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(2026) 2 ILRA 8
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 428 No. 15862 of 202
&
Other Connected Cases

Gopal Prasad Sharma **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether dismissal of complaints under Section 256 CrPC amounts to acquittal when the accused never appeared.

Whether revision under Sections 397/401 CrPC was maintainable instead of appeal under Section 378(4) CrPC.

Validity of summoning orders under Section 138 NI Act.

Whether accused's repeated non-appearance amounts to abuse of process.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Sections – 200, 201, 203, 204, 204(4), 247, 251, 252, 253, 254, 255, 256, 256(1), 257, 258, 259, 378, 378(4), 378(5), 311, 397, 398, 399, 400, 401, 401(2), 402, 482 - Negotiable Instruments Act, 1881 - Section - 138, 143, 141: - Application u/s 482 – against revisional orders restoring complaints – seeking relief of quashing – complaint u/s 138 NI Act for dishonour of cheques – cognizance taken – summons - bailable and non-bailable warrants issued – accused never appeared – trial not commenced – complaints dismissed by Magistrate under section 256 CrPC – revision allowed by Sessions Court – connected cases filed by accused challenging revisional orders and summoning orders – applicant pleaded that remedy lay in appeal u/s 378(4) CrPC and cognizance defective – Court finds that acquittal without trial is illegal, revision maintainable, and cheques issued personally – held – (i) Section 256 CrPC cannot be invoked to acquit an accused who never appeared for trial – (ii) Revision is the proper remedy against dismissal of complaints in such circumstances, not appeal - (iii) Accused's conduct of evading summons/warrants for over a decade held to be abuse of process, – (iv) summoning orders are proper – consequently, all eight applications are dismissed with costs of Rs. 50,000 payable to complainant, - however, complainant's Application is allowed with direction to expedite the trial in line with Supreme Court directions on speedy trial under NI Act. (Para – 41, 52, 53, 54, 55, 56, 57, 60, 61, 62) **Leading Application allowed with direction but connected applications are dismissed.** (E-11)

CASE LAW CITED

Associated Cement Co. Ltd. v. Keshvanand (1998) 1 SCC 687
S. Anand v. Vasumathi Chandrasekar (2008) 4 SCC 67
S. Rama Krishna v. S. Rama Reddy (2008) 5 SCC 535
BLS Infrastructure Ltd. v. Rajwant Singh (2023) 4 SCC 326
Anil Kumar Agarwal v. State of U.P. (Allahabad HC, Larger Bench)

Ranjeet Sarkar v. Ravi Ganesh Bhardwaj (2025) 7 SCC 234
Aneeta Hada v. Godfather Travels Pvt. Ltd. (2012) 5 SCC 661
Amit Kapoor v. Ramesh Chandra (2012) 9 SCC 460
In Re: Expeditious Trial of Cases under Section 138 NI Act (2021) 16 SCC 116

LIST OF ACTS

Negotiable Instruments Act, 1881 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Complaint – transaction - Cheque dishonour - cognizance - Summoning Order – summons - bailable warrant - non-bailable warrant - acquittal, revision vs appeal, summons trial, abuse of process, speedy trial, non-appearance, costs imposed - opportunity – direction – expedite disposal – rejected – allowed.

CASE ARISING FROM

Complaint Case No. 80 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 529 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 76 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 526 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 79 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 528 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 78 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 334 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 72 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 530 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 77 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 527 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 74 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 532 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another],
Complaint Case No. 75 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad],
Criminal Revision No. 531 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another] – all the compliant were filed before the Court of Additional Chief Judicial Magistrate-IV, Agra.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sushil Shukla, Senior Advocate assisted by Shri Ravitendra Pratap Singh.
Counsel for Respondent(s): Shri Raj Shekhar Srivastava, AGA.

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

1. This leading case alongwith the connected cases has been taken by this court on being nominated by Hon'ble the Chief Justice on 29.11.2025.

2. The leading case in this bunch is an application under Section 482 CrPC filed by the complainant (Gopal Prasad Sharma) against the accused opposite party no.2 (Ram Anoop Prasad @ Rai Anoop Prasad) for seeking direction of this Court to direct the speedy disposal of complaint filed twelve years back by the complainant for the offence under Section 138 Negotiable Instruments Act, 1881, P.S. Shahganj, District Agra. This application is particularly moved to seek direction in Complaint Case No. 74 of 2012 (Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad), though there are seven other complaints between the same parties arose out of same transaction. Before dealing with the issue, the crux of the matter in all the cases having genesis from the single incident needs to be mentioned.

3. Connected with the above application are eight other applications filed by accused/applicant (Ram Anoop Prasad @ Rai Anoop Prasad), against Gopal Prasad Sharma (complainant) to assail, **primarily**, the orders allowing the criminal revisions filed by the complainant against the accused/applicant for quashing the orders of the trial Magistrate acquitting the accused/applicant invoking Section 256 CrPC and **alternatively**, the summoning orders dated 25.02.2012 passed by the Magistrate, summoning the accused/applicant for offence under Section 138 Negotiable Instruments Act, 1881.

For the sake of brevity, comprehensiveness and clarity in the judgement the words used to represent the applicant and opposite party no.2, is taken as "complainant", who has filed the case and "accused", who is summoned in complaint; whereas, Negotiable Instruments Act, 1881 will be referred as "NI Act" and The Code of Criminal Procedure, 1973 as "CrPC".

4. Heard, Sri Sushil Shukla, learned Senior Advocate assisted by Sri Ravitendra Pratap Singh, learned counsel for accused; Sri Rajesh Kumar Pandey, learned counsel for complainant; and Sri Raj Shekhar Srivastava, learned A.G.A. for the State.

5. The complaint has filed eight complaints in the year 2012 against the accused for offence under Section 138 NI Act before the Magistrate at Agra with alleged averments that the complainant and the accused were having close and cordial relations. In the last week of June 2011, the accused came to complainant's house at Shahganj, Agra and asked for some money and also insisted the complainant to purchase his flat situated at Ghaziabad for a consideration of Rs. 80,00,000/-. The complainant accepted the offer and in the first week of July, 2011, he gave Rs. 30,00,000/- as advance to the accused, in presence of three persons, whose names have been disclosed in the complaint. It was agreed between the parties that the remaining amount of Rs. 50,00,000/- would be made good at the time of execution of sale deed. Somehow the deal could not be materialized and the accused has offered to return the advanced money, which was accepted by the complainant. The accused thereafter returned Rs. 30,00,000/- through eight cheques. Four cheques of Rs. 2,50,000/- each and four cheques of Rs. 5,00,000/- each. All these cheques were dishonored due to insufficiency of funds and led to eight criminal complaints.

6. In all the eight complaints the learned Magistrate has taken cognizance against the accused for offence under Section 138 NI Act and issued the summons to the accused. For continuous period of two years, the summons have been issued, but the accused did not appear. The Magistrate then issued bailable warrant, but even then the accused did not appear. On 29.09.2014, the complainant could not appear before the trial court due to the reason of death in his family and his counsel also did not turn up, consequently, the learned Magistrate has dismissed all the eight complaints and acquitted the accused invoking Section 256 CrPC It is this order of Magistrate, which was challenged by the complainant in revision before the court of Sessions and the revisional court has set aside the order of learned Magistrate in all the eight revision petitions. The learned Magistrate has again resorted to issuance of processes and till 24.01.2024, the summons, bailable warrants and non-bailable warrants have continuously been issued against accused, but he did not appear to proceed with the trial; else moved the connected eight applications under Section 482 CrPC for quashing the revisional court's order, alternatively, the cognizance order passed by the Magistrate. Now, it would be expedient to deal with all the eight applications, separately.

[1. Crl. Misc. Application U/S 482 CrPC No. 12094 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

7. The **Complaint Case No. 80 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 598510** dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that Funds Insufficient. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 27.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out. Complainant not present even on the last date of hearing also, complainant not present. It is 2:40 p.m. so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR."

8. This order of learned Magistrate has been challenged in Criminal Revision No. 529 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

9. The learned Magistrate is again seized with the matter. From 10.04.2018 to 30.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued; and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[2. Crl. Misc. Application U/S 482 CrPC No. 12548 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

10. The Complaint Case No. 76 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 598509 dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that Funds Insufficient. The information

of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidnce regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 27.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out. Complainant not present even on the last date of hearing also, complainant was not present. It is 2:50 p.m. so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR."

11. This order of learned Magistrate has been challenged in Criminal Revision No. 526 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

12. The learned Magistrate is again seized with the matter. From 10.04.2018 to 24.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued;and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[3. Crl. Misc. Application U/S 482 CrPC No. 12590 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

13. The Complaint Case No. 79 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 598511 dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that □Funds Insufficient□. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequntly, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out. Complainant not present .It is 2:50 p.m. Even on the last date also complainaning was not present. so, complains is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR."

14. This order of learned Magistrate has been challenged in Criminal Revision No. 528 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

15. The learned Magistrate is again seized with the matter. From 10.04.2018 to 30.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued; and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[4. Crl. Misc. Application U/S 482 CrPC No. 12625 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

16. The Complaint Case No. 78 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 598508 dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that Funds Insufficient. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed.The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of chequeand took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out complainant not present. It is 2:45 p.m. even on the last date of hearing also, complainant was not present. so, complaint is dismissed u/s 256 CrPC and accused is acquitted file be consign to RR."

17. This order of learned Magistrate has been challenged in Criminal Revision No. 334 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 08.02.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

18. The learned Magistrate is again seized with the matter. From 16.03.2018 to 20.06.2023, the summons were continuously issued; and from 18.09.2023 to 24.01.2024, the bailable warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[5. Crl. Misc. Application U/S 482 CrPC No. 12953 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

18. The Complaint Case No. 72 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 125833 dated 31.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that Funds Insufficient. The information of dishonor of cheque was intimated by the Bank vide memo dated 23.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out complainant not present .It is 2:50 p.m. even on the last date also, complainant was not present so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR."

19. This order of learned Magistrate has been challenged in Criminal Revision No. 530 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

21. The learned Magistrate is again seized with the matter. From 10.04.2018 to 06.04.2019, the summons were continuously issued; on 22.06.2019, the bailable warrant has been issued; and from 22.08.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[6. Crl. Misc. Application U/S 482 CrPC No. 12968 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

22. The Complaint Case No. 77 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 125830 dated 29.10.2011 for Rs. 5,00,000/-

drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that Funds Insufficient. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out. complainant not present .It is 2:50 p.m. even on the last date of hearing complainant was not present so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR."

23. This order of learned Magistrate has been challenged in Criminal Revision No. 527 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside and the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

24. The learned Magistrate is again seized with the matter. From 10.04.2018 to 24.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued; and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[7. Crl. Misc. Application U/S 482 CrPC No. 13016 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

25. The Complaint Case No. 74 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 125832 dated 30.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that Funds Insufficient. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding the dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014

summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out complainant not present .It is 2:45 p.m. even on the last date of hearing complainant was not present. so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR"

26. This order of learned Magistrate has been challenged in Criminal Revision No. 532 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

27. The learned Magistrate is again seized with the matter. From 10.04.2018 to 10.08.2020, the summons were continuously issued; and from 31.03.2022 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[8. Crl. Misc. Application U/S 482 CrPC No. 13020 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

28. The Complaint Case No. 75 of 2012 [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of Cheque No. 125831 dated 28.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that "Funds Insufficient". The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"29.09.2014- Called out. complainant not present .It is 2:50 p.m. even on the last date of hearing also complainant was not present so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR."

29. This order of learned Magistrate has been challenged in Criminal Revision No. 531 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

30. The learned Magistrate is again seized with the matter. From 10.04.2018 to 10.05.2018, the summons were continuously issued; from 12.07.2018 to 10.08.2020, the bailable warrants have been issued; and from 31.03.2022 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

31. Learned Senior Advocate appearing for the accused submits that the revisional court (Additional Sessions court) has exercised the jurisdiction of revision, which is not applicable in the present matter, where the accused has been acquitted in the Complaint Case for an offence under Section 138 N.I. Act by the Magistrate. The proper remedy available to the complainant was to prefer Leave to Appeal under Section 378(4) CrPC. Further submits that Section 401(4) CrPC clearly bars the jurisdiction of revision where the provision of appeal is provided in the Code. Hence, submitted that the applications are liable to be allowed and the impugned order of revisional court, whereby the order of acquittal has been set aside by the revisional court, shall be quashed and consequently proceedings pending before the Magistrate shall also be quashed. Learned counsel has relied upon the pronouncements in cases of ***Abhishek Mishra @ Pintu Vs. State of U.P. and Anr.1, Vinay Kumar Vs. State of U.P. and Anr.2, Associated Cement Co. Ltd. Vs. Keshvanand3, S. Anand Vs. Vasumathi Chandrasekar4, S.Rama Krishna Vs. S.Rama Reddy (Dead) by His Lrs & Ors., BLS Infrastructure Ltd. Vs. Rajwant Singh & Ors.6, Anil Kumar Agarwal Vs. State of UP & Anr. and Shitala Baksh Singh Vs. State of U.P. through Secretary (Home) and Another***. It is further submitted that the order passed by the revisional court is also bad in the eye of law, because no opportunity has been granted by the revisional court to the accused to defend the order of Magistrate passed in his favour for acquittal. This opportunity is provided under Section 401(2) CrPC. He relied upon the judgments of Hon'ble Supreme Court in the cases ***of Manharibhari Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel & Ors9, P. Sundarrajan & Ors Vs. R. Vidhya Sekar10 and Subhash Sahebrao Deshmukh Vs. Satish Atmaram Talekar & Ors***. It is further submitted that even otherwise the cognizance taking order passed by the Judicial Magistrate is bad in the eyes of law.

32. He further submits that the Magistrate has committed error in issuing the summons and taking cognizance of offence under Section 138 of N.I.Act against the accused because the cheque has been issued by a company and without impleading the company or taking cognizance against the Director of the company the accused has been summoned in personal capacity. Further submits that the cognizance order is also bad in the eyes of law as the complaint does not disclose that the account from which the cheque was issued was in the name of accused and therefore, the cognizance taking order as well as the summons issued against the accused is bad in the eyes of law and on this count as well, the summoning order issued by the Magistrate shall be quashed. In substantiation of arguments, the learned counsel has relied on the judgments of Hon'ble Supreme Court in the cases of ***Jugesh Sehgal Vs. Shamsher Singh Gogi12, PJ Agro Tech Limited and others Vs. Water Base Limited13 and Aneeta Hadra Vs. Godfather Travels Pvt. Limited***.

33. **Per contra**, learned counsel for the complainant and learned AGA have submitted that larger Bench in ***Abhishek Mishra @ Pintu Vs. State of U.P. and Anr.*** by order dated 05.04.2025 has opined that the reference needs no deliberation and does not deserve to be answered. Learned counsel further submits that Hon'ble Supreme Court in the case of ***In Re:- Expeditious Trial of Cases under Section 138 of N.I. Act 1881*** has issued general directions for expeditious disposal of the cases pertaining to dishonour of cheque. Further submits that the accused has willfully not appeared in the cases of dishonour of cheque and it is in the absence of the accused that the Magistrate has dismissed the complaint invoking Section 256 CrPC, against which the complainant has file the revision petitions, which were rightly allowed by the revisional court. Further submits that the conduct of accused throughout the case about deceiving the summons, on one pretext or the other is with the motive of not returning the money advanced, given for the purchase of flat to the accused which has not been advanced to any company, therefore, impleading of a company or invoking of Section 141 of N.I.Act is not required and therefore, the complaint was filed against the accused in personal capacity. Further submits that the cheques have been issued by the accused to pay the debt, which were dishonoured hence, the complaint, as the notice was not complied. The intention of accused is still clear and explicit that he does not want to return the money even after fourteen long years have elapsed. The accused is an unscrupulous litigant, hence the applications filed by the accused shall be dismissed.

34. This Court has taken into consideration the rival submissions made by the parties and perused the record.

35. The factual matrix of the case requires reiteration for deliberations to ponder on the legal perspective. The complainant has filed eight complaints under Section 138 N.I.Act against the accused for dishonour of cheque in which learned Magistrate has issued processes under Section 204 CrPC on 25.02.2012. The processes (summons and bailable warrants) have been issued for two years, but the accused did not appear. On 29.09.2014, the Magistrate, in absence of complainant and accused has dismissed the complaint, specifically mentioning acquittal of accused under Section 256 CrPC. At the very threshold, it is required to be pointed out that learned counsel for the accused has not placed any judgment, wherein this fact has been considered by either Hon'ble the Supreme Court or by the High Court regarding the remedy in appeal under Section 378 CrPC or revision under Section 397 read with Section 401 CrPC.

36. It is an admitted fact that the complainant has filed criminal revision invoking Section 397 read with Section 401 CrPC before the court of Sessions to assail the order dated 29.09.2014 passed by the Magistrate, acquitting the accused by dismissing the complaint and the Additional Sessions Court, while invoking revisional jurisdiction has allowed the revision petitions, setting aside the orders dated 29.09.2014 passed by the Magistrate.

37. The record reflects that the complainant was continuously appearing before the court of Magistrate, taking steps for service of summons and bailable warrants for procuring the presence of accused, as is provided under Section 204(4) Cr.P.C., reiterates ***"When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint."***

38. The record further reveals that the Magistrate has continuously issued summons to the accused from 25.02.2012 till 18.06.2014. On 14.08.2014, the complainant was present and bailable warrant of Rs. 5000/- was issued against the accused fixing 27.09.2014 as the next date. On 27.09.2014 the case was fixed for further orders, revealing therein that the parties were not present, there is no satisfaction of the court as to the service of bailable warrant upon the accused. It is also a point to be considered that on 27.09.2014, the court has fixed 29.09.2014, after the gap of a day, on which date, the Magistrate has dismissed the complaint in absence of the complainant and acquitted the accused.

39. Thus the points of concern are :-

(i) Whether the complainant has not taken the steps for service of summons and processes, as is required under Section 204(4) CrPC which provides power to the Magistrate to dismiss the complaint?

(ii) Whether the accused could be acquitted without appearing in a complaint?

(iii) Whether the requirement of section 256 CrPC has been complied by the Magistrate, which requires the presence of complainant on the date of adjourned hearing?

(iv) Whether the Magistrate was having any evidence on record at post cognizance stage, subsequent to the passing of cognizance taking order dated 25.02.2012, till dismissing the complaint on 29.09.2014, which could be considered for the acquittal of accused?

(v) Whether the order of Magistrate acquitting the accused, who is not before the court or facing trial is patently an illegal and erroneous order, which requires to be dealt with in revision under Section 397 read with section 401 CrPC? OR Merely dismissal of the complaint and acquitting the accused under Section 256 CrPC makes the order appealable under Section 378 CrPC? AND if the application under Section 378(4) CrPC is moved for seeking leave to appeal in such a situation, whether the appellate court could exercise the appellate jurisdiction without the evidence on record at the post cognizance stage because the complainant had no occasion to adduce it?

40. Sections 200-203 CrPC provides for complaints to Magistrate (Chapter XV), which deals with entertaining a complaint, examination of complainant and witnesses on oath and the dismissal of complaint under Section 203 CrPC. After considering the statement of complainant and witnesses on oath and result of inquiry or investigation carried out under Section 202 CrPC, if any, the Magistrate does not found sufficient ground to proceed, the complaint is dismissed under Section 203 CrPC but if sufficient ground to proceed then Section 204 CrPC provides for taking of cognizance of offence and issuance of processes upon the accused. In the present case, the Magistrate has taken cognizance of the offence in all the eight cases of dishonour of cheque, separately on 25.02.2012.

41. The complainant has taken required steps for issunace of summons and bailable warrant, which have been issued against the accused, but the accused did not appear. The orders dated

29.09.2014, reiterated herein before clearly reveals that the complaint has not been dismissed for the reasons of non-taking of processes as is provided under Section 204(4) CrPC. Thus, point (i) is accordingly dealt with and decided.

42. At the post cognizance stage, no evidence could be adduced by the complainant because the accused never appeared in the complaint.

43. Section 143 of N.I.Act provides that the power of court is to try the case summarily, the relevant extract is reiterated, ***"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all the offence under this Chapter shall be tried by a Judicial Magistrate of first class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 CrPC (both inclusive) of the said Code shall, as far as may be, applied to such trial."*** Moreover, Sub-section (1) of Section 262 CrPC provides that the procedure for summary trial is the same as provided in this Code for the trial of summons-cases, if not otherwise excepted.

44. Whereas, the trial of summons-case is provided in Chapter XX (Sections 251-259) CrPC. It is through this analogy that the provision of Section 256 CrPC is applicable for the cases of N.I.Act. The provision of Section 256 CrPC is reiterated underneath:-

"256. Non-appearance or death of complainant.

(1)If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2)The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

45. In the present Complaint Case, the accused never appeared for trial and the case was not fixed for hearing, which connotes the presence of parties for trial. Though, the Magistrate invoked Section 256 CrPC. Now the legal pronouncements be taken into consideration.

46. Hon'ble the Supreme Court in the case of ***Associated Cement Co. Ltd. (supra***) while dealing with Section 247 of the Code of Criminal Procedure, 1898, as applicable to the State of Jammu & Kashmir, the coordinate Section is Section 256 of CrPC considered two requirements, which are to be taken into consideration by the Magistrate while acquitting the accused and found that the Magistrate has not taken into consideration those requirements and passed the order of acquittal under section 247 of the old Code (Section 256 of the CrPC) and considered that the

Magistrate while invoking Section 256 CrPC must keep in mind that the attendance of complainant is essential on the date fixed. The relevant paragraphs 16 and 17 are reiterated underneath:-

"16. What was the purpose of including a provision like Section 247 in the old code (or section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The Section, therefore, affords a protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, court has a duty to acquit the accused in invitum.

17. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjoined to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice."

47. In the case of S. Anand (supra) Hon'ble Supreme Court has again considered the applicability of Section 256 CrPC and the exercise of power by the Magistrate, in the light of argument that an application under Section 311 CrPC moved by the accused was pending, when the complaint was dismissed by the Magistrate invoking Section 256 CrPC. The relevant paragraphs 13, 14 and 15 are reiterated underneath:-

"13. The date was fixed for examining the defence witnesses. Appellant could have examined witnesses, if he wanted to do the same. In that case, the appearance of the complainant was not necessary. It was for her to cross-examine the witnesses examined on behalf of the defence.

14. The accused was entitled to file an application under- Section 311 of the Code of Criminal Procedure. Such an application was required to be considered and disposed of by the learned Magistrate. We have noticed hereinbefore that the complainant did not examine herself as a witness. She was sought to be summoned again for cross-examination. The said prayer has not yet been allowed. But, that would not mean that on that ground the court

would exercise its discretionary jurisdiction under-Section 256 of the Code of Criminal Procedure at that stage or the defence would not examine his witnesses.

15. Presence of the complainant or her lawyer would have been necessary, as indicated here-in-before, only for the purpose of cross- examination of the witnesses examined on behalf of the defence. If she did not intend to do so, she would do so at her peril but it cannot be said that her presence was absolutely necessary. Furthermore, when the prosecution has closed its case and the accused has been examined under Section 311 of the Code of Criminal Procedure, the court was required to pass a judgment on merit of the matter."

48. In the case of S. Rama Krishna (supra), the complainant has passed away, the counsel moved application for substitution, the accused moved objection, thereafter, one year none appeared for complainant and the Magistrate has dismissed the complaint and acquitted accused. On which, the Hon'ble the Supreme Court has considered the ingredients of Section 256(1) CrPC in paragraph 9. The same is reiterated underneath:-

"The ingredients of Section 256(1) are: (i) that summons must have been issued on a complaint, (ii) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date; and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned."

49. In the case of ***BLS Infrastructure Ltd.(supra***), the Hon'ble Supreme Court has considered the scope of Section 256 CrPC, the powers exercised by the Magistrate and considered that if the complainant, who has moved an applications under Section 311 CrPC does not appear before the court for pressing the application, the Magistrate is not justified in straightway dismissing the complaint. The relevant paragraphs 12 and 16 of the aforesaid judgement are reiterated underneath:-

"12. A plain reading of the proviso to sub-section (1) of Section 256 would indicate that where the Magistrate is satisfied that the personal attendance of the complainant is not necessary, he can dispense with the attendance of the complainant and proceed with the case. Such a situation may arise where complainant's/prosecution's evidence has been recorded and to decide the case on merits, complainant's presence is not necessary.

13. xxxxxx

14. xxxxxx

15. xxxxxx

16. Further, if the complainant had not appeared to press the application under Section 311 of the Code, the learned Magistrate could have rejected the application under Section 311 of the Code and proceeded with the case on basis of the available evidence. We are, therefore, of

the considered view that the learned Magistrate was not justified in straight away dismissing the complaint(s) and ordering acquittal of the accused on mere non- appearance of the complainant. The High Court too failed to take notice of the aforesaid aspects. Thus, the orders impugned are liable to be set aside."

50. In all the judgments cited for the accused/applicant, the fact in common is the presence of accused in the complaint, who were facing trial when the complainant did not appear and the Magistrate has dismissed the complaint wrongly or rightly invoking Section 256 CrPC. It is also the point of discussion and deliberation in the case of ***Anil Kumar Agarwal (supra),*** which has been decided by a larger Bench on reference that complainant/victim has got a right to file an appeal under sub- section (4) and (5) of Section 378 CrPC against the order of acquittal. The difference in the present case and the above dealt cases is presence of accused facing trial. If the accused did not appear to face trial, whether he could be acquitted? The scheme of summons trial provided under Chapter XX of CrPC starts from appearance of accused. Section 251 CrPC provides that when in a summons-case the accused appear the substance of accusation shall be stated to him by the Magistrate to know whether he plead guilty or has defense to make. If the accused pleads guilty, the Magistrate may convict him under Section 252 CrPC, otherwise, the procedure is laid down under Section 254 CrPC where the accused is pleaded not guilty. This procedure is reiterated underneath:-

"***254. Procedure when not convicted.***

(1)If the Magistrate does not convict the accused under Section 252 or Section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2)The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3)The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court."

51. Section 255 provides for acquittal or conviction, the same is reiterated underneath:-

"255. Acquittal or conviction.

(1)If the Magistrate, upon taking the evidence referred to in Section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2)Where the Magistrate does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3)A Magistrate may, under Section 252 or Section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby."

52. Thus, the scheme of trial provides the presence of accused to face trial, recording of his statement of pleading guilty or has a defense to make, conviction on pleading guilty and proceeding with the trial for adjudication.

53. The scope and applicability of Section 256 CrPC is again considered by Hon'ble Supreme Court in the case of ***Ranjeet Sarkar Vs. Ravi Ganesh Bhardwaj***, wherein it is observed that Section 256 CrPC could be invoked for acquitting the accused, if the acquittal of accused would follow as its logical result of absence of complainant. The relevant paragraph 23 is reiterated underneath:-

"23. What, therefore, assumes importance for invoking Section 256, Cr. PC is the purpose for which the case is fixed. If the date is not appointed for appearance of the accused but for some other purpose, like in the present case, acquittal of the accused does not necessarily follow as the logical result of absence of the complainant. Also, the words on any day subsequent thereto must be understood in reference to the words preceding, namely, the day appointed for the appearance of the accused. Say, for instance, if a date is fixed by the magistrate for bringing an order from a superior court or for showing cause why an order of dismissal should not be passed for continuous absence of the complainant or for producing any material, which is not intrinsically connected with any step towards progress of the lis, and the complainant is found to be absent, a dismissal of the complaint can be ordered but the provision for acquitting the accused may not be attracted unless it happens to be the date appointed for appearance of the accused and they do appear personally or through an advocate; also, without the magistrate recording a clear acquittal along with the order of dismissal of the complaint, acquittal need not be read into every such order of dismissal of a complaint owing to absence of the complainant."

54. In the present case, the non-appearance of complainant on the date fixed would not lead to acquittal of accused at any stretch of imagination, because the accused was not appearing in the trial. Section 256 CrPC contemplates acquittal of accused, who is before the court and not when he is absconding the trial. Therefore, point no. (ii) & (iii) are accordingly decided in the light of judgment of the Hon□ble Supreme Court considered here-in-above and the provisions of law that acquittal cannot be recorded where the requirement of presence of complainant is not necessary for hearing of the complaint. Hence the order passed by the Magistrate on 29.09.2014 is patently illegal order.

55. So far as the point no. (iv) is concerned it is an admitted position that the evidence recorded at the pre-cognizance stage is the only evidence available on record. At the post-

cognizance stage there is no evidence because after taking of cognizance there was no opportunity for the complainant to adduce the evidence, as complaint case was continuously being fixed for appearance of accused, till 29.09.2014 when the order dismissing the complaint was passed. Hence, the point no.(iv) is accordingly replied.

56. The above discussions made it clear that the complainant has taken steps for service of summons and processes as required under Section 204 (4) CrPC and the accused has been acquitted without his facing trial in the complaint proceeding and there is no evidence available with the Magistrate after the post cognizance stage, which could warrant acquittal of the accused. Now, the points of concern is elaborated at point no. (v). To deal with this issue, the first and foremost point of concern is the scope of criminal revision provide under Section 397 to 402 CrPC, which deals with the power and scope of revisional jurisdiction exercised by the High Court and the Sessions Court. The revisional jurisdiction of Sessions court is required to be considered, because the revision has been filed before the Sessions Court and exercised by Additional Sessions Judge as per the provisions of Section 400 CrPC, which provides the exercise of all the powers under Chapter XXX(Reference and Revision) of CrPC by Additional Sessions Judge that could be exercised by the Sessions Judge. The provisions of Section 397, 398, 399 and 401 CrPC are reiterated underneath:-

"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.

398. Power to order inquiry:-

On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this Section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

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 proceedings 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 sub-sections 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.

401. High Court□s powers of revision:-

(1)In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2)No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3)Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

57. The scope of revisional jurisdiction is considered by Hon'ble Supreme Court in ***Amit Kapoor Vs. Ramesh Chandra***, (relevant paragraph 12 and 13), wherein it is held that the provisions of revision is to examine by a superior court when the order is grossly erroneous and intervention of superior revisional court is necessitated to prevent the abused of process of law, wherein the point of law is the prime concern of revisional court. Paragraph 12 and 13 are reiterated underneath:-

"12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression prevent abuse of process of any court or otherwise to secure the ends of justice, the jurisdiction under Section 397 is a very limited one. The legality, proprietary or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

13. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor & Ors. v. State of Punjab & Ors. [AIR 1980 SC 258 : (1980) 1 SCC 43]. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of

Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction."

58. While dealing the issue, this Court has already considered that there is no evidence on record, which had its logical end in acquittal of accused in absence of complainant, because the accused has never appeared for commencement of trial, which would be commenced, in the present case after putting the substance of accusation before the accused in pursuant to Section 251 CrPC, which provides "when in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

59. The judgments of the Hon□ble Supreme Court and the High Court dealt here-in-above specifically speaks about the filing of appeal for acquittal, invoking Section 378(4)CrPC, but the facts of present case is different from the facts of those cases, which are dealt with in the preceding paragraphs. Section 378 CrPC that deals with the appeal in case of acquittal is reiterated underneath:-

"378.Appeal in case of acquittal :-

(1) Save as otherwise provided in Sub-Section (2) and subject to the provisions of Sub-Sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision."

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of Sub-Section (3), also direct the Public Prosecutor to present an appeal"

(a)to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b)to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal under Sub-Section (1) or Sub-Section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-Section (1) or under Sub-Section (2).”

60. The meaning and definition of word “acquittal” is not provided in CrPC, but the wordly meaning of the word connotes that a formal finding by a court that the accused is not guilty of the offence charge. The acquittal could only be recorded when the prosecution fails to prove the case. In the present case, neither the accused appeared for hearing on charge nor the complainant was ever provided opportunity of producing the evidence. In such a situation, if the complainant is resorted to move an application for leave to appeal under Section 378(4) CrPC and the leave is granted by the court, that what would be before the appellate court for considering the justifiable evidence or material before the Magistrate for acquitting the accused?

61. Hence, the perception of this Court after deliberation of the entire facts and law on the point of preferring a revision or appeal in the present set of facts is right of preferring revision and not an appeal because the accused never appear for trial and acquittal of accused under Section 256 CrPC is an abuse of process of law and exercise of discretion which is not applicable to the Magistrate. Thus, point no. (v) is accordingly deliberated and decided.

61. As this Court has found that revision under Section 397 read with Section 399 and 401 CrPC is rightly invoked by the complainant, now the point of concern is whether the order passed by revisional court (Additional Sessions Judge), bad in the eye of law due to non-compliance of Section 401(2) CrPC, which deals with an opportunity of hearing to the accused, reiterates as ***“no order under this section shall be made to the prejudice of the accused or other persons unless he has had an opportunity of being heard either personally or by pleader in his own defence.”*** It is apparent from the face of revisional order that the accused did not appear, but the accused has not annexed the copy of order sheet of the revisional court on the point of issuance of notice and satisfaction of the court. However, the subsequent order sheet of Magistrate court is annexed,

which reveals that from 10.04.2018 to 24.01.2024 continuous processes means, summons, bailable warrant and non-bailable warrant have been issued but accused did not appear and directly approach this Court invoking Section 482 CrPC. This shows that the accused is an unscrupulous litigant, whose main purpose is to ignore the processes of court and delay the proceedings of the case to any stretch.

62. The last point of argument of learned counsel for the accused is for quashing of the summoning order dated 25.02.2012 on the ground that the account is not maintained in the name of accused, which has been acknowledged by the complainant in his complaint and ignored by the Magistrate at the time of issuance of summons and relied upon the cases of Jugesh Sehgal(supra) and P.G.Agro Tech Ltd. (supra) but the plain reading of complaint does not show that the account is not maintained in the name of accused/applicant. Further, the complaint shows transaction between the parties with no involvement of the Company to invoke Section 141 NI Act.

63. Therefore***, (1) Application U/s 482 No. 12094 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (2) Application U/s 482 No. 12548 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (3) Application U/s 482 No. 12590 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (4) Application U/s 482 No. 12625 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (5) Application U/s 482 No. 12953 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (6) Application U/s 482 No. 12968 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (7) Application U/s 482 No. 13016 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another) and (8) Application U/s 482 No. 113020 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another)*** are hereby ***dismissed*** with cumulative cost of Rs. 50,000/- payable by accused to complainant within ***30 days*** whereas, the application moved by the complainant in ***Application U/s No. 15862 of 2024 (Gopal Prasad Shamra Vs. State of U.P. and another)*** is hereby ***allowed*** with direction to the Additional Civil Judge (Junior Division)/Additional Chief Judicial Magistrate, Court No.4, Agra or trial Magistrate to speed up the trial of all cases detailed above in accordance with the directions issued by the Hon'ble Supreme Court ***In-Re Expeditious Trial of Cases Under Section 138 NI Act, 1881***.

(2026) 2 ILRA 30
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.02.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 79 of 2008

Shiv Pujan Verma **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The appellant was accused of murdering his father with an axe and danda over a dispute regarding the sale of agricultural land.

Headnotes

A. Criminal law-Indian Penal Code,1860-Section 302-Criminal Procedure Code,1973-Section 374(2)-Murder-Circumstantial evidence-Prosecution case based on motive of land dispute, extra judicial confession, and recovery of weapons-Failure of prosecution to complete the chain of circumstances-Complainant and Independent witnesses turning hostile-Extra –judicial confession deemed weak and unreliable as confession allegedly made to a village witness but denied during trial and also recovery memo not supported by independent witnesses who claimed signatures were obtained on blank papers under police pressure-Held, when the links in the chain of circumstances are broken and the evidence fails to unerringly point towards the guilt of accused, the benefit of doubt must accrue to the appellant-Conviction set aside.(Para 40 to 77)

Held

The court held that evidence of recovery and confession cannot be relied upon if the witnesses do not support the prosecution version during cross-examination. Also the testimony of hostile witnesses cannot be used to fill gaps in a case based purely on circumstantial evidence. The prosecution failed to provide eyewitness accounts or forensic links to the accused. The appeal is allowed. The appellant is acquitted. (E-6)

Case law Cited

Sahadeven Vs State of T.N. (2012) 6 SCC 403, Sharad Birdhichand Sarda Vs State of Maharashtra, (1984) 4 SCC 116,Raja Naykar Vs State of Chhattisgarh, (2024) 3 SCC 481, Mustkeem alias Sirajudeen Vs State of Rajasthan, (2011) 11 SCC 724, Nanhar & Ors Vs State of Haryana, (2010) 11 SCC 423, Mehendra Singh & Ors Vs State of M.P. (2022) 7 SCC 157-referred to.

List of Acts

Criminal Procedure Code,1973
Indian Penal Code,1860
Evidence Act,1872

List of Keywords

Circumstantial evidence, Extra-judicial confession, hostile witnesses, Recovery, Independent witnesses, Presumption of Innocence, Motive, Deceased, medical evidence, land dispute.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No.- 79 OF 2008
Shiv Pujan Verma Vs. State of U.P.
From the judgment and order dated 13.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant :-
Sri S.S Imam Rizvi, Sri Diwakar Singh, Sri Rajiva Dubey
Adv. for Respondent:-
G.A.,

(Delivered by Hon'ble Zafeer Ahmad, J.)

1. Heard Sri Rajiva Dubey learned counsel for the appellant and Sri Pawan Kumar Singh learned A.G.A for the State.

2. The aforesaid criminal appeal arises out of order and judgment dated 15.12.2007 passed by learned Sessions Judge , Balrampur in S.T. No. 48 of 2006 (State v. Shiv Pujan) arising out of case crime no. 06 of 2006 wherein the appellant has been convicted and sentenced to undergo life imprisonment u/s 302 Indian Penal Code (in short I.P.C).

Prosecution Case in Nutshell:

3. The prosecution case, in nutshell, is that the complainant Mangal Prasad Verma submitted a written report (Ex. Ka-1) at Police Station Jarwa, District Balrampur, stating therein that his father Shiv Pujan had two brothers, namely Munshi and Nibber. Shiv Pujan was the eldest, Munshi was the second and Nibber was the youngest. All the three brothers were living separately. The second brother Munshi used to reside with his parents, namely Ragunath and Kamla, in a seperate house situated at the edge of the forest. Furthermore, it was stated that on the morning of 17.01.2006, his uncle Nibber came and informed him that during the preceding night, some unknown persons had dragged Munshi (uncle), Ragunath (grandfather) and Kamla (grandmother) from the said house to the back side of the chak-road and assaulted them with sharp-edged weapons, resulting in their death. On receiving this information, the complainant rushed to the house of his grandfather and found that all the three had been murdered. It was further stated that his uncle Nibber had collected the dead bodies and placed them in the courtyard of the house.

4. On the basis of the aforesaid written report, a FIR was registered under Section 302 IPC against unknown persons (Ex. Ka-8) and corresponding entry was made in the general diary as entry no. 14 (Ex. Ka-9). The investigation was taken up by S.H.O. R.N. Gautam, who reached the place of occurrence and inspected the site. During inspection, samples of blood-stained and plain soil were collected (Ex. Ka-6) and a site plan of the place of occurrence was prepared (Ex. Ka-30).

5. The panchayatnama of the dead body of Smt. Kamla was prepared by S.I. A.P. Singh (Ex. Ka-4). On his directions, the dead body was duly sealed and the following papers were prepared: letter to R.I. (Ex. Ka-13), letter to C.M.O. (Ex. Ka-14), challan lash (Ex. Ka-15), sketch of the dead body (Ex. Ka-16) and sample seal (Ex. Ka-17). The panchayatnama of the dead body of Raghunath was prepared by S.I. Bhagirathi Tiwari (Ex. Ka-2). On his directions, the dead body was duly sealed and the following papers were prepared: letter to R.I. (Ex. Ka-18), letter to C.M.O. (Ex. Ka-19), challan lash (Ex. Ka-21), sketch of the dead body (Ex. Ka-20) and sample seal (Ex. Ka-22). Furthermore, the panchayatnama of the dead body of Munshi was prepared by S.I. A.P. Singh and S.I. Bhagirathi Tiwari (Ex. Ka-3). On his directions, the dead body was duly sealed and the following papers were prepared: letter to R.I. (Ex. Ka-23), letter to C.M.O. (Ex. Ka-24), challan lash (Ex. Ka-25), sketch of the dead body (Ex. Ka-26) and sample seal (Ex. Ka-27).

6. During the preparation of the panchayatnama of the dead body of Munshi, an application addressed to Police Station Jarwa, dated 14.01.2006, was recovered from the pocket of his jacket (Ex. Ka-29). The said application contained allegations against the accused Shiv Pujan. A recovery memo in respect of the said application was prepared at the place of occurrence and the same was attested by witnesses (Ex. Ka-28).

7. Further, on 17.01.2006 at about 8:30 P.M., an application was produced at the police station by constable Mahesh Prasad, which had been received through the office of the Sub-Divisional Magistrate, Tulsipur. The said application, dated 28.12.2005, had been submitted by the deceased Raghunath on Tehsil Diwas against his son Shiv Pujan, on which the Sub-Divisional Magistrate had passed directions on the same day. Along with the said application, other connected documents were also produced at the police station (Ex. Ka-31).

8. On 20.01.2006, Ram Niwas (brother of the complaint Mangal Prasad) and the accused Shiv Pujan were brought to the police station for interrogation and their statements were recorded under Section 161 Cr.P.C. During the said interrogation, the accused Shiv Pujan confessed the commission of the offence and assured recovery of the axe and danda used in the incident. Thereafter, he was arrested and taken into custody. Pursuant to his disclosure statement, the accused was taken to the house of Raghunath, where a heap of dry sugarcane leaves was lying near a bullock cart placed in the eastern corner of the house, he caused the recovery of an axe and a danda from the said heap, stating that the same had been used by him in killing his parents and brother. A recovery memo of the said weapons was prepared and the same was attested by two independent witnesses, namely Mahendra Nath and Kuddan (Ex. Ka-5).

9. Upon completion of the investigation, a charge-sheet (Ex. Ka-33) under Section 302 IPC was submitted before the Court of the Chief Judicial Magistrate on 25.03.2006. Cognizance was taken and the case was committed to the Court of Session on 19.04.2006.

10. To prove its case, the prosecution examined ten witnesses, namely: PW-1 Mangal Prasad (complainant), PW-2 Ram Chhabiley, PW-3 Mahendra Nath, PW-4 Guddan, PW-5 Govardhan, PW-6 Lalta Prasad, PW-7 Ramashankar Chauhan (constable), PW8- Dr. H.P. Singh (post-mortem doctor), PW9- Ram Nihore Gautam, and PW-10 Israr Husain (constable).

11. Appellant has not produced any oral or documentary evidence in his defence. In his statement under Section 313 CrPC, the appellant denied having committed the crime. Thus, the appellant pleaded innocence.

12. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court convicted the appellant to undergo life imprisonment under Section 302 IPC.

Submission made by learned counsel for the accused-appellant:-

13. Learned counsel for the accused-appellant submitted that the impugned judgment and order are unsustainable in law and on facts. It was further argued that the Trial Court has erred in placing reliance upon the testimonies of the police witnesses, which, according to the learned counsel, suffer from material contradictions. It was further urged that there is no eyewitness to the occurrence and, therefore, the appellant has been falsely and wrongly implicated in the present case.

14. It was also argued that the entire prosecution case substantially rests upon the testimony of PW-2 Ram Chhabiley, which, according to the learned counsel, is unreliable and unworthy of

credence. It was further argued that the judgement of the Trial Court is founded upon conjectures and surmises and on erroneous presumptions, rather than on cogent and trustworthy evidence. It was lastly argued that the appellant was not named in the first information report, which, according to the learned counsel, further weakens the prosecution case.

Submission made by learned A.G.A : -

15. Per contra, learned A.G.A. has vehemently opposed the submissions advanced by the learned counsel for the appellants. It was argued that the prosecution has successfully established the chain of circumstances pointing unerringly towards the guilt of the appellant and that no material infirmity or illegality has been committed by the Trial Court while recording the conviction. It was further argued that though the appellant was not named in the FIR, the subsequent investigation has clearly brought on record cogent material establishing the motive, conduct and involvement of the appellant in the commission of the offence. It was argued that the recovery of the weapon used during the offence at the instance of the appellant, the extra-judicial confession made by him, and the surrounding circumstances constitute a complete and unbroken chain pointing to his guilt.

16. Thus, learned A.G.A. submitted that the accused-appellants has rightly been convicted in accordance with law and sentenced accordingly. There is no illegality or error in the impugned judgment and order. It is further submitted that the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

17. **PW-1 Mangal Prasad**, son of the accused Shiv Pujan, deposed that his father had two brothers, namely Munshi and Nibber, Shiv Pujan being the eldest, Munshi the middle and Nibber the youngest. He further deposed that his father was residing separately in the village, whereas his grandfather Raghunath, grandmother Kamla and uncles Munshi and Nibber were residing in a house situated about one kilometre to the south of the village. He further deposed that on the night of the incident, Raghunath, Kamla, Munshi and Nibber were sleeping in the said house. He further deposed that in the morning following the occurrence, Nibber came to his house and informed him that during the night some unknown person had dragged Raghunath, Munshi and Kamla to the chak-road and had murdered them by using sharp-edged weapons and danda. Upon receiving this information, he along with his family members reached the spot and saw that all three had been killed. He further deposed that Nibber had brought the dead bodies to the courtyard of the house. He denied acquaintance with the village chowkidar and also denied having gone with him to the police station, though he admitted that the police subsequently came to the spot and thereafter he went to the police station, where a written application was prepared by the police. At this stage, he was declared hostile by the Trial Court.

18. During cross-examination, he denied having made any statement to the police regarding his arrival at the police station along with the village chowkidar and also denied the suggestion that he was deposing falsely to save his father. He further deposed that his uncle Munshi generally lived in a separate house in the village and only occasionally stayed with his grandfather. He further deposed that the second marriage of his uncle Nibber had taken place on the condition that some land would be transferred to his wife, and when Raghunath refused to do so, disputes arose between Nibber's in-laws, Nibber and his grandparents Raghunath and Kamla, due to which Nibber's wife left for her parental home. On being questioned by the Court as to who came into possession of Raghunath's agricultural land after the deaths of Ragunath and Munshi, he stated that he could not say whether the land was vacant or not. He further stated that he had one more uncle and that during chakbandi (consolidation proceedings) Ragunath had received about 12-14 bighas of abadi land, over which disputes existed between Moose, Bachchan, Gadde Yadav and Kalau Rajendra Walender. He further stated that after the murders of his grandfather, uncle and grandmother and after his father was sent to jail, the said land was taken over by Moose, Bachchan, Gadde, Kalu Rajendra and Walender. He further deposed that the three deceased persons were living together in the same house and that Nibber's wife was not present on the date of occurrence as she had gone to her parental home after a quarrel. He further deposed that he was informed about the murders on the following morning, whereafter his entire family reached the place of occurrence on receiving the information from his uncle. He further deposed that his uncle Nibber and his father had went with the dead bodies to Gonda for post-mortem examination and that in his presence no articles were recovered from the bodies of his uncle, grandmother and grandfather.

19. **PW-2, Ram Chhabiley**, deposed that about 15□20 days prior to the occurrence, he had met deceased Raghunath, who informed him that his son Shiv Pujan had threatened to kill him. He further deposed that frequent quarrels used to take place between Raghunath and the accused over agricultural land and that Raghunath had categorically stated that Shiv Pujan would not receive any share in the land during his lifetime. He further deposed that two days after the occurrence, in the afternoon hours, Shiv Pujan met him and made a confession stating that he had murdered his father Raghunath, his mother Kamla and his brother Munshi. He further stated that the accused requested him to use his influence with the police to save him. Upon being questioned as to why he had killed his mother, the accused replied that he had done so in order that no witness might remain alive.

20. During cross-examination, he deposed that he was not present in the village on the date of occurrence and returned on the following day. He further deposed that the house of deceased Munshi Verma was situated adjacent to the house of Govardhan Yadav and that Munshi and his brother Nibber used to stay alternately with their parents. He stated that the land on which Munshi had constructed his hut was not patta land but was abadi land belonging to the Gram Samaj. He further deposed that Shiv Pujan had earlier assisted Munshi in obtaining land from the village Pradhan. He further deposed that he used to frequently meet deceased Raghunath. He admitted that he was involved in proceedings under Section 151 Cr.P.C. with deceased Munshi Verma about one years prior to the incident, though he denied that the said proceedings were related to any land dispute. He further deposed that Nibber□s first wife had left him and that the in-laws of his second marriage were primarily interested in the family property, but Raghunath had refused to transfer any land in favour of Nibber□s wife. He further stated that Nibber possessed no property of his own and that the entire agricultural land stood in the name of Raghunath. He further deposed that

Raghunath had ongoing land disputes with villagers namely Moose, Gudde, Bachchan, Atau and Ghirau in respect of land near the Nevalgarh Dam, and that Shiv Pujan himself had earlier submitted an application at the police station on behalf of his father regarding said dispute.

21. **PW-3, Mahendra Nath**, deposed that upon receiving information regarding the murder of Munshi, Raghunath and Smt. Kamla of village Pehalwan Purva, he reached the said village. He further deposed that the Inspector conducted the panchayatnama of the dead bodies of Raghunath, Munshi Verma and Smt. Kamla at the place of occurrence and, after sealing the dead bodies in cloth, sent them to Gonda for post-mortem examination. He further deposed that the panchayatnama of all the deceased persons was prepared on the spot by the Station House Officer. He further deposed that on 20.01.2006 the accused Shiv Pujan was neither arrested nor produced before him and that the police did not interrogate Shiv Pujan in his presence. He further deposed that the accused did not lead to any recovery of the alleged murder weapons, namely axe or danda, in his presence, nor did the police prepare any recovery memo in his presence. Upon being shown paper no. 4/13, he admitted that the signatures appearing thereon were his, but deposed that his signatures were obtained by the Inspector on a blank paper. At this stage, the witness was declared hostile in the Trial Court.

22. During cross-examination, he stated that to his knowledge the Investigating Officer had not recorded any of his statement. When his alleged statement under Section 161 Cr.P.C. was read over to him, he stated that he had not made any such statement to the Investigating Officer and could not explain how the Investigating Officer had recorded the same. He denied the suggestion that he had colluded with the accused and was deliberately not speaking the truth before the Court in order to protect him. He further denied the suggestion that the murder weapon, namely axe, was recovered in his presence, that he had appended his signatures on the recovery memo of the murder weapons, or that any written recovery memo was prepared and read over to him in his presence.

23. **PW-4, Guddan**, son of Dhagai and resident of Jugulmaria, deposed that on the morning of 17.01.2006, accused Shiv Pujan came to his house in village Pahalwan Purva and informed him that during the preceding night, some unknown person had murdered his father, mother and brother. He further deposed that upon receiving the said information, he went to the place of occurrence and was present when the police prepared the panchayatnama of the three deceased persons, namely Raghunath, Kamla and Munshi. He further deposed that no letter was recovered from the pocket of the jacket of deceased Munshi in his presence. He further deposed that he did not witness the arrest of the accused Shiv Pujan, nor did he see the police interrogate him. He further deposed that no recovery of axe or danda was made in his presence. Upon being shown the recovery memo, the witness admitted that the signatures appearing thereon were his, but deposed that the Inspector filled up the memo and thereafter obtained his signatures. At this stage, the witness was declared hostile in the Trial Court.

24. During cross-examination, he stated that the inspector had not recorded his statement. When his alleged statement under Section 161 Cr.P.C. was read over to him, he deposed that he had not made any such statement to the inspector and could not explain how the inspector had recorded the same. He further deposed that he is illiterate and is only aware of how to sign his name. He denied the suggestion that he had colluded with the accused and was deliberately not

speaking the truth before the Court in order to protect him. He admitted that he is the Pradhan of the village of Shiv Pujan and further admitted that Shiv Pujan had remained his supporter. He denied the suggestion that the murder weapons, namely axe and danda, were recovered in his presence, that he had appended his signatures on the recovery memo of the murder weapons, or that any written recovery memo was prepared and read over to him.

25. **PW-5 Govardhan**, a neighbour of the deceased Raghunath, deposed that his agricultural land is situated near the house of Raghunath. He deposed that on the day of the incident, he had gone to inspect his land and to ease himself at around 6:00-7:00 p.m., though he could not specify the exact time as he is illiterate and unable to accurately assess time. He deposed that when he proceeded some distance near a brick structure, he saw deceased Ragunath and Munshi coming from that side in a bullock cart. He further deposed that after Munshi reached his house, he heard Munshi saying “kon ho?” and “tum kya kar rahe ho?”, but he could not hear the second voice. He further deposed that he heard only the voices of Munshi and Raghunath and did not hear the voice of any other person. He further deposed that he neither saw nor heard the voice of Shiv Pujan at the spot. He further deposed that his statement was recorded by the Inspector. He also stated that he did not hear any cries for help from Munshi or Raghunath. At this stage, the witness was declared hostile in the Trial Court.

26. During cross-examination, he deposed that he did not inform the Inspector that he had heard cries of Munshi and Raghunath for help or that they were being beaten with a danda. He denied having heard the voices of Munshi, Raghunath or Shiv Pujan at the time of the incident and stated that he had only informed the Inspector that he had seen Raghunath and Munshi while they were coming in a bullock cart. He further deposed that he was not aware of any dispute involving the parties and admitted that he had friendly relations with Shiv Pujan. He denied the suggestion that he was deposing falsely before the Court due to fear or pressure from the accused. He denied the suggestion that his statement under Section 161 Cr.P.C. had been correctly recorded by the Inspector in accordance with what he had stated. He further denied the suggestion that he had heard the voices of deceased Munshi and Raghunath or of accused Shiv Pujan at the time of the incident and that he was deliberately suppressing the truth before the Court. He further deposed that Munshi and Raghunath had no enmity with anyone in the village, though there was some dispute with one Gudde regarding agricultural land, and that on some occasions he had heard quarrel between Shiv Pujan and Raghunath, with regards to share in the property.

27. **PW-6 Lalta Prasad**, elder brother of deceased Raghunath, deposed that Raghunath possessed about 26-27 bighas of land at his maternal village Pahalwan Purva and had three sons, namely Shiv Pujan (the eldest), Munshi, and Nibbar (the youngest). He deposed that Shiv Pujan had been residing separately from his parents and brothers for about seven to eight years prior to the occurrence. He further deposed that Shiv Pujan had approached him requesting that he influence Raghunath to give him about five bighas of land for cultivation; to which Raghunath agreed. He further deposed that as per his knowledge there was no dispute between Raghunath and Shiv Pujan.

28. During cross-examination, he stated that the second marriage of the youngest son Nibbar was solemnised on the condition that Raghunath would transfer land in the name of Nibbar’s wife.

When Raghunath refused to do so, disputes arose between Raghunath and Nibbar's in-laws. He further deposed that Raghunath had informed him that threats were being extended by Nibbar's in-laws on account of the property dispute. He further deposed that a portion of Raghunath's land was acquired for the Sarju Canal, for which compensation was paid, and that several villagers, namely Ghirau, Moose, Gudde, Bachchan and Atau, were desirous of occupying the said land. He further deposed that after the deaths of Raghunath, Munshi and Kamla and the subsequent incarceration of Shiv Pujan, the aforesaid villagers occupied the land and have remained in possession thereof till date.

29. **PW-7, Ramashankar Chauhan**, C.P. 254 Police Station, Uska Bazaar, Siddarth Nagar, depsoed that on 17.01.2006 he was posted as head constable in Kotwali Jarwa police station. He further deposed that on the basis of written complaint of Mangal Prasad Verma he filed a chik FIR No, 2/06, case crime no. 6/06 under Section 302 IPC (Ext. Ka-8). He further deposed that he made the entry of same as entry no. 14 on 17.01.2006 at around 9-10 AM (Ext. Ka-9).

30. No cross-examination of PW-7 was done.

31. **PW-8 Dr. H.P. Singh**, Consultant Surgeon, District Hospital, Gonda deposed that on 18.01.2006 he was posted at District Hospital Gonda and on that day he conducted the post-mortem of deceased Smt. Kamla, who was brought in sealed cover condition by constable 225 Bachanram and constable 330 Israr Husain of police station Jarwa. On external examination, it was found that the rigor mortis had passed in the upper limbs and was beginning to subside in the lower legs. The following ante-mortem injuries were found on the deceased's body:

Injury No. 1: Lacerated wound on forehead measuring 8cm X 6cm X bone deep, 3 cm above the tips of the eyes. There was no fracture.

Injury No. 2: Contusion measuring 4cm X 2cm, which was 2 cm lateral to the right angle of the mouth. There was no fracture of Mandible.

Injury No. 3: Multiple contusions on right arm, 4cm below the shoulder measuring 12 cm X & 7 cm. The right humerus bone was fractured.

Injury No. 4: Lacerated wound on right wrist measuring 2□ cm X 1cm X deep up to bone.

Injury No.5: Multiple contusions on the back of the right hand measuring 8 cm X 4cm.

Injury No. 6: Contusion with a swelling on both sides of the front chest, 2cm below the medial end of left clavicle measuring 12 cm X 12cm.

Injury No. 8: Rib bone 2nd to 6th on the right side and 2nd to 9th on the left were broken.

Injury No. 7: Multiple contusion on right thigh, lacerated 10 cm above the right knee, measuring 8 cm X 8 cm.

The left lung was severely lacerated and the pleural cavity was filled. All other organs were normal. The teeth were 9/8 in numbers. There was fluid in the stomach. There was faecal matter in the large intestine. He opined that she could have died from excessive bleeding and shock due to the ante-mortem injuries. Further he opined that she could have died between 36 to 48 hours from the time of post-mortem examination.

32. Furthermore, on the same day at 1:35 PM, he also examined the dead body of deceased Raghunath, who was brought by same constable namely, Bechanram and Israr Hussain. On external examination, he found that the rigor mortis had passed in the upper body and was almost passed in the lower body. The following ante-mortem injuries were found on the deceased's body:

Injury No. 1: Lacerated wound measuring 3cm X 1 1/2cm X deep to bone was present at the junction of the eye and forehead. The nasal bone was fractured and the right lower part of the frontal bone was fractured.

Injury No. 2: Lacerated wound measuring 3cmX 1cmX bone deep on the right side of the chin. The lower jaw bone of the right side was fractured and the teeth were protruding and dislodged.

Injury No. 3: Lacerated wound measuring 3cm X 1cm deep to bone, behind the right ear.

Injury No. 4: Lacerated wound measuring 1cm X 1 cm X on the right arm, 12 cm below the right shoulder deep upto bone. The humerus bone of the arm was fractured.

Injury no. 5: Lacerated wound measuring 3cm X 2cm X bone deep on the left forearm, 6cm above the left wrist. Both the radius and ulna bones of the forearm were fractured.

Injury No. 6: Lacerated wound measuring 6cm X 1 1/2 cm X deep up to bone in left leg 12 cm below knee.

Injury No. 7: Multiple abrasions with swelling on the front of the chest, 1cm below the suprasternal notch. Rib bone 2nd to 5th on the left side and 2nd to 9th on the right side were broken and the lung cavity was filled with blood. The liver on the right side was ruptured and the stomach cavity was completely filled with blood. The deceased had 14/ 11 teeth, his stomach was empty and his heart was also empty but there was blood in the heart membrane. Brain was not liquidified. Further, he opined that the Ragunath died due to excessive bleeding and shock caused by the ante-mortem injuries on his body. He may have passed away between 36 to 48 hours prior to the time of post-mortem examination.

33. Furthermore, on the same day at 4:15 PM, he conducted the post-mortem examination of the deceased Munshi Verma, who was brought by the same constables as stated above. On external examination, he found that the rigor mortis had passed in the upper body and was beginning to subside in the lower body. The following ante-mortem injuries were found on the body of the deceased:

Injury No. 1: Incised wound measuring 4cm X 2cm X bone deep on the left side of the neck, 4 cm below the left ear. The carotid and jugular veins on the right side were severed.

Injury No. 2: Incised wound on the right side of the face about 5cm below the ear measuring 5cm X 5cm X deep to the bone. The jaw bone was fractured.

Injury No. 3: Multiple lacerated wounds on right side of the face, 1cm above the injury no. 2, measuring 6cmX 3cm X deep up to bone.

Injury No. 4: Lacerated wound on the right side of the head 5 1/2 cm above the right eyebrow measuring 6cm X 1cm X deep up to bone.

Injury No. 5: Multiple contusions measuring 12cm X 3cm on the right chest, 2cm below the right nipple.

Injury No. 6: Multiple contusions on the chest 4cm below suprasternal notch. The seventh rib on the left side and rib 2nd to 6th on the right side along with middle bone (sternum) were fractured.

On internal examination he found that the right lung membrane and lung were ruptured. The deceased had 11/10 teeth, stomach contained black digested food, the large and small intestines were empty, brain was not liquidified. He opined that the death may have occurred due to bleeding and shock caused by the ante-mortem injuries and he may have passed away between 36 to 48 hours from the time of post-mortem examination.

34. He further deposed that in his opinion the cut wound on the body of Munshi could have likely been caused by a sharp weapon such as an axe and the contusions and lacerated wounds on the bodies of all the deceased could have been caused by a hard and blunt object like a lathi. He further opined that all the deceased may have died sometime during the night of January 16th/17th, 2006 and the injuries inflicted on all the deceased were sufficient to cause the death.

35. During cross-examination, he deposed that under normal circumstance it takes four hours for the food to pass through the stomach. He further deposed that no food was found in the stomachs of deceased Kamla and Ragunath, and black type digested food was found in the stomach of deceased Munshi, which was not recognizable as to what type of the food it was. He further deposed that looking at the contusions and lacerated wounds of all the deceased it would not be possible to conclude as to whether they were caused by same weapon or different weapon.

36. **PW-9, Ram Nihor Gautam**, DCRV police line Balrampur, Balrampur deposed that on 17.01.2006 he was posted as inspector-in-charge at police station Kotwali Jarwa. He further deposed that on the same day, he had registered a case crime number 06/06, on the bases of the written complaint of Mangal Prasad Verma, under Section 302 IPC and he himself took up the investigation of the case. He further deposed that thereafter he along with constable Ramshankar Chauhan, S.S.I Sri Arvind Pratap Singh, S.S.I. Sri Bhagirathi Tiwari, CP 244 Naval Bihari Pandey, SI CP 225 Bechan Prasad, CP 330 Israr Hussain, CP 361 Radhey Shyam Sharma, H.G. Somai

Prasad, and Pawan Kumar left for the place of the occurrence. He further deposed that after reaching the place of occurrence he recorded the statement of Mangal Prasad. He further deposed that after the witnesses of the panchayatnama were appointed, panchayatnama of dead body of deceased Kamla and Munshi were prepared and after sealing the bodies in separate clothes and stamping them, they were handed over to constable 330 Israr Hussain, constable 225 Bachan Ram and SI Bhagirathi Tiwari for post-mortem. He further deposed that he had prepared the panchayatnama of dead body of Kamla (Ext. Ka-4). He further deposed that on his instruction SI A.P. Singh had prepared letter to RI, letter to CMO, challan lash, sketch of the dead body, and sample of the seal (Ext. Ka-13 to Ka-17). He further deposed that on his instruction the panchayatnama of dead body of Raghunath Verma was prepared by SI Bhagirathi Tiwari (Ext. Ka-2) along with letter to RI, letter to CMO, challan lash, sketch of the dead body, and sample of the seal (Ext. Ka-18 to Ka-22). He further deposed that he had also prepared the panchayatnama of dead body of Munshi Verma (Ext. Ka-3). He further deposed that on his instruction SI Bhagirathi Tiwari and SI A.P. Singh prepared letter to RI, letter to CMO, challan lash, sketch of the dead body, and sample of the seal (Ext. Ka- 23 to Ka-27). He further deposed that while preparing the panchayatnama of dead body of Munshi, an application dated 14.01.2006 was found, addressed to Jarwa police station, against the accused Shiv Pujan and his son. He further deposed that memo of recovery for this application was prepared and it was attested by the witnesses (Ext. Ka-28). He further deposed that the application was taken into custody along with paper number 4/5 (Ext. Ka-29). He further deposed that on 17.01.2006 statement of Nibber was recorded and thereafter the place of occurrence was inspected and a site map was prepared (Ext. Ka-30). He further deposed that on the same day, after the panchayatnama were prepared, plain soil and blood-stained soil were collected from the place of occurrence, placed in separate boxes, sealed and stamped, and single memo for all of them was prepared (Ext. Ka-6). He further deposed that on 17.01.2006 at about 8:30 PM an application dated 28.12.2005 submitted by deceased Raghunath at tehsil diwas against Shiv Pujan and his son was received through the office of S.D.M., Tulsipur and an entry in this regard was made (Ext. Ka-31). He further deposed that SDM, Tulsipur took action on the said application on 28.12.2005. He further deposed that on 20.01.2006 Ramnivas, brother of Mangal Prasad, and accused Shiv Pujan were called to the police station for questioning. He further deposed that the statement of witness Govardhan and Ram Chhabiley were recoded under Section 161 CrPC. He further deposed that thereafter, statement of accused Shiv Pujan was recorded, wherein he confessed to his crime and assured the recovery of the murder weapon, an axe and danda. He further deposed that thereafter accused Shiv Pujan was arrested and taken into custody. He further deposed that public witnesses Mahendra Nath and Kuddan along with accused Shiv Pujan were taken to place of occurrence, where accused took to police to a pile of dry sugarcane leaves near the bullock cart in the eastern corner of Ragunath□s house and from that pile accused himself searched for an axe and a danda, and told that he had killed his parents and brother with the same. He further deposed that after taking possession of the danda and axe, the same were kept in a cloth, sealed and stamped. He further deposed that a memo of the recovery of the murder weapon was prepared at the spot and it was attested by the witnesses (Ext. Ka-5). He further deposed that on the same day, the site plan of the recovery of murder weapon was prepared (Ext Ka-32). He further deposed that on 22.01.2006 statement of Lalta, brother of deceased Ragunath, was recorded wherein he stated that he had bequeathed the property situated in village Pehalwan Purva to the deceased Ragunath (copy of will is marked as Ext. Ka-7). He further deposed that after sufficient evidence against the accused, the charge-sheet was filed in the court on 07.03.2006 (Ext. Ka-33).

37. During cross-examination, he deposed that he received the information of the incident on 17.01.2006 at around 9:10 AM, when he was present at the police station. He further deposed that Mangal came along with the chowkidar for registering FIR. He further deposed that in the panchayatnama of the all three deceased, as per the FIR, it was mentioned that a sharp-edge weapon was used for the murder however, on inspecting the dead bodies and the injuries it was difficult to conclude whether or not such weapon was used and therefore the bodies were sent for post-mortem examination. He further denied the suggestion that injury was shown on the basis of recovery of an axe and he also denied the suggestion that after inspecting the lacerated wounds of the dead bodies he had shown the recovery of danda. He further deposed that it appeared to him that the Raghunath□s right hand was broken and twisted and therefore he had mentioned the same in panchayatnama. He further deposed that the application, which was recovered from the pocket of deceased Munshi during panchayatnama, was not shown by him to Superintendent of Police or District Magistrate or any other officer and on that application, there was no signature or thumb impression of deceased Munshi. He further deposed that the said application was taken into custody. The same was seen by the witnesses, however, it was difficult to conclude that who had written the said application. He further denied the suggestion that a wrong entry was made in the panchayatnama, and initially nothing was recovered and later by cutting the entry he showed the recovery. He further deposed that on 16.01.2006 Nibber went for a bhandara in a temple. He further denied the suggestion that Nibber did not stay in the bhandara. He further deposed that the entry regarding the application given on tehsil diwas (Ext. Ka-34) was made on 17.01.2006 at around 8:30 PM. He further deposed that he had not verified the thumb impression of deceased Ragunath which was affixed on the said application because no record containing the thumb impression could be obtained. He further deposed that the accused had not revealed him that from where had the accused obtained the danda. He further deposed that the appellant did not disclose the source of the danda and admitted that no thumb impressions were obtained from the axe or the danda. He further denied the suggestion that he had concealed the real culprits and falsely named Shiv Pujan and sent to jail on the basis of fake seizures. He further denied the suggestion that he had presented a fake application and fabricated witnesses' statements.

38. **PW-10, Israr Hussain**, C.P. 330, Police Station Kotwali Jarwa, District Balrampur, deposed that on 17.01.2006 he was posted at Police Station Jarwa and accompanied the Inspector to the place of occurrence. He further deposed that the panchayatnama's of the deceased Kamla Devi, Raghunath and Munshi were prepared at the spot (Ext. Ka-2, Ka-3 and Ka-4 respectively). He further deposed that thereafter the dead bodies were separately wrapped in cloth, duly sealed, and the relevant papers pertaining to the dead bodies were handed over to him and constable Bechan Ram for taking the same for post-mortem examination at Gonda. He further deposed that while the dead bodies remained in his custody, the seals remained intact and no unauthorised person was permitted to touch, inspect or disturb the dead bodies until they were delivered to the post-mortem doctor. He further deposed that upon delivery, identification of the dead bodies was carried out by the doctor and post-mortem examination was thereafter conducted. He further deposed that he collected the post-mortem reports and submitted the same at the police station.

39. During cross-examination, he deposed that at the time when the dead bodies were being shifted for preparation of panchayatnama, Raghunath's son Nibbar was present, whereas the accused Shiv Pujan did not accompany them. He further deposed that he had personally seen the

dead bodies before attesting his signatures on the relevant documents and had signed the papers at the direction of the Inspector.

Court Analysis:

Effect of Extra-Judicial Confession:

40. The conviction of the appellant substantially rests upon the extra-judicial confession attributed to him before PW-2 Ram Chhabiley. It is, therefore, necessary to examine the evidentiary value of such confession in the light of settled principles of criminal jurisprudence.

41. The evidentiary value of an extra-judicial confession has been examined in detail by the Supreme Court in **Sahadevan v. State of T.N., (2012) 6 SCC 403**, wherein the apex court held that in cases founded upon circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the Court must subject such evidence to a greater degree of scrutiny, and the onus lies upon the prosecution to establish a complete chain of circumstances unerringly pointing towards the guilt of the accused. Furthermore, the apex court held:

"16. …. (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

42. Applying the aforesaid settled principles to the facts of the present case, this Court finds that the alleged extra-judicial confession attributed to the appellant before PW-2 Ram Chhabiley does not satisfy the litmus tests. Firstly, PW-2 does not occupy any position of authority nor has the prosecution established any special relationship of trust between him and the appellant which would render it natural for the appellant to confess a heinous triple murder. The witness himself admits that he was not present in the village on the date of occurrence and returned only on the following day. There is no convincing explanation as to why the appellant would voluntarily choose PW-2 as the confidant of such a serious admission.

43. Secondly, the conduct of PW-2 is wholly inconsistent with ordinary human behaviour. Despite claiming that the appellant confessed to having committed a heinous triple murder and sought his help to manage the police, PW-2 did not inform any authority, village elders, or police officials immediately. Such unnatural silence is inconsistent with ordinary human conduct and considerably weakens the credibility of his version.

44. The Court also cannot lose sight of the fact that PW-2 admitted previous involvement in proceedings under Section 151 Cr.P.C. with deceased Munshi and also admitted the existence of long-standing land disputes involving the deceased family and other villagers. These circumstances indicate the possibility of underlying village factionalism and provide a fertile ground for false implication.

45. In view of the aforesaid, the alleged extra-judicial confession, standing alone and unsupported by unimpeachable corroboration, does not inspire the confidence of this Court. It is unsafe to base a conviction solely or substantially on such a shaky piece of evidence. The Trial Court, in placing heavy reliance upon the extra-judicial confession of PW-2, has not subjected the same to the degree of scrutiny mandated by law. Consequently, the evidentiary value of the said confession is found to be weak and insufficient to independently sustain the conviction.

Validity of Statements Recorded under Section 161 Cr.P.C. and Credibility of the Alleged Recovery of Murder Weapons:

46. The prosecution has also placed reliance upon the statement allegedly made by the appellant during police interrogation and leading to the recovery of an axe and danda claimed to be used in the commission of the offence. The said recovery is stated to have been effected on the basis of the statement recorded under Section 161 Cr.P.C.

47. At the outset, it is necessary to notice the settled position of law that a statement recorded under Section 161 Cr.P.C. is not substantive evidence. Such statement can only be utilized for the limited purpose of contradiction in accordance with Section 145 of the Evidence Act. Any confession made to a police officer is hit by Sections 25 and 26 of the Evidence Act and is inadmissible in evidence. Only that portion of a statement which leads to the discovery of a fact may be admissible under Section 27 of the Evidence Act, provided the discovery is proved to be genuine, voluntary and trustworthy.

48. In the present case, the alleged recovery of the axe and danda is sought to be proved through PW-3 Mahendra Nath and PW-4 Guddan, both cited as independent witnesses to the recovery memo. However, both these witnesses have not supported the prosecution version. They have denied that any recovery was effected in their presence and have stated that their signatures were obtained on blank papers or that they were made to sign without knowing the contents. Both witnesses were declared hostile. Their testimony, therefore, substantially weakens the prosecution version regarding the alleged recovery.

49. What remains thereafter is the solitary testimony of the Investigating Officer regarding the recovery. It is true that a recovery can be proved even through the testimony of a police officer

alone; however, when independent witnesses are admittedly available and cited, but they disown the recovery, the Court is required to exercise greater caution before placing reliance solely on official testimony, particularly in a case resting entirely on circumstantial evidence.

50. In such circumstances, the alleged recovery, which is founded primarily upon a police statement recorded under Section 161 Cr.P.C. and is unsupported by independent corroboration, does not inspire confidence. The prosecution has failed to establish the recovery as a reliable incriminating circumstance against the appellant. Therefore, the said recovery cannot be treated as a strong or conclusive link in the chain of circumstantial evidence.

Effect of Absence of Eyewitness and Failure of the Prosecution to Establish a Complete Chain of Circumstantial Evidence:

51. Admittedly, the prosecution case does not rest upon any direct ocular testimony. No witness has come forward to claim that he had seen the accused committing the murders of Raghunath, Kamla and Munshi. The case is, therefore, founded entirely on circumstantial evidence.

52. It is well settled that where a conviction is sought to be based solely on circumstantial evidence, the prosecution is under a heavy burden to establish a complete and unbroken chain of circumstances which must point unerringly towards the guilt of the accused and must exclude every possible hypothesis consistent with his innocence. In **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, the Hon'ble Supreme Court laid down the celebrated "five golden principles" (panchsheel) governing cases based on circumstantial evidence, namely:

(i) the circumstances from which the conclusion of guilt is to be drawn must be fully established;

(ii) the facts so established must be consistent only with the hypothesis of the guilt of the accused;

(iii) the circumstances must be of a conclusive nature and tendency;

(iv) they must exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

53. Furthermore, mere recovery of the alleged weapon of assault is not sufficient by itself to record a conviction in cases bases purely on circumstantial evidence particularly when the chain of circumstances is not complete. The Supreme Court consistently held that conviction in circumstantial evidence cases requires a complete and unbroken chain of circumstances that points unerringly and exclusively to the guilt of the accused, and is inconsistent with any hypothesis of innocence. This principle was laid down in the case of ***Sharad Birdhichand Sarda*** (supra). Mere recovery of weapon, even if blood-stained or matching victim's blood group via FSL/forensic

report, does not fulfil this requirement on its own. The apex court in ***Raja Naykar v. State of Chhattisgarh, (2024) 3 SCC 481*** held that mere recovery of blood-stained weapon, even bearing the same blood group as the victim, is insufficient to prove the charge of murder unless the recovery is convincingly linked to the crime and forms part of a complete and unbroken chain of incriminating circumstances.

54. Therefore, recovery alone, even with a matching FSL report, cannot sustain a conviction without strong corroborative evidence connecting the accused to the crime scene, motive, act etc. If the chain breaks or leaves room for a reasonable doubt - for example, where recovery is made from an open or public place easily accessible to others or where there is no eyewitness or where witnesses have turned hostile, the accused is entitled to acquittal. In cases based entirely on circumstantial evidence, the factum of recovery of the weapon of assault must be dealt with great caution as suspicion, howsoever strong, cannot take the place of, nor substitute, the proof beyond reasonable doubt. In this context, reference may also be taken from the case of **Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724.**

55. When the prosecution evidence in the present case is tested on the anvil of the aforesaid settled principles, it becomes apparent that the chain of circumstances is far from complete. Furthermore, the ratio of the case of **Nanhar & Ors. v. State of Haryana, (2010) 11 SCC 423** relied upon by the learned counsel for the appellant, on the aspect of circumstantial evidence would be applicable in the present case.

56. There is no “last seen” evidence or eyewitness account. PW-5 Govardhan, who was examined as a witness who alleged to be present near the place of occurrence, has stated that he neither saw nor heard the appellant at the relevant time and did not hear any cries for help from the deceased. This testimony, instead of strengthening the prosecution case, seriously weakens it.

57. The alleged recovery of the axe and danda has not been supported by any independent/public witnesses, and PW-3 Mahendra Nath and PW-4 Guddan, have denied of witnessing any recovery at the instance of the appellant. Their evidence renders the alleged recovery wholly unreliable.

58. The recovery of the alleged incriminating application from the pocket of deceased Munshi also becomes suspicious, as the panch witnesses to the inquest have not supported such recovery.

59. Even the alleged extra-judicial confession made to PW-2 Ram Chhabiley, which has been projected as the main link in the chain, does not inspire confidence and lacks independent corroboration.

60. Thus, the circumstances relied upon by the prosecution neither stand firmly proved nor form a continuous and unbroken chain. They do not point exclusively towards the guilt of the appellant, nor do they exclude other reasonable hypotheses consistent with his innocence.

61. In such a scenario, the conviction cannot be sustained, as suspicion, however strong, cannot take the place of legal proof. The prosecution having failed to satisfy the panchsheel laid

down in Sharad Birdhichand Sarda (supra), the benefit of doubt must necessarily enure to the appellant.

Motive Alone Cannot Sustain Conviction:

62. Much emphasis has been laid by the prosecution upon the alleged motive arising out of the property dispute between the appellant Shiv Pujan and the deceased Raghunath and Munshi. The evidence on record does indicate that there were differences within the family regarding partition and enjoyment of land. However, it is a settled principle of criminal law that motive, even if assumed to be established, cannot by itself be made the sole basis for sustaining a conviction.

63. The Hon'ble Supreme Court, in ***Mahendra Singh & Ors. v. State of Madhya Pradesh, (2022) 7 SCC 157***, has held "it is well settled that only because motive is established, the conviction cannot be sustained" and the reliance taken by the applleant on this aspect is correct. Thus, it can be said that motive may provide a background for the occurrence, but it does not dispense with the requirement of proving the involvement of the accused in the commission of the crime through reliable and cogent evidence.

64. Ld. A.G.A. vehemently argued that the application allegedly recovered from the pocket of the jacket worn by the deceased (Ext. Ka-29) (paper no. 4/5) constitutes an incriminating circumstance against the appellant and lends assurance to the prosecution case. This Court has examined the said submission in the light of the evidence available on record.

65. The prosecution seeks to rely upon the alleged recovery of the application during the preparation of the inquest proceeding. However, PW-4 Guddan, who was cited as an independent witness to the proceedings, has denied that any such letter was recovered in his presence. He further admitted his signatures on the recovery memo pertaining to the alleged recovery of the murder weapon (Ext. Ka-5), yet stated that the same were obtained after the Inspector procured his signatures on blank papers. Such testimony casts a serious shadow upon the authenticity of the documentary proceedings relied upon by the prosecution. When an independent witness disowns the recovery and alleges that signatures were obtained without knowledge of the contents, the evidentiary value of the document becomes doubtful and cannot be accepted without caution.

66. It is equally relevant to notice that the alleged application recovered from the pocket of the deceased has not been proved through unimpeachable evidence. The Investigating Officer himself admitted that the document bore neither signature nor thumb impression of the deceased and that its authorship could not be verified. In the absence of proper proof of origin and authenticity, such recovery cannot be elevated to the status of a reliable incriminating circumstance. The said circumstance, therefore, fails to strengthen the chain of evidence sought to be established by the prosecution.

67. The prosecution has also attempted to rely upon the conduct of the appellant in not lodging the FIR and in not accompanying certain proceedings as indicative of guilt. This Court is unable to subscribe to such submission. Evidence of conduct must be evaluated within the meaning of Section 8 of the Evidence Act and must be such as clearly points towards culpability. On the

contrary, the record indicates that the appellant participated in the inquest proceedings. Had he been the perpetrator of the crime, his presence in such formal proceedings cannot be lightly construed as adverse conduct. Likewise, mere absence at the time of lodging of the FIR or failure to take particular steps does not automatically give rise to an inference of guilt. Human conduct varies widely, and criminal liability cannot be fastened on speculative assumptions regarding behaviour.

68. Therefore, neither the alleged recovery of the application nor the conduct attributed to the appellant constitutes a dependable incriminating circumstance. These factors, when examined in the light of the entire evidence on record, do not advance the prosecution case and instead reinforce the doubts already noticed in the chain of circumstances.

69. In the present case, apart from the alleged and rather weak motive, there is no evidence connecting the appellant with the occurrence. The case of the prosecution rests entirely on circumstantial evidence. Moreover, the circumstances relied upon by the prosecution do not form a complete and unbroken chain so as to point unerringly towards the guilt of the appellant and to rule out every hypothesis consistent with his innocence.

70. Therefore, even if the existence of motive is accepted, the same cannot, in the absence of a complete and reliable chain of circumstantial evidence, form the foundation for sustaining the conviction. Motive can only be an additional link in a proved chain of circumstances; it cannot by itself take the place of proof.

Benefit of Doubt and Presumption of Innocence:

71. It is a cardinal principle of criminal jurisprudence that every accused is presumed to be innocent until proven guilty beyond all reasonable doubt. The burden squarely lies upon the prosecution to establish each and every link in the chain of circumstances leading unerringly to the guilt of the accused. Suspicion, however grave, cannot take the place of proof.

72. In a case resting entirely on circumstantial evidence, the presumption of innocence becomes even more pronounced, for the Court must be satisfied that the circumstances relied upon by the prosecution form a complete chain and are inconsistent with any hypothesis other than the guilt of the accused. Where two views are possible on the evidence adduced, the view favourable to the accused must necessarily be adopted. It is well settled principal of law that a suspicion however governed can not take place of valid proof. There is considerable difference betweeen “may be proved” and “must be proved”.

73. In the present case, as discussed hereinbefore, the prosecution has failed to establish a complete and unbroken chain of circumstances. The alleged extra-judicial confession suffers from serious infirmities and does not inspire confidence. The recovery of the alleged murder weapons is also shrouded in doubt, having not been supported by independent witnesses and lacking corroborative forensic evidence. There is no eye-witness to the occurrence, and the circumstantial links relied upon by the prosecution are either weak, doubtful or uncorroborated.

74. The cumulative effect of these deficiencies creates a reasonable doubt in the prosecution case. Such doubt is neither fanciful nor speculative, but arises from material contradictions and lacunae in the evidence on record. In criminal law, even a single reasonable doubt is sufficient to entitle the accused to an acquittal.

75. Accordingly, the appellant is entitled to the benefit of doubt. The presumption of innocence, which accompanies the accused from the inception of the trial and continues throughout the appellate stage, stands fortified in the present case, and the prosecution has failed to dislodge the same by reliable and convincing evidence.

Conclusion:

76. In view of the foregoing discussion and upon an overall re-appraisal of the evidence on record, this Court is of the considered opinion that the prosecution has not been able to establish the charge against the appellant beyond reasonable doubt. The chain of circumstances is found to be incomplete and does not unerringly point towards the guilt of the appellant. The findings recorded by the learned Trial Court, therefore, cannot be sustained in law.

77. Accordingly, the appeal is **allowed**. The impugned judgment and order dated 15th December 2007 passed by the learned Session Judge, District Balrampur in Session Trial No. 06 of 2006 is set aside.

78. The appellant, Shiv Pujan is acquitted of all the charges. He shall be released forthwith, if not wanted in any other case.

79. Pending applications if any stands disposed of.

80. The office is directed to transmit a certified copy of this judgment to the court concerned for immediate compliance.

(2026) 2 ILRA 49
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 235 of 1984

Radha Charan Sharma **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to criminal appeal against a conviction under section 302 of the IPC, where the appellant was accused of murdering his wife with a farsa following a domestic dispute.

Headnotes

A. Criminal law-Indian Penal Code,1860-Section 302-Criminal Procedure Code,1973-Section 374(2)-Murder-Circumstantial evidence-Inadmissibility of confessional FIR-Scope of Section 106, Evidence Act-Appellant convicted for the murder of his wife with farsa- Prosecution case primarily rested on a confessional FIR lodged by the accused and subsequent recovery of the weapon-A confessional FIR lodged by an accused is hit by Section 25 of the Evidence Act and is completely inadmissible as substantive evidence-Recovery of the weapon deemed unreliable due to hostile witnesses and procedural inconsistencies-Burden of proof under section 106 of the Evidence Act cannot be shifted to the accused unless the prosecution first establishes the foundational fact of the accused's presence at the scene of the crime at the relevant time-Mere existence of matrimonial discord or "could have" committed the crime is insufficient to bridge the gap to "must have" in a case of circumstantial evidence-Chain of circumstances being incomplete ,the conviction is unsustainable-Conviction set aside-Appeal allowed.(Para 54 to 81)

Held

The court ruled that the prosecution failed to prove the case beyond a reasonable doubt as the primary evidence (the confessional FIR) was inadmissible, the recovery of the weapon was suspect, and the foundational facts for shifting the burden under section 106 were not established. The conviction and life sentence passed by the trial court are set aside, and the appellant is acquitted. (E-6)

Case law Cited

Sharad Birdhichand Sarda Vs State of Maharashtra (1984) 4 SCC 116, Narayan Yadav Vs State of Chhatishgarh 2025 SCC Online SC 1603, Faddi Vs State of M.P. 1964 SCC OnLine SC 123 and Aghnoo Nagesia Vs State of Bihar 1965 SCC OnLine SC 109, State of M.P Vs Balveer Singh (2025) 8 SCC 545, Manoj Rameshlal Chhabriya Vs Mahesh Prakash Ahuja & Anr 2025 SCC OnLine SC 451-referred to.

List of Acts

Indian Penal Code, 1860
Criminal Procedure Code, 1973

List of Keywords

Confessional FIR, IPC 302 Section, Evidence Act, Section 25, Section 106 (Burden of Proof), Section 27 of Evidence Act (Discovery of fact), Circumstantial Evidence, Hostile witness, Recovery of weapon(Farsa), Matrimonial Discord, Chain of Circumstances, Foundational Facts, Presumption of Innocence, Acquittal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No.- 235 OF 1984
Radha Charan Sharma Vs. State of U.P.
From the judgment and order dated 11.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Appellant :-
Vishesh Kumar (Amicus Curiae)
Adv. for Respondent:-
A.G.A.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Vishesh Kumar, learned Amicus Curiae for the appellant, learned AGA for the State and perused the trial court record.

2. The instant criminal appeal has been filed against the judgment and order dated 19.01.1984, passed by learned Sessions Judge, Mathura in Sessions Trial No. 65 of 1983 (State of U.P. Vs. Radha Charan Sharma), arising out of Case Crime No. 36 of 1983, under Section 302 IPC, Police Station Raya, District Mathura, whereby the accused-appellant has been convicted for the offence under Section 302 IPC and awarded the sentence of life imprisonment.

3. In the instant case, the information about the incident, in question, was given by the accused-appellant himself through a written report submitted by him in the Police Station Raya on 02.02.1983 at 7:30 AM, which was registered vide Case Crime No. 36 of 1983, under Section 302 IPC. The FIR particularly reveals that in the night at about 12:00 O□clock, the informant had a quarrel with his wife Pramila and she threatened him that within 2-3 days, she will get her killed. The said conversation could not be tolerated by him and in a fit of anger, he struck a farsa blow on her neck causing her instantaneous death. However, in the late hours of the night, he could not approach the Police Station to lodge the report but has now come to register the report.

4. On the basis of the said written report (Exhibit Ka-5) given by the accused-appellant himself, a chik FIR (Exhibit Ka-6) was drawn and its corresponding G.D. entry was also made, carbon copy whereof has been marked as Exhibit Ka-7.

5. After registration of the said FIR in the presence of Second Officer Mahendra Pal Singh (PW-6), investigation of the said case was entrusted to him. He thereafter recorded the statement of Head Moharrir Kamal Kishor Mishra and thereafter, recorded the statement of accused Radha Charan Sharma, who was also present in the Police Station itself. In the said statement, the accused-appellant made a disclosure that a farsa, by which, he had killed his wife, could be got recovered by him, as such, he was taken into custody and the Investigating Officer alongwith the accused-appellant reached at his house, where number of persons were present. Out of them, Har Prasad and Resham Lal were appointed as witnesses and in front of them, the accused-appellant went into the Kotha and from inside the Kotha, he brought a blood-stained farsa and handed it over to the Investigating Officer, which has been marked as Material Exhibit-1. The said farsa was taken into possession and its recovery memo was prepared, which has been proved and marked as Exhibit Ka-4 and signed by the witnesses as well as accused-appellant himself, which was later sent for the chemical examination.

6. The Investigating Officer thereafter conducted an inquest on the person of the deceased and prepared the inquest memo, which has been proved and marked as Exhibit Ka-10. The dead body was lying near the outer door of the Kotha, the photograph of which has been prepared and the same has been proved and marked as Exhibit Ka-11 and Ka-12. He thereafter sealed the dead body and sent it for the post-mortem.

7. The Investigating Officer thereafter collected the blood-stained earth and plain earth from the place, where the dead body was lying and took it in his possession and prepared its recovery memo, which has been proved and marked as Exhibit Ka-13.

8. An autopsy was conducted on the person of the deceased- Pramila on 03.02.1983 by the Medical Officer Dr. S.S. Saraswat (PW-4). The Doctor has noted following injuries on the person of the deceased :-

(i). Incised wound 4 cm x 1 cm x muscle deep on the lower part of right pinna and right side of face just near the angle of right mandible bone. Oblique.

(ii). Incised wound 8 cm x 3 cm x bone deep on right side of upper part of neck at the junction with head 3 cm below the right ear. Transverse bone cut underneath.

(iii). Incised wound 2 cm x 1/2 cm x muscle deep on the right side of lower jaw just anterior to angle of right mandible bone. Oblique.

(iv). Incised wound 1 cm x 1/4 cm x muscle deep on the left cheek 0.5 cm above left angle of. mouth. Oblique.

(v). Incised wound 7 cm x 2 cm x bone deep on the right side of head, 9 cm above right ear. Transvesely oblique. Bone cut underneath.

(vi). Multiple abrasions with contusions 9 cm x 5 cm area on the lateral aspect of right shoulder and arm.

(vii). Multiple linear abrasions 2 cm x 9 cm. area on the back 7 cm x 1/2 cm.

(viii). Incised wound 2 cm x 1/2 cm x muscle deep on the back of right thigh lower part. Transverse.

9. The right ear was found cut at pinna. The right parietal and occipital bones were found cut. Membrane and mind were found lacerated. The right posterior cranial fossa was also found fractured. In the stomach 3 ozs. whitish fluid was found. Small intestines were empty. In Large intestines faecal matter and gases were found.

10. The Doctor took off a Sari, a Sweater, a Peti-Coat, a Nose-Pin, Bichhiya from the dead-body and sealed the same in a packet which was handed over to the constable who had brought the dead-body. In the opinion of the Doctor the death was the result of the coma due to the ante-mortem injuries. The Doctor proved the post-mortem report Exhibit Ka-8, which was prepared by him at the time of conducting the post-mortem examination.

11. In the opinion of the Doctor, cause of death was noted to be coma, due to the aforesaid injuries.

12. The Investigating Officer then recorded the statement of the witnesses Har Prasad and Resham Lal. The extract of the statement of Resham Lal has been drawn and marked as Exhibit Ka-14.

13. The Investigating Officer inspected the place of incident and prepared the site plan, which has been proved and marked as Exhibit Ka-15. He also recorded the statement of one Mahendra Pal Sharma (PW-1) on 7th February, 1983, who handed him over two letters, which were sealed and proved and marked as Exhibits Ka-2 and Ka-3 and recovery memo was also prepared, which has been proved and marked as Exhibit Ka-16.

14. On the same day, the Investigating Officer recorded the statement of the witness Shyam Babu, who also handed over him a letter, which has been proved and marked as Exhibit Ka-1, which too was sealed and its recovery memo was prepared, which has been proved and marked as Exhibit Ka-17.

15. The Investigating Officer Mahendra Pal Singh conducted the investigation till 07.02.1983 and thereafter, investigation was entrusted to Sub Inspector Ravindra Pal Singh, who, after concluding the investigation, submitted the charge-sheet against the accused-appellant on 19.02.1983, which has been proved and marked as Exhibit Ka-18.

16. On the basis of the said charge-sheet, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions, it was committed to the court of Sessions, where it was numbered vide Sessions Trial No. 65 of 1983 (State of U.P. Vs. Radha Charan Sharma). Consequent thereto, on 20.04.1983, learned Sessions Judge, Mathura framed the charge against the accused-appellant under Section 302 IPC, which was read out and explained to him in Hindi, who abjured the said charge, pleaded not guilty and claimed to be tried.

17. During the course of trial, the prosecution in order to bring home the guilt against the accused-appellant, examined as many as two witnesses of fact and three other formal witnesses. Their testimony in brief is enumerated below :-

18. P.W.-1 Mahendra Pal Sharma is the maternal uncle of the deceased, who had handed over two letters written by the deceased herself, which have been proved and marked as Exhibits Ka-2 and Ka-3, which are said to be in the handwriting of the deceased, which according to him, has been received a little earlier before the murder of the deceased. The letter (Exhibit Ka-1) was sent to her father Shankar Lal at his address, which was addressed to her sister Indresh, whereas letter (Exhibit Ka-2) was sent to him. He further testified that after going through the letter (Exhibit Ka-2), which was received on 28.01.1983, it became difficult for him to hold on for the next day as the contents of the letter very serious. Consequent thereto, on the very next day i.e. on 29.01.1983, he left his village in the morning and reached Hardua Ganj and thereafter, reached Raya at 6:00 PM and stayed at the house of Radha Ballabh, in whose house, accused-appellant was a tenant and used to live with his niece Pramila as well as Manju, niece of the accused-appellant, however, none of the three met him there. The other tenants however met him, who informed him that the accused had already left day before yesterday alongwith two others. He thereafter returned to Aligarh and then, went to his brother-in-law□s house at Ghazipur and informed him about the entire incident and then, returned back to his village. On first day of the month, his brother-in-law Shankar Lal received a letter (Exhibit Ka-1) and on receiving the said letter, his brother-in-law reached the Village Imlani and met him. After going through the said letter, on the next day, he sent his brother Satendra to Badhaun to bring back Pramila, however, on reaching Raya, it was revealed that

Pramila had already been done to death by her husband and her dead body was lying in the Police Station. When Satendra visited the Police Station, he found that Radha Charan was put in the lock-up and the dead body had been sent to Mathura for an autopsy and thereafter was taken to Imlani. Later, when the police met him, then he had handed over the three letters (Exhibits Ka-1 to Ka-3) to the Police.

19. PW-1, in his cross-examination, has testified that he reached Raya on 29th and not on 28th as the letter was received by him on 28th itself. He further testified that he had informed the Investigating Officer on first day of the month, that Shankar Lal had received a letter, who came to him, then he had sent Satendra to Badhaun, however subsequently, it was revealed that Pramila has been done to death by her husband, however, if the said factum has not been stated in his statement recorded by the Investigating Officer, he can not offer any reason for it absence. Before receiving the letters (Exhibits Ka-2 and Ka-3), he had no personal knowledge that there was some matrimonial discord between Pramila and her husband Radha Charan. The letter (Exhibit Ka-3) was received in January, 1983, however, he does not remember its exact date. The letter (Exhibit Ka-2) was received earlier to the letter (Exhibit Ka-3). The accused is M.A., B.Ed and is not a cynic. He further denied the suggestion that Gudiya was unhappy out of the said marriage.

20. PW-2 Har Prasad is another witness of recovery of farsa from the house of the accused Radha Charan. He, in his testimony, testified that wife of Radha Charan was killed about nine months back, however, said murder had not occurred in his presence. The accused Radha Charan had taken out of a blood-stained farsa from his Kotha in his presence and handed it over to the Police, however, he can not identify the said farsa. On showing the said farsa to the witness, he testified that he can not state that this is the same farsa, which was handed over by the accused to the Police, however, the farsa was sealed in his presence by the Investigating Officer, whose recovery memo was prepared at the spot and he had signed it as a witness, which has been proved and marked as Exhibit Ka-4, containing his signatures. At the relevant time, Resham Lal was also present with him and he also signed the recovery memo in his presence.

21. During the course of cross-examination, he stated that his house is situate, leaving one house between the accused house. In the morning, it was revealed that Radha Charan had killed his wife and had gone to the Police Station. He further denied that he has given any affidavit in the court nor he knows what an affidavit is. About 2-1/2 months back, he came to the court but did not come in the court room. He was brought by the brother of Radha Charan, who wrote something on a paper, which was singed by him, however, he does not know the contents of the said paper. On his attention been drawn to an Application, marked as Kha-2, he stated that it is signed by him at two places and once, it was signed in the court. On his attention been drawn the affidavits, marked as Kha-3 and Kha-4, he stated that said affidavits has been signed by him at four places. On his attention been drawn to his vakalatnama, marked as 14-Kha-1, he stated that it has been signed by him. He further testified that he does not remember if any counsel got his signatures on the register, may be he has signed it, however, the counsel had not read out the paper to him. He does not know any counsel Daudayal Agrawal but stated that he came in the court to file the papers alongwith counsel, however, he could not identify him. He does not remember, if any question was put to him by the Judge. Counsel had asked to sign the papers before the court, which he did. On the relevant date, Radha Charan at about 10-11:00 AM had handed over a farsa. He further denied the

suggestion that he had submitted an affidavit and it is also wrong to state that under the pressure of the Investigating Officer, he is denying to have filed an affidavit.

22. P.W.-3 Kamal Kishor Mishra, was the Moharir in the Police Station on the relevant date i.e. 02.02.1983, on the basis of a written report handed over to him by the accused Radha Charan, he had drawn the chik FIR. The said written report was drawn and signed by the accused, on the basis of which, the chik FIR was prepared, which has been proved and marked as Exhibit Ka-6. On the basis of which, corresponding G.D. Entry No.14 was also prepared, which has been proved and marked as Exhibit Ka-7. After registering the case, he had taken the accused into custody and put him in the lock-up.

23. During the course of cross-examination, he testified that from the midnight dated 1/2-2-1983 up to 7:30 in the morning, no cognizable report was lodged nor after registering the report, in question, any other report was lodged till 11:30 AM. He further denied the suggestion that the information in respect of the incident was received by him at the Police Station in the night itself, on the basis of which, Investigating Officer had reached the place of incident. He further denied that the accused was called to the Police Station from Raya for interrogation and his written report (Exhibit Ka-5) was got forcefully scribed. The sealed farsa was deposited in the Police Station by the Investigating Officer on 02.02.1983 in the evening at 5:00 PM, which was sent in the Maal Khana on 10.02.1983. The accused was also brought to the Police Station at 5:00 PM alongwith Investigating Officer. He had further stated that the accused was sent to the jail on 03.02.1983 at 6:00 PM and thereafter, sealed farsa could not be deposited in the Sadar Maal Khana for some reasons and was brought back by Constable Bahuran Singh and thereafter, till 10.02.1983, it was not sent back to the Maal Khana, for which, no explanation could be offered. He further stated that he does not remember if any reason was assigned by Constable Bahuran Singh to return back the crime weapon- farsa.

24. P.W.-4 Dr. S.S. Saraswat is the Medical Officer, who had conducted an autopsy on the person of the deceased on 03.02.1983 and had prepared the post-mortem report, which has been proved and marked as Exhibit Ka-8. He had noted eight injuries on the person of the deceased, which has been noted in the post-mortem report and has already been discussed in the earlier part of the judgment. The genuineness of the said document was admitted by the prosecution. While making internal examination, the doctor found that the right parietal and occipital bone of the deceased were cut and right posterior cranial fossa was fractured and the cause of death was injuries sustained by the deceased. PW-4 further testified that he had examined the farsa (Material Exhibit-1) with his own hands and since, edges of farsa were not sharp, as such, such injuries could not have been caused by the said farsa, which were found on the body of the deceased, however, if the edges of the farsa, in question, is sharpened, then the said injuries could have been caused by it but the state, in which, the farsa is and on being used, such injuries could not be caused by it, which though may cause incised wound but its margin would be contused, however, in the instant case, margins have been found to be clean cut. The relevant papers were sent alongwith the dead body and the injuries on the person of the deceased were sufficient to cause death of the deceased. At this stage, said witness has been declared hostile and an opportunity was given to the Public Prosecutor to cross-examine him.

25. On being cross-examined by the Public Prosecutor, PW-4 Doctor testified that he has not pointed out in his report that the margins of the incised wounds were clean cut, rather it was not written, if margins were found to be clean cut or contused. Only on the basis of his memory, he had stated that the margins in the instant case were clean cut and more so, because the wounds were found to be cutting the bones. He further testified that if by the said farsa (Material Exhibit-1) is forcefully hit, then bones could be cut.

26. On being cross-examined by the accused, PW-4 stated that blade of the said farsa is rough at some places, while plain at some places but is not sharp. He further stated that he could not state as to how many blows were inflicted to cause the injuries on the body of the deceased. Injuries nos. 6 & 7 could be caused by fall or by lathi-danda

27. P.W.-5 Resham Lal is another witness of recovery of farsa brought out by the accused Radha Charan, who, in his testimony, has candidly stated that no farsa was recovered in his presence. On the next day, when the dead body was taken away at about 4:00 PM, a constable came to him and stated that the paper, on the basis of which, blood test was to be done, has been spoiled and therefore, requested him to sign another paper, consequently, he signed the said paper. At the relevant time, when the paper was signed, he was present in his field mowing the grass. At the relevant time, when he had signed the paper, nothing was written on it and it was a plain paper. On his attention been drawn to recovery memo of blood-stained farsa (Exhibit Ka-4), he admitted that the said paper contains his signatures. However, On his aforesaid testimony, the said witness was declared hostile and the Public Prosecutor was requested to cross-examine him.

28. During his cross-examination, he testified that he had heard that the wife of Radha Charan has been killed. After the said incident, Investigating Officer came in his village at about 10-11:00 AM. Accused Radha Charan was also present there, however, he does not know if Radha Charan came with the Investigating Officer or was already present in the village. He was also a Panch witness of the inquest. On the said date, Investigating Officer had also collected the blood-stained earth and plain earth from the place of incident and prepared its recovery memo, which was signed by him. Har Prasad was also one of the Panch witness and his signatures were also obtained on the inquest memo in his presence, however, recovery of blood-stained earth was not signed by him in his presence. At about 4:00 PM, he signed the inquest and recovery memo of the blood-stained earth. On the relevant date, Radha Charan did not produce the farsa in his presence. On the relevant date and time, the police got his signatures on two papers. The Investigating Officer did not interrogate him nor recorded his statement. He denied the factum that he gave any statement to the Investigating Officer. To quote :-

"(i). मैंने पंचायतनामा पर दस्तख्त करीब चार बजे किये और उसी समय मिट्टी के कागज पर भी दस्तखत किये।

(ii). राधा चरन ने उसी समय मेरे सामने कोठे से फरसा निकाल कर नहीं दिखाया था। उस दिन पुलिस ने मेरे दस्तखत केवल दो कागजों परे कराये।

(iii). अन्दर दरोगा जी ने मुझसे कभी कोई पूछताछ नहीं की। मुझे याद नहीं है कि दरोगा जी ने मेरा कोई बयान लिखा या नहीं। मैंने दरोगा जी को ये बयान नहीं दिया था कि आपने मेरे सामने मुलजिम राधा चरन से एक अदद फरसा जिसके फल पर खून लगा है, अन्दर वाले कोठे के उत्तरी-

पश्चिमी कोने से निकालकर आपको दिया। जिसकी फर्द आपने लिखी व फरसा को एक कपड़े में रखकर सील किया। गवाह को बयान उपरोक्त पढ़कर सुनाया गया तो उसने कहा कि मैंने दरोगा जी को ये बयान नहीं दिया, मैं नहीं कह सकता कि उन्होंने मेरा ये बयान कैसे लिख लिया।

(iv). मैंने इस मुकदमें में पहले भी बयान हलफी लगाया था, मेरे सामने कोई फरसा, राधा चरन ने निकालकर पुलिस को नहीं दिया। मैं बयान हलफी देने स्वयं ही आया था, मुझे मुलजिम का भाई अथवा कोई नहीं लाया था। बयान हलफी दाखिल करने के लिए दाऊ दयाल वकील किया था, जिनको 20 रुपए मैंने दिये थे। ये बयान हलफी लगाने मैं इसलिए आया था कि मेरे घरवाले मुझे परेशान करते थे कि तुम तारीख पर कचहरी चले जाते हो और कोई घर का काम नहीं होता है, इसलिए मैंने सोचा कि बयान हलफी देने से कचहरी आने से छुट्टी हो जावेगी। ऐसी बात नहीं है कि मुलजिम के घरवाले मुझे परेशान कर रहे थे कि तुम बयान हलफी दे दो क्यों कि पता नहीं कि तुम तारीख पर क्या कहो क्या नहीं कहो। जो बयान हलफी दाखिल करने में मैंने खर्चा किया वो मुझे आज तक किसी ने नहीं दिया। ये कहना गलत है कि मैं राधा चरन को बचाने के लिए झूठ बोल रहा हूँ।"

29. On being cross-examined by the accused, he testified that he alongwith Har Prasad had come to file an affidavit and the affidavit was read out to him as well as Har Prasad. The Oath Commissioner, who sweared the affidavit had also read out the same to him as well as Har Prasad.

30. P.W.-6 Mahendra Pal Singh is the first Investigating Officer, who, in his testimony, has stated that in February, 1983, he was posted as Second Officer at the Police Station Raya and in his presence, the FIR was registered, which has been proved and marked as Exhibit Ka-6, which contains his signatures. The investigation of the said case was entrusted to him, who thereafter recorded the statement of the Head Moharrir Kamal Kishor Mishra at the Police Station and since, the instant case was got registered at the instance of accused Radha Charan himself, who too was present in the Police Station, as such, his statement was also recorded in the Case Diary, which has been proved and marked as Exhibit Ka-9. The accused made a disclosure to get the crime weapon-farsa recovered, as such, he was taken into custody and brought to village Bhaisara, at his house, where large number of persons were present, out of them, Har Prasad and Resham Lal were appointed as witnesses and the accused, in their presence, went inside the Kotha and brought out a blood-stained farsa (Material Exhibit-1) and handed it over to him. He prepared its recovery memo, which has been proved and marked as Exhibit Ka-4 and got it signed by Har Prasad and Resham Lal. He further denied the suggestion that the signatures of Resham Lal were obtained on the next date by sending a constable, on which, fard recovery memo has been prepared. The said farsa was recovered in the morning at 10:00 AM, which was later sent by the second Investigating Officer Ravindra Pal Singh for chemical examination, the chemical examination report of which is available on record, marked as Exhibit Ka-23. After making the recovery of farsa, he had conducted an inquest on the person of the deceased and prepared the inquest memo, which has been proved and marked as Exhibit Ka-10. Thereafter, he prepared the photo nash and challan nash, which have been proved and marked as Exhibits Ka-11 and Ka-12 and thereafter, dead body was sent for post-mortem through two constables Suresh Singh and Lala Ram. He further testified that the place, where dead body was kept, blood had fallen and from such place, he had collected the blood-stained earth and plain earth and prepared its recovery memo, which has been proved and marked as Exhibit Ka-13. He recorded the statement of Har Prasad and Resham Lal and other Panch witnesses. The statement of Resham Lal has been proved and marked as Exhibit Ka-14. The site plan has been prepared by him, which has been proved and marked as Exhibit Ka-15. On 07.02.1983, he recorded the statement of Mahendra Pal Sharma, who had handed over him two letters (Material Exhibits-2 and 3), which was sealed by him and its recovery memo was also prepared, which has been proved and marked as Exhibit Ka-16. On the same day, he also recorded

the statement of Shyam Babu, who handed over him a letter marked as Material Exhibit Ka-1, which was sealed by him and its recovery memo was also prepared by him, which has been proved and marked as Exhibit Ka-17, which has been signed by Shyam Babu.

31. On being cross-examined, he testified that he recorded the statement of some witnesses, living in the vicinity of house of the accused but did not record the statement of Ramji Lal, Ram Kishan, Lekhraj, Hetram or Ram Singh, the houses of which, he has shown in the site plan prepared by him, which has been proved and marked as Exhibit Ka-15. He further stated that he had gone in the village only twice, first on 01.02.1983 and next on 07.02.1983 but no one amongst them met him, however, again he corrected himself and stated that infact on 07.02.1983, he had not gone in the village rather the statement of all the witnesses that were recorded on 07.02.1983, has infact been recorded in the Police Station itself. He further testified that on 02.02.1983, nobody has informed that they had heard the cries of Pramila in the night or had seen the accused leaving his house, however, in the statement of sister-in-law of the deceased, it has been noted that on the day of incident, accused was at his house. The name of sister-in-law of the deceased is Vimlesh, who lives separately but her house is attached with that of accused Radha Charan and Vimlesh is the wife of Ram Kishan, whose house is situate in the west as shown in the site plan. The boundary walls of Ram Kishan and the accused Radha Charan are the same and it has only one exit. The Investigating Officer further testified that the relevant time of recovery, when the accused went inside the Kotha, he was standing at its doorstep, which was placed in the wall, where the dead body was lying and the farsa was not visible. The said farsa was kept in the north-western corner, however, he did not consider it necessary to find out, if the farsa was hidden in some object or it was simply kept there. No one accompanied the accused inside the Kotha and he alone went inside it. Resham Lal and Har Prasad were present with him at the doorsteps, where the dead body was kept. The place, where they were standing, was about 14 feet long and on the said place, only three persons were present and others were outside the courtyard. In fard recovery memo, marked as Exhibit Ka-4, there is some gap between the Tahreer and the signatures but it is not much. He further denied the suggestion that the plain papers were got signed by the witnesses and then, the recovery memo was subsequently prepared on it. He further denied the suggestion that information of the murder was reported in some other manner and on getting the said information, he reached the village and arrested the accused and took him to the Police Station and thereafter, written report was forcefully got scribed, which has been proved and marked as Exhibit Ka-5. He further denied the suggestion that just to create an evidence, fake blood marks were put on the farsa (Material Exhibit-1). Nobody's statement has been recorded in the Case Diary as a link evidence, moreover, the statement of Constable Bahuran Singh has also not been recorded. Further, there is no mention in the Case Diary that the farsa was sent to Maal Khana on 03.02.1983 but could be not deposited there, however, the same may have been mentioned in the General Diary.

32. After recording the testimony of the prosecution witnesses, statement of the accused-appellant Radha Charan has recorded under Section 313 Cr.P.C. by putting all the incriminating circumstances to him. The accused-appellant denied all the incriminating circumstances and claimed that he has been falsely implicated.

33. In his defence, accused-appellant had got examined one Daudayal Agrawal, Advocate as DW-1, who, in his testimony, has testified that he is a practising Advocate in Collectorate,

Mathura. On 02.08.1983, he had prepared the affidavits of Resham Lal, son of Shiv Lal and Har Prasad, son of Nattha Ram, resident of Bhaisara, Police Station Raya. Exhibit Kha-1 is a vakalatnama, which bears the signatures of Har Prasad as well as Resham Lal. Exhibit Kha-2 is an application, which bears the signatures of Resham Lal as well as of Har Prasad. Exhibit Kha-3 is an affidavit of Har Prasad, whereas Exhibit Kha-4 is an affidavit of Resham Lal bearing their respective signatures, which has been identified by him. The said affidavits were read out to both the deponents Har Prasad and Resham Lal and the same were prepared as per their instructions. Thereafter, the said affidavits were sworn before the Oath Commissioner.

34. On being cross-examined, DW-1 Daudayal Agarwal testified that he was very well acquainted with Har Prasad and Resham Lal and also the person, who was accompanying them and on his pointing out, he had identified Har Prasad and Resham Lal, however, he does not remember as to who had identified the two deponents. He further denied the suggestion that brother of the accused Radha Charan had brought the two deponents and on their instance, application and affidavits were prepared.

35. In such facts, learned trial court, after analysing the evidence adduced during the course of trial and considering the submissions made by the accused and the prosecution, has held the appellant guilty of the offence charged with and accordingly convicted him under Section 302 IPC and awarded the sentence of life imprisonment.

36. Being aggrieved and dissatisfied by the said judgment and order, the instant criminal appeal has been preferred by the appellant.

37. Challenging the impugned judgment and order, learned Amicus Curiae for the appellant has submitted that the trial court has completely misread, misappreciated and misinterpreted the evidence on record and has illegally recorded the findings of conviction and sentence against the appellant, which is bad in law and liable to be set-aside.

38. Learned Amicus Curiae for the appellant has next submitted that though instant case is based on circumstantial evidence and in a case based on circumstantial evidence, motive is of great significance, however, in the present case, the prosecution has miserably failed to prove the motive of the accused for committing such serious offence of causing the death of his own wife. Moreover, to prove the factum of motive against the appellant, the prosecution has placed implicit reliance upon the three letters said to be written by the deceased herself, addressed to her father (who has not been produced at all) as well as her maternal uncle- Mahendra Pal Sharma (PW-1), however, when we carefully go through the contents of the said letters, it is evident that the necessary inference that could, at the most, be drawn from the said letters is, that the deceased Pramila was not living happily with her husband-accused-appellant Radha Charan and there has been stray incidents of torturing and beating her, however, merely in the backdrop of the said circumstance, it can not be said to be a strong motive to commit the offence of murder of the deceased, however, the trial court, by placing implicit reliance upon the said letters, has treated the conduct of the accused to be strong motive against the appellant and on that basis has illegally and erroneously recorded the findings of conviction and sentence against the appellant, which is bad in law and is liable to be set-aside.

39. It is further pointed out by the learned Amicus Curiae that the trial court while recording the findings in respect of motive has categorically held that "from all the facts coming out of these letters, written by the deceased herself, it can be said that the accused-appellant 'could' be the person, who committed the murder of the deceased."

40. Criticizing the said findings recorded by the trial court, learned Amicus Curiae for the appellant has submitted that infact, there is a big gap between the findings of "could have" and "must have" committed the murder of the deceased, particularly in a case based on circumstantial evidence.

41. In Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116, the Hon'ble Apex Court has laid down the following five golden principles i.e. the panchsheel of the proof of a case based on circumstantial evidence :-

"(i). The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

42. However, in the instant case, the trial court by completely ignoring the aforesaid five golden principles of law, in a most arbitrary and whimsical manner, has recorded the findings of conviction and sentence against the appellant, which is wholly illegal and against the settled principle of law and is therefore liable to be set-aside.

43. Learned Amicus Curiae for the appellant has next submitted that the trial court, while recording the findings of conviction and sentence against the accused-appellant, has held that written report handed over by the accused-appellant himself in the Police Station, can not be said to be wholly inadmissible in evidence and can be relied upon to record the findings of conviction and sentence against the accused-appellant. The said findings recorded by the trial court is also against the settled principle of law laid down by the Hon'ble Apex Court in several of its decisions, wherein it has been categorically held that an FIR of confessional nature made by an accused person is inadmissible in evidence against him. The trial court has committed an apparent error of

law by relying upon the contents of the FIR lodged by the accused-appellant himself, being admissible piece of evidence. Thus, the said view taken by the trial court in this regard, is patently illegal, against the settled principle of law and as such, the impugned judgment and order passed by the trial court is wholly illegal, unsustainable and bad in law and is therefore liable to be set aside.

44. Learned Amicus Curiae for the appellant has next submitted that even recovery of the crime weapon- farsa shown to be made at the pointing out of the accused-appellant has not been cogently and clearly established by the prosecution and there are number of loop-holes in relying upon the said piece of evidence, however, the trial court by placing implicit reliance upon the said piece of evidence of recovery of farsa, to be proved, has recorded the findings of conviction against the accused-appellant, which is bad in law and is therefore liable to be set aside.

45. Learned Amicus Curiae for the appellant has next submitted that the findings recorded by the trial court convicting the accused-appellant is further based on the circumstance, that the accused-appellant has not been able to explain his conduct and the circumstance, under which, his wife has been done to death within the four-corners of his house, which is an incriminating circumstance sufficient to prove his guilt as envisaged under Section 106 of Indian Evidence Act, however, the said findings is also based on misreading and misappreciation of evidence on record and is therefore wholly illegal and erroneous and is liable to be set-aside.

46. Learned Amicus Curiae for the appellant has next submitted that it is well settled principle of law that before relying upon the aforesaid piece of evidence, the prosecution is required to cogently and clearly prove that the accused was at or around his residence at the relevant time, in the absence of which, the said provisions can not be invoked.

47. Learned Amicus Curiae for the appellant has next submitted that before invoking the provisions contained in Section 106 of the Indian Evidence Act, the prosecution is required to first establish the foundational facts so as to shift the burden of proof upon the accused. If the prosecution fails to establish the foundational facts, invoking the provisions of Section 106 of the Indian Evidence Act would be improper. However, in the present case, when we go through the entire evidence, we find that the prosecution has miserably failed to establish the foundational facts before invoking the provisions of Section 106 of the Indian Evidence Act to shift the burden of proof upon the accused, yet the trial court, by placing implicit reliance upon the said piece of evidence, has recorded the findings of conviction against the accused-appellant, which is bad in law and is therefore liable to be set aside.

48. Per contra, learned AGA for the State has supported the prosecution story and has submitted that the motive, suggested by the prosecution in the form of the letters written by the deceased herself, is admissible in evidence, which cogently and clearly establishes the factum of motive and in the backdrop of which, the accused-appellant had committed the murder of the deceased. Relying thereupon, the trial court has rightly convicted and sentenced the accused-appellant by the impugned judgment and order, which order does not suffer from any illegality nor can be said to be an erroneous approach and therefore, the same can not be set-aside and is liable to be affirmed by this Court.

49. Learned AGA for the State has further supported the findings of the trial court, wherein, it has been held that the alleged report (Exhibit Ka-5) can be considered to be an admissible piece of evidence to establish the guilt against the accused-appellant and therefore, the findings of conviction recorded by the trial court based on such admissible piece of evidence, is just, proper and legal and do not call for any interference by this Court.

50. Learned AGA for the State has further submitted that the conduct of the accused-appellant in not disclosing the fact as to how his wife was murdered in his own house, is also a forceful circumstance to establish the guilty mind of the accused-appellant. Admittedly, accused-appellant is the husband of the deceased and the incident had taken place inside his house, as such, he had the best of the knowledge of the circumstance, under which, his wife was done to death in his own house, however, the accused-appellant has utterly failed to explain the fact and the circumstances as to how his wife was done to death inside his house, which is a strong circumstance against him and relying upon the said circumstance, the trial court has rightly convicted the accused-appellant, which findings can not said to be perverse and illegal and therefore, the same can not be set-aside by this Court.

51. Learned AGA for the State has further submitted that the recovery of crime weapon- farsa at the pointing out of the accused-appellant has also been cogently and clearly established by the prosecution and the trial court, relying upon the said piece of evidence, has rightly convicted the accused-appellant by passing the impugned judgment and order, which does not suffer from any illegality and therefore, the same can not be set-aside by this Court.

52. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the evidence adduced during the course of trial and the findings recorded by the trial court, we find that the trial court has convicted and sentenced the appellant, primarily on the following grounds:-

(i). Motive for committing the offence.

(ii). The FIR lodged by the accused-appellant himself has been held to be an admissible piece of evidence and relying upon such evidence, the trial court has recorded the findings of conviction against the appellant.

(iii). The conduct of the accused before commission of the offence, failure on the part of the accused to explain as to how his own wife has been done to death within the four-corners of his house, of which, he had the special knowledge, particularly, in view of the provisions of Section 106 of the Indian Evidence Act,

(iv). Lastly the factum of recovery of crime weapon- farsa at the instance of the accused.

53. However, when we critically analyse the findings of the trial court based on the said evidence, on which, the impugned judgment and order of conviction and sentence has been passed, we find that the said findings recorded by the trial court, are based on surmises and conjectures and against the settled principle of law laid down by the Hon’ble Apex Court in several of its decisions.

54. The first fact, which has been considered by the trial court in the impugned judgement is that of "motive" and by placing implicit reliance upon the said motive taking it, to have been proved, the findings of conviction has been recorded by the trial court against the appellant, however, when we critically analyse the said "motive", we find that, infact, inference in respect of the said motive has been drawn by the trial court based on the three letters said to be written by the deceased herself prior to her death, which has been handed over by her maternal uncle PW-1 Mahendra Pal Sharma to the Investigating Officer and has been proved and marked as Exhibits Ka-1, Ka-2 and Ka-3, however, when we go through the contents of the said three letters, we find that it does not, infact, lend cogent evidence, from which, an unimpeachable inference can be drawn that it is the appellant and the appellant alone, who has committed the murder of the deceased. At the most, only thing that could be discerned from the said letters is the conduct of the accused with his wife prior to her death. Perusal of the said letters only shows that there was some bitterness in the matrimonial relations between the husband and wife and in the backdrop of which, the deceased wanted to part company with the appellant.

55. In our opinion, it is germane to point out here that only on the basis of day-to-day conduct of the accused, no conclusive inference can be drawn to hold that the appellant would thus have strong motive to have committed the murder of the deceased, particularly, in a case based on circumstantial evidence. Even, the trial court while categorically recording the said findings has come to the conclusion that from all the facts coming out of these letters written by the deceased herself, it can be said that the accused "could" be the person, who has committed the murder of the deceased.

56. Thus, from the said findings, it is evident that even the trial court is inconclusive in recording the said findings and only on the basis of suspicion and probability, which infact has not been cogently and clearly established, the said findings has been recorded by the trial court.

57. It is well settled principle of law that the suspicion, howsoever strong, it may be, cannot take the place of proof. More so, when there is a wide gap between the fact that the accused "could have" or "must have" committed the murder.

58. It is well settled principle of law that in a criminal trial, the prosecution is required to prove its case beyond all reasonable doubts against the appellant and only on the basis of findings based on suspicion and probability, the conviction can not be recorded.

59. Thus, in the backdrop of the aforesaid circumstances, the findings of conviction based on motive, recorded by the trial court is therefore perverse and illegal and as such, the same can not be sustained in law and is liable to be set aside. The contrary view taken by the trial court is therefore bad in law and is liable to be set-aside.

60. The second ground, on which, the findings of conviction and sentence has been recorded by the trial court against the appellant, is based on the report of the incident of murder, which was lodged by the accused-appellant himself and is in his own handwriting, which has been held to be an admissible piece of evidence by the trial court. It is germane to point out here that the said findings recorded by the trial court on the basis of the aforesaid evidence is wholly misplaced and

against the settled principle of law laid down by the Hon'ble Apex Court in a recent decision passed in the case of ***Narayan Yadav Vs. State of Chhattishgarh reported in 2025 SCC OnLine SC 1603***, wherein the Hon'ble Apex Court, by relying upon the decisions passed in the cases of ***Faddi Vs. State of M.P. reported in 1964 SCC OnLine SC 123 and Aghnoo Nagesia Vs. State of Bihar reported in 1965 SCC OnLine SC 109***, has clearly held that :-

"19. In Faddi (supra), this Court stated that :-

"*If the FIR given by the accused contains any admission as defined in Section 17 of the Evidence Act there is no bar in using such an admission against the maker thereof as permitted under Section 21 of the Act, provided such admission is not inculpatory in character*. In the judgment their Lordships distinguished Nisar Ali case, [AIR 1957 SC 366] in the following lines:-

"But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course, a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused. (Emphasis supplied)

20. In Aghnoo Nagesia (supra), this Court sounded a note of caution that when the statement in the FIR given by an accused contains incriminating materials and it is difficult to sift the exculpatory portion therefrom, the whole of it must be excluded from evidence.

21. In Faddi (supra), the issue before this Court was whether the FIR lodged by the accused himself therein was admissible in evidence. In the facts of the said case, this Court held that the objection to the admissibility of the FIR lodged by the appellant was not sound, as the FIR only contained a few admissions, and those admissions did not amount to a confession so as to render the entire FIR inadmissible in evidence. We quote the relevant observations made by this Court in Faddi (supra) as under :-

"14. It is contended for the appellant that the first information report was inadmissible in evidence and should not have been therefore taken on the record. In support, reliance is placed on the case reported as Nisar Ali v. State of U.P, [AIR 1957 SC 366]. We have considered this contention and do not see any force in it.

15. The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court viz. how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements' of the prosecution witnesses is correct or not. Admissions are admissible in evidence under Section 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant

fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

16. The Privy Council, in very similar circumstances, held long ago in Dal Singh v. King Emperor, [LR 44 IA 137] such first information reports to be admissible in evidence. It was said in that case at p. 142:

"It is important to compare the story told by Dal Singh when making his statement at the trial with that what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jubbulpur. As such the statement is proper evidence against him . It will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh."

Learned counsel for the appellant submits that the facts of that case were distinguishable in some respects from the facts of this case. Such a distinction, if any, has no bearing on the question of the admissibility of the report. The report was held admissible because it was not a confession and it was helpful in determining the matter before the Court.

17. In Nisar Ali case, [AIR 1957 SC 366] Kapur, J. who spoke for the Court said, after narrating the facts:

"An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, not to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression it cannot be used as evidence against the maker at the trial if he himself becomes an accused supports the appellant's contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course a confessional first information report cannot be used against the maker when he be an accused and

necessarily cannot be used against a co-accused. Further, the last sentence of the above-quoted observation is significant and indicates what the Court meant was that the first information report lodged by Qudratullah, the co-accused, was not evidence against Nisar Ali. This Court did not mean- as it had not to determine in that case- that a first information report which is not a confession cannot be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provisions of that Act. We find also that this observation has been understood in this way by the Rajasthan High Court in State v. Balchand, [AIR 1960 Raj 101] and in State of Rajasthan v. Shiv Singh, [AIR 1962 Raj 3] and by the Allahabad High Court in Allahdia v. State, [1959 All LJ 340].

18. We therefore hold that the objection to the admissibility of the first information report lodged by the appellant is not sound and that the Courts below have rightly admitted it in evidence and have made proper use of it.

(Emphasis supplied)

22. We now proceed to look into the decision of this Court in Aghnoo Nagesia (supra). The following observations of this Court at paragraphs 9 to 18 are relevant and are quoted below :-

"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confession caused by certain inducements, threats and promises. Section 25 provides: "No confession made to a police officer shall be proved as against a person accused of an offence". The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s. (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by

a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy and the fullest effect should be given to them.

10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S. 157 of the Evidence Act or to contradict him under S. 145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under S. 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under S. 21 of the Evidence Act and is relevant, see Faddi v. State of Madhya Pradesh, Cri. Appeal No. 210 of 1963, dated 24-1-1964: (AIR 1964 SC 1850), explaining Nisar Ali v. State of U.P., (S) AIR 1957 SC 366 and Dal Singh v. King Emperor, (1916-17) 44 IA 137: (AIR 1917 PC 25). But a confessional first information report to a police Officer cannot be used against the accused in view of S. 25 of the Evidence Act.

11. The Indian Evidence Act does not define “confession”. For a long time, the Courts in India adopted the definition of “confession” given in Art. 22 of Stephen's Digest of the Law of Evidence. According to that definition a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in Pakala Narayanaswami v. Emperor, (1938-39) 66 IA 66 : (AIR 1939 PC 47 at p. 52). Lord Atkin observed:

“……..no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession.” These observations received the approval of this Court in Palvinder Kaur v. State of Punjab (1), (1952) 2 SCC 177: 1953 SCR 94: (AIR 1952 SC 354 at p. 357). In State of U.P. v. Deoman Upadhyaya, (1961) 1 SCR 14 at p. 21: (AIR 1960 SC 1125 at pp. 1128-1129). Shah, J., referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence

alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See Hanumant Govind v. State of M.P.,(1952) 2 SCC 71:1952 SCR 1091: (AIR 1952 SC 343 at p. 350) and (1952) 2 SCC 177: 1953 SCR 94: (AIR 1952 SC 354). The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory; and the prosecution intends to use the whole of the statement against the accused.

13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

14. If proof of the confession is excluded by any provision of law such as S. 24, S. 25 and S. 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section under as S. 27 of the Evidence Act. Little substance and content would be left in Ss. 24, 25 and 26 if proof of admission of incriminating facts in a confessional statement is permitted.

15. Sometimes, a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under S. 301-A of the Penal Code, 1860 and a statement made by him to a police officer that “I was drunk: I was driving a car at a speed of 80 miles per hour. I could see A on the road at a distance of 80 yards; I did not blow the horn: I made no attempt to stop the car; the car knocked down A”. No single sentence in this statement amounts to a confession; but the statement read as a whole amounts to a confession of an offence under S. 304-A of the Penal Code, 1860, and it would not be permissible to admit in evidence each sentence separately as a non-confessional statement. Again, take a case where a single sentence in a statement amounts to an admission of an offence. “A” states “I struck “B” with a tangi and hurt him”. In consequence of the injury “B” died. “A” committed an offence and is chargeable under various sections of the Penal Code, 1860. Unless he brings his case within one of the recognised exceptions, his statement amounts to an admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the subsequent conduct, all throw light upon the gravity of the offence and the intention and knowledge of the accused, and negatives the right of private defence, accident and other possible defences. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

16. If the confession is caused by an inducement, threat or promise as contemplated by S. 24 of the Evidence Act, the whole of the confession is excluded by S. 24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by S. 24. To hold that the proof of the admission of other incriminating facts is not barred by S. 24 is to rob the section of its practical utility and content. It may be suggested that the bar of S. 24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant but are of no value. But we think that on a plain construction of S. 24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, Ss. 25 and 26 bar not only proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also admissions contained in the confessional statement of all incriminating facts related to the offence.

17. A little reflection will show that the expression "confession" in Ss. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Ss. 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus fall within the purview of Ss. 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, S. 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession.

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S. 27."

(Emphasis supplied)

23. The legal position, therefore, is this - a statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is, as an admission under Section 21 of the Act of 1872, against its maker alone, and only if the admission does not amount to a confession.

24. To put the aforesaid in simpler terms, an FIR of a confessional nature made by an accused person is inadmissible in evidence against him, except to the extent that it shows he made a statement soon after the offence, thereby identifying him as the maker of the report, which is admissible as evidence of his conduct under Section 8 of the Act of 1872. Additionally, any

information furnished by him that leads to the discovery of a fact is admissible under Section 27 of the Act of 1872. However, a non-confessional FIR is admissible against the accused as an admission under Section 21 of the Act of 1872 and is relevant.

25. Thus, the first error that the High Court committed was to read the contents of the FIR lodged by the appellant into evidence. As observed earlier, the FIR lodged by the appellant amounts to a confession, and any confession made by an accused before the police is hit by Section 25 of the Act of 1872. There was no question at all for the High Court to seek corroboration of the medical evidence on record with the confessional part of the FIR lodged by the appellant."

61. Thus, in the light of the aforesaid two decisions of the Hon'ble Apex Court, contents of the FIR lodged by the appellant can not be said to be an admissible piece of evidence. Thus, on such inadmissible evidence, findings of conviction can not be recorded by the trial court, however, contrary view taken by the trial court is against the aforesaid settled principle of law and is therefore liable to be set aside and is accordingly set-aside.

62. Now, it is further relevant to note here that the trial court, while recording the findings of conviction and sentence against the appellant, has also relied upon the provisions contained in Section 106 of the Indian Evidence Act regarding special knowledge of the facts to the accused about the incident. The trial court, relying upon the said provisions of law, has recorded the findings of conviction and sentence against the appellant, which too, in our opinion, suffers from patent infirmity and illegality and is therefore liable to be set aside, inasmuch as, as per the settled propositions of law before invoking the provisions of Section 106 of the Indian Evidence Act, it is necessary for the prosecution to establish the foundational facts to shift the burden of proof upon the accused. In case, the Court finds that the prosecution fails to establish these foundational facts, rendering reliance upon Section 106 of the Indian Evidence Act, would be improper as held by the Hon'ble Apex Court in the case of State of Madhya Pradesh Vs. Balveer Singh reported in (2025) 8 SCC 545.

63. Further, the Hon□ble Apex Court in the case of Manoj Rameshlal Chhabriya Vs. Mahesh Prakash Ahuja and Another reported in 2025 SCC OnLine SC 451 has held that while invoking the provisions of Section 106 of the Indian Evidence Act, the onus was on the prosecution to lead such evidence, which would show that the accused was at or near his residence so as to attract the provisions of Section 106 of the Indian Evidence Act, however, in the present case, the prosecution has miserably failed to discharge the said onus, from which, an inference can be drawn that at the relevant time, the accused-appellant was present at his residence or somebody had seen the accused-appellant coming out or going into his house, in the absence of which, we are of the opinion that the provisions of Section 106 of the Indian Evidence Act can not be invoked in the instant case.

64. It is further germane to point out here that PW-1 Mahendra Pal Sharma, maternal uncle of the deceased, in his testimony, has candidly stated that the appellant Radha Charan used to live in his house alongwith his wife Pramila and niece Manju, however, the prosecution has not produced Manju as a witness so as to prove the fact that she had seen the appellant, present in the house

before or at the time of the incident, in the absence of which, the provisions of Section 106 of the Indian Evidence Act can not be invoked.

65. It is further germane to note here that in the testimony of the prosecution witnesses, it has been testified that apart from the accused-appellant Radha Charan, number of tenants also used to reside in the premises, where the accused-appellant used to reside, however, none of the said tenants have either been interrogated by the police or their evidence has been adduced before the trial court to prove the factum of appellant being present in his house or somebody seeing the appellant coming out or going into his house at the relevant time, when his wife was killed. It is further germane to point out here that no evidence has been led by the prosecution to prove that any of the tenants had seen the appellant present near or inside his house at the time of the incident. Even Smt. Vimlesh, the sister-in-law of appellant Radha Charan, who also used to reside in the same vicinity having a common boundary with that of the accused-appellant, has been withheld by the prosecution for the reasons best known to them. Thus, in the absence of these foundational facts, we are of the opinion that the provisions of Section 106 of the Indian Evidence Act can not be invoked in this case and the contrary findings recorded by the trial court basing the conviction and sentence thereupon, is therefore erroneous, illegal and bad in law and is liable to be set aside.

66. In the instant case, another ground, on which, the trial court has recorded the findings of conviction, is based on the recovery of crime weapon- "farsa" at the pointing out of the appellant Radha Charan. In this regard, the evidence led by the prosecution is the confessional statement of the accused-appellant recorded by the Investigating Officer, wherein, accused-appellant Radha Charan stated that the crime weapon- farsa, by which, he had given a blow on the neck of his wife causing her death is kept inside the Kotha and he can get it recovered. Subsequently, on the basis of the said statement, the Investigating Officer accompanied the accused and reached the place of the incident and appointed Har Prasad and Resham Lal, the two witnesses for recovery of the said farsa and thereafter, in front of them, the accused Radha Charan went inside the Kotha and brought out a blood-stained farsa and handed it over to the Investigating Officer, on the basis of which, the Investigating Officer prepared the recovery memo and got it duly signed by the two witnesses, namely, Har Prasad and Resham Lal and accused-appellant Radha Charan himself, which has been proved and marked as Exhibit Ka-4.

67. In order to prove the recovery of farsa, the prosecution has produced the witness Har Prasad as PW-2, however, when we carefully go through his testimony, we find that he, in his examination-in-chief, stated that :-

"मुलजिम राधा चरन ने कोठे के अन्दर से निकाल कर पुलिस को मेरे सामने फरसा दिया था, वो फरसा खून से सना हुआ था। लेकिन मैं उस फरसे को नहीं पहचान पाऊंगा। गवाह को फरसा प्रदर्श-1 दिखाया गया तो उसने कहा कि मैं नहीं कह सकता कि जो फरसा मुलजिम ने निकालकर दिया था, वो यही फरसा था या नहीं। लेकिन जो फरसा मुलजिम ने निकालकर पुलिस को दिया था, उसे मौके पर ही दरोगा जी ने सील मोहर कर दिया था और उसकी लिखा-पढ़ी भी मौके पर वहीं की थी। उस पर मेरे भी गवाही के दस्तखत कराये थे। वो कागज प्रदर्श क-4 है जिस पर मेरे दस्तखत हो रहे हैं। उस समय मेरे साथ रेशम लाल भी मौजूद था। इस कागज पर उसने भी उसी समय मेरे सामने दस्तखत किये थे।"

68. On being cross-examined, PW-2 Har Prasad testified that he had not given any affidavit by appearing before the court and is not aware as to what affidavit is. About 2-1/2 months back, he

attended the court but not this court. He was brought by the brother of Radha Charan, who got something scribed on a paper and got it signed but he does not know what was written on the said paper. He also could not recollect as to how many papers were signed by him.

69. During further cross-examination, the attention of PW-2 Har Prasad was drawn to an application, marked as 12-Kha, whereupon he admitted that he had put his signatures on the said application at two places and once, it was signed in this court itself, when he had come to file the said documents. He further corrected himself and stated that earlier in his testimony, he had stated that he had not come to this court 2-1/2 months back, however, the same is incorrect. On his attention been drawn to his affidavit, marked as 13-Kha/3 and 13-Kha/4, he admitted that it has been signed by him at four places. He further testified that he could not recollect if any counsel got his signature on a register, however, no paper was read out to him by any counsel. He can not identify the counsel Daudayal Agrawal (DW-1), however, on being asked to sign the papers before the court, he had signed the papers.

70. Thus, from his testimony, it is evident that though the said witness is an important witness of the recovery of crime weapon- farsa alleged to be brought out by the appellant, however, while testifying before the court, the said witness is highly inconsistent and shaky. At one place, the said witness is denying to have given any affidavit, while at the other, he accepts to have signed the affidavit, which was filed before this court. Thus, being inconsistent witness, his testimony regarding recovery of crime weapon- farsa is shaky and therefore, no credence can be attached to his testimony, being an unreliable witness.

71. Now, other witness of recovery of crime weapon- farsa is PW-5 Resham Lal, however, in his testimony, he has not supported the prosecution story and candidly stated that no recovery of crime weapon- farsa was made by the appellant Radha Charan, in his presence. He further testified that on the next day, on which, the dead body was taken away, a police constable had approached him and stated that the paper for blood test has been spoiled and the same is to be set right, as such, he may again sign the said paper, whereupon he signed the said paper. At the relevant time, when he signed the papers, it was a blank paper.

72. On his attention been drawn to Exhibit Ka-4, he admitted that it bears his signatures. Upon the said testimony, he was declared hostile and thereafter, he was permitted to be cross-examined by the public prosecutor. He categorically testified that Radha Charan did not got recovered the crime weapon- farsa from inside his Kotha and the police got his signatures only at two places. He further denied to have given any such statement to the Investigating Officer to the extent that the accused Radha Charan got recovered a blood-stained farsa from inside the Kotha, the recovery memo of which was prepared by the Investigating Officer and the same was sealed.

73. On his attention been drawn to his earlier statement, he denied to have given any such statement to the Investigating Officer. He further candidly testified that in the instant case, he had given an affidavit that no farsa was handed over by Radha Charan to the police and he himself had appeared to give the said affidavit and he further denied the suggestion that he is falsely deposing to rescue Radha Charan.

74. Now, when we further analyse the testimony of PW-2 Har Prasad and PW-5 Resham Lal in the light of the testimony of DW-1 Daudayal Agrawal, who in his statement, has categorically and candidly reiterated the factum of filing of the affidavits both by PW-2 Har Prasad and PW-5 Resham Lal alongwith an application, which has been marked as Exhibits Kha-2, Kha-3 and Kha-4 clearly denying therein that Radha Charan handed over the crime weapon- farsa to the police in their presence, which further renders the prosecution story highly shaky and doubtful regarding the factum of recovery of crime weapon- farsa by the accused-appellant Radha Charan, which creates serious dent in the prosecution story and makes it incredible.

75. It is further germane to point out here that the factum of giving an affidavit by PW-2 Har Prasad and PW-5 Resham Lal has also been proved by DW-1 Daudayal Agrawal, Advocate, who had prepared their affidavits got it sworn by them and filed in the court, which has been proved and marked as Exhibit Kha-3. Vakalatnama of Resham Lal and Har Prasad as well as an application marked as Exhibits Kha-1 and Kha-2, denying the factum of recovery of farsa in their presence from the house of the accused-appellant has also been brought on record and is a relevant piece of evidence.

76. From the aforesaid testimony, it is evident that the manner, in which, the accused brought out the crime weapon- farsa from inside the Kotha of his house and handed it over to the Investigating Officer, who prepared its recovery memo, which has been proved and marked as Exhibit Ka-4, in our opinion, does not fulfil the requirement of a valid recovery as envisaged under Section 27 of the Indian Evidence Act. For a valid recovery under Section 27 of the Indian Evidence Act, either the crime weapon should have been recovered from the possession of the accused or on his pointing out, however, in the instant case, admittedly, the crime weapon- farsa has been brought out from the Kotha by the accused, while the Investigating Officer and the witnesses were standing out at the door-step, thus, the exact place, from where the recovery of the crime weapon- farsa has been made, has not been clinchingly and clearly established in the instant case, which further renders the recovery of crime weapon- farsa doubtful. To quote :-"जिस समय मुलजिम अन्दर कोठे में गया तो मैं उस दरवाजे पर खड़ा हुआ था जो दोनों खनों के बीच की दीवार में है यानी उस खन में खड़ा था, जहां पर लाश पड़ी थी, वहां से वो फरसा दिखाई नहीं दे रहा था। वो फरसा उत्तरी-पश्चिमी कोने में रखा हुआ था। मैंने ये जानने की जरूरत नहीं समझी की फरसा कोने में किसी चीज में छिपा रखा था या वैसे ही रखा हुआ था।"

77. In respect of the factum of recovery of crime weapon- farsa and its keeping in safe custody for being sent for chemical examination, it is germane to point out here that even according to the prosecution own case, the crime weapon- farsa was shown to be handed over by the accused to the Investigating Officer on 02.02.1983 at about 10:00-11:00 AM and it was thereafter kept at the Police Station and sent to Maal Khana on 03.02.1983, however, it was returned back on 03.02.1983 itself at 5:45 PM and thereafter, was sent to the Maal Khana on 10.02.1983. No explanation whatsoever has been tendered by PW-3 Kamal Kishor Mishra as to in between the period from 02.02.1983 to 10.02.1983, where the crime weapon- farsa was kept, which further raises a big question mark about the veracity of the recovery of the crime weapon- farsa from the accused and its chemical examination report, upon which, implicit reliance has been placed by the trial court while recording the conviction.

78. Thus, in the backdrop of the aforesaid facts and circumstances of the case, even the factum of recovery of blood-stained farsa at the pointing out of the appellant and the F.S.L. report can not be said to be clinchingly proved by the prosecution against the appellant.

79. It is further germane to point out here that even otherwise also, it is well settled principle of law laid down by the Hon□ble Apex Court in several cases that mere recovery of weapon and F.S.L. report as in the

present case, is not enough to convict the accused, in the absence of corroborative evidence as held by the Hon□ble Apex Court in the case of Govind Vs. State of Haryana reported in 2025 SCC OnLine SC 2456.

80. In view of foregoing discussions, we are of the opinion that the prosecution has miserably failed to prove the case beyond all reasonable doubts against the appellant and the findings recorded by the trial court convicting the appellant and sentencing him for the offence charged with is therefore set aside by allowing the appeal.

81. In the result, the instant criminal appeal succeeds and is hereby allowed. The impugned judgment and order dated 19.01.1984 passed by the trial court is set aside. The appellant is acquitted of all the charges and he be set free forthwith, if not wanted in any other case, subject to the compliance of Section 437-A of Cr.P.C. to the satisfaction of the trial court.

82. Let a copy of this judgment and order be forwarded to the trial court alongwith trial court record for information and necessary compliance.

(HON'BLE RAJIV GUPTA, J.
&
HON'BLE DEVENDRA SINGH-I, J.)

1. Shri Vishesh Kumar, Advocate was appointed an Amicus Curiae to argue the instant criminal appeal on behalf of the appellant. He has rendered valuable assistance to the Court.

2. The Court quantified Rs. 15,000/- to be paid to Shri Vishesh Kumar towards fees for the able assistance provided by him in hearing of the instant criminal appeal.

3. The said fees shall be paid to him by the Registry of this Court within a period of one month from today.

(2026) 2 ILRA 74
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.02.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 534 of 1995

Ram Pheran & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal against a conviction under section, 498-A, 304-B/ 302/34 of the IPC, where the appellant was accused of dowry death (strangulation and subsequent burning) of his wife over dowry demands.

Headnotes

A. Criminal law-Indian Penal Code,1860-Sections 498-A, 304-B/ 302/34-Criminal Procedure Code,1973-Section 374(2)-Dowry death Vs. Murder-Circumstantial evidence-Deceased found extensively burnt in matrimonial home-Medical evidence (PW-4) revealing death by asphyxia due to strangulation prior to burning-Absence of carbon particles in the trachea and a fractured hyoid bone are definitive indicators of death by strangulation prior to burning-Harassment for dowry of Rs. 1000 established by testimony of father(PW-1) and brother (PW-2)-Plea o alibi by husband and mother-in-law rejected as it contradicted the initial information given by the father-in-law admitting their presence-Hence, a false plea of alibi in a case of custodial death in a matrimonial home serves as an additional link in the chain of circumstantial evidence-Appellant no. 2 released by the Governor on remission after serving over 24 years-While conviction and sentence are confirmed, the appellant is not required to surrender to undergo the remaining sentence as the constitutional power of remission remains untouched by the court's judgment.(Para 24 to 34)

Held

The court held that the deceased was strangulated to death before being set on fire to stage a suicide or accident. Evidence showed a fractured hyoid bone and absence of sooty particles in the trachea, confirming the burns occurred post-death. The appellants' plea of alibi was discarded due to their own contradictory statement. The court upheld the conviction, finding the chain of circumstantial evidence complete. Since the Governor already granted remission under Article 161, the surviving appellant is not required to surrender to serve the remaining life sentence. (E-6)

Case law Cited

Sharad Birdhichand Sarda Vs State of Maharashtra (1984) 4 SCC 116, Anwar Ali & Anr Vs State of Himachal Pradesh (2020) 10 SCC 166, Union of India Vs sriharan: 2016 (7) SCC 1, Suresh Yadav Vs State of Chhatisgarh; (2022) 19 SCC 469-referred to.

List of Acts

Indian Penal Code,1860
Criminal Procedure Code,1973

List of Keywords

Cruelty, Common Intention, Dowry , Dowry death, remission, Governor , Examination of accused, Murder, Asphyxia, Strangulation, Hyoid Bone fracture, Sooty particles, Post mortem burns, Carotid Arteries, Laceration, Plea of Alibi, Panchseel principles, Circumstantial evidence,Abatement, Inquest Proceedings.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No.- 534 OF 1995
Ram Pheran & Ors Vs. State of U.P.
From the judgment and order dated 16.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s) :-
H.P. Pathak, M.P. Yadav
Adv. for Respondent(s):-
G.A.,

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

(1) Heard Sri M.P. Yadav, learned counsel for the appellants and Sri Pawan Kumar Mishra, learned AGA for the State.

(2) The instant Criminal Appeal has been filed assailing the judgment and order dated 25.08.1995, passed in Sessions Trial No.498/1994 (The State versus Ram Pheran and Others) by the Sessions Judge, Gonda, arising out of Case Crime No.29/94, under Sections 498-A/ 304-B/ 302 read with Section 34 of Indian Penal Code(hereinafter referred to as IPC) and Section 3/5 of Dowry Prohibition Act (hereinafter referred as D.P. Act), Police Station Harraiya, District Gonda, by means of which the appellants have been convicted under Section 302 read with Section 34 IPC and Section 498-A IPC and sentenced each of them to undergo imprisonment for life under Section 302 read with Section 34 IPC and to undergo one year rigorous imprisonment under Section 498-A IPC alongwith a fine of Rs.1000/- payable by each of them and in default of payment of fine, to undergo further rigorous imprisonment for one month. It has further been provided that all the sentences shall run concurrently.

(3) The prosecution story, in short, is that Smt. Meena Devi, daughter of Moti Lal was married to the appellant no.2 Mansha Ram, resident of Village Sonpur, Police Station Harraiya, District Gonda in the year 1989. The accused Ram Pheran is the husband of the accused Smt. Maharani. They are the father-in-law and mother-in-law of the deceased. The accused persons used to demand Rs.1,000/- as dowry from the deceased and harass her on account of non-fulfillment of their demand. It was further alleged that, since the marriage of the brother of the deceased was scheduled to take place on 23.06.1994, her brother Ram Chandra had come to take her on 19.06.1994. However, she was not sent with Ram Chandra, the brother of the deceased and he was forced to return without her. He was told that if the amount of dowry of Rs.1000/- would not be paid, his sister would face dire consequences. In the midnight between19.06.1994 and 20.06.1994, the deceased was allegedly burnt by the appellants, on account of non-fulfillment of their demand of dowry. The written F.I.R. was given at Police Station Harraiya on 20.06.1994 at about 04:45 p.m. by Moti Lal, the father of the deceased. On the basis of the said written report, Chick F.I.R. was prepared and case was registered against all the three accused/appellants at Crime No.29/94, under Sections 498-A/ 304-B I.P.C., entry of which was also made in the GD, a copy of which is on record.

(4) As borne out from the records, before the aforesaid F.I.R. was lodged by Moti Lal on 20.06.1994, a written information had been furnished by the accused/appellant Ram Pheran at Police Station Harraiya on 20.06.1994 at about 8:05 a.m., intimating therein about the death of his daughter-in-law on account of burning. This information was entered in the GD at Serial No.10, a copy of which is on record. Accordingly, the process was undertaken for inquest proceedings of the dead body on the basis of said information at 2:00 p.m. Thereafter, the dead body was sent for post mortem examination, which was conducted on 22.06.1994 at about 1:00 p.m. in the mortuary, Gonda. The Investigating Officer prepared the site plan of the spot, took into his custody the dhibri, prepared Naksha Lash and on completion of the investigation, he submitted the charge sheet against all the three accused persons on 16.09.1994 under Sections 498-A, 304-B and 201 IPC. The cognizance was taken by learned Magistrate. Thereafter the matter was committed to the session. The Session Court framed the charges against all the accused persons i.e. the appellants under

Section 304-B, 498-A and Section 302 read with Section 34 IPC as well as Section 3/5 D.P. Act, to which they pleaded not guilty and claimed trial.

(5) In order to prove it's case, the prosecution examined P.W.1; Moti Lal, the informant and father of the deceased, P.W.2 Ram Chandra; brother of the deceased, P.W. 3 Pawan Kumar, P.W. 4 Dr. Ashok Kumar, who conducted the post mortem examination, P.W.5 Constable Mishri Lal, who took the dead body for post mortem examination, P.W.6 S.I. R.K. Chaudhary, who conducted the inquest proceedings of the dead body, P.W.7 Pradeep Kumar; Investigating Officer of the case and P.W.8 Head Constable Ram Sewak to prove the information furnished by Ram Pheran. The prosecution also placed on record certain documentary evidences and proved the same.

(6) Thereafter, the statements of the accuseds under Section 313 Cr.P.C. were recorded, in which they denied the allegations. They stated that the marriage had taken place nine years back and a wrong post mortem report had been obtained, on account of extraneous consideration. According to the accused Ram Pheran, his wife Smt. Maharani and son Mansha Ram i.e. husband of the deceased were not present at the time of incident, as they were in village Padam Chakki, situated at a distance of about two and a half kilometers from the place of incident. He stated that he alone was present and was sleeping at the door of the house at a distance of about 250 kasies. When the deceased caught fire and raised an alarm, the villagers, particularly the women assembled there. However, he did not enter into the house, as the deceased was his daughter-in-law. Similar pleas of absence were taken by the accused appellants Mansha Ram and his mother Smt. Maharani. The defence examined D.W.1; Rameshwar Prasad and D.W.2; Krishna Mohan, particularly to prove that the appellants Smt. Maharani and Mansha Ram were not in the house at the time of incident.

(7) The learned trial court, thereafter after hearing learned counsels for the parties and considering the evidence and material on record, acquitted the appellants under Section 304-B IPC and 3/5 D.P.Act on the ground that the charges under the said sections could not be proved and convicted the appellants under Section 498-A and Section 302 read with Section 34 IPC. Hence, this appeal has been filed.

(8) During pendency of appeal, the appellants no.1 and 3 have died, therefore, this appeal stands abated on their behalf. Now this appeal survives only on behalf of the appellant no.2.

(9) We have heard learned counsel for the parties and perused the records.

(10) In-disputedly, the death of Meena Devi, a young lady of 18 years of age and married to the accused Mansha Ram, had taken place in the intervening of 19/20.6.1994 inside the house of the appellants (accused) in Village Sonpur, on account of excessive burning. The father-in-law of the deceased, who is father of the appellant Mansha Ram, submitted a written report on 20.06.1994 at 8:05 a.m.(Ex Ka-16), intimating therein that a son had been born to his younger brother Kamta Prasad on 19.06.1994 and in celebration thereof, the ladies of the family were playing musical instruments and singing. He, his brother Kamta Prasad and son Mansha Ram were sleeping outside of the house. After the singing and playing of instruments, his daughter-in-law, wife of Mansha Ram was going to sleep, who had glowing lamp(dhibri) of glass in her hand. When she reached

near the door, the flame from the lamp caught her terricot saree and she started burning. On the alarm raised by her, they ran and reached the spot. By that time, the daughter-in-law was extensively burnt and lying unconscious. They tried to extinguish the fire but by that time, she died. This incident occurred at about 1:00 a.m. in the night between 19/20.06.1994. As there was no arrangement in the night, therefore, he has sent Triveni @ Teja son of Rajkumar Mishr and Krishna Mohan Tiwari son of Ram Surat Tiwari to the parental house of the daughter-in-law to inform them and thereafter he has come to the police station to give the information.

(11) In view of above, admittedly, the appellants were present at the time of the incident, in which the deceased died on account of burning. However, during trial, they took the plea that only the complainant Ram Pheran was present at the spot, whereas Mansha Ram; the husband of the deceased and his mother i.e. wife of the complainant; Smt. Maharani were not present and had gone to village Padam Chakki. To prove it, they took this defence in their statements under Section 313 C.r.P.C. and also produced two defence witnesses.

(12) D.W.1; Rameshwar Prasad stated that at about 12:30 p.m. in the night, he heard the noise that there is a fire, then he went to the house of Mansha Ram and found that his wife was burning and the persons present were trying to extinguish the fire by the cotton and clothes. At that time, Mansha Ram and Maharani were not present at home,as they had gone to Village Padam Chakki, which is at a distance of about 8-9 kms from Sonpur. Ram Pheran was at his house, at about 250-300 steps in the south. He also stated that Mansha Ram and Maharani returned in the morning, on the information given to them. He denied the suggestion that the appellants had killed the deceased on account of dowry demand.

(13) D.W.2; Krishna Mohan also stated that about 1 year two months back, at about 12:00-1:00 a.m., he heard the noise that the house of Ram Pheran is burning. He ran towards his house and found that the daughter-in-law of Ram Pheran was burning and whoever reached there was trying to extinguish the fire. At that time, Mansha Ram and Maharani were not present at the house. Subsequently, he came to know that they had gone to village Padam Chakki, which is about 5-6 kms. away from Village Sonpur. He, in his cross examination, has admitted that he has affinity with Ram Pheran, the complainant.

(14) The evidence given by D.W.1 and D.W.2 is contrary to the information given by the complainant i.e. the appellant Ram Pheran on 20.06.1994 (Ex. Ka-16) at 8:05 in the morning at the Police Station Harraiya, District Gonda, wherein he admitted that he, alongwith his son and brother Kamta Prasad was sleeping outside the house, therefore, the plea of alibi taken by the appellants is an after thought, and the evidence of D.W.1 and D.W.2 is not reliable. Even otherwise, they are not eye witnesses.

(15) The learned trial court, after considering the evidence and material on record, recorded that the plea of absence required strict proof thereof, which could not be done. D.W.1 and D.W.2 were not found worthy of placing any credence, as they made efforts to state a fact against the own admission of accused Ram Pheran, who had himself admitted his presence at the relevant time and the plea of alibi of Smt. Maharani also could not be proved and discarded the plea. This Court is in agreement with the view taken by the learned trial court. Now this Court has to see as to how the

deceased died and the cause of death and under the circumstances, the appellants could only have the perpetrators of crime.

(16) Dr. Ashok Kumar, who appeared as P.W.4, proved the post mortem report (Ex. Ka-2). He found that inner and middle coats of carotid arteries were found lacerated with extravasation of blood within their walls. The cornu of hyoid (left comu) was found broken (fractured). The body was of a young lady of average built and muscularity with both eyes proptosed and mouth semi opened. Whole body was burnt except both feet and both soles. Scalp haris were also diarred. Smell of kerosene was found present on the body and clothes. Abdomen was burst open and the abdominal contents were coming out. Small to medium sized maggots were found present on the body. Occasional blisters were also found present on the body, which were containing air only. As per the post mortem report, the following anti mortem injuries were found:-

"Post mortem burn of face, head, neck, trunks and both extremities including perinium except both soles and both feet. There was no line of redness. Occasional vesications containing air with their bases hard, dry and yellow. No reparative process was found present. It has further been recorded that the larynx were marked by congested mucosa. No sooty particles were found present in trachea of bronchitis. Both lungs were found markedly congested showing haemorrhage i.e. petechiae and exuding dark fluid blood on section. Emphysematous patches on the surface of lungs were also found present. The cause of death was due to asphyxia on account of strangulation."

(17) He opined that the death of the deceased had occurred in the night of 19/20.6.1994. He stated that he alongwith his companion Dr. P.K. Agarwal, found the cause of death was strangulation and thereafter burning of the dead body, which was different than the reason given in the inquest report, therefore, he wrote a letter dated 22.06.1994 to the Superintendent of Police in this regard and as per the directions received, the post mortem was conducted in the presence of Chief Medical Officer by him and his companion Dr. P.K. Agarwal. He proved the letter written to the Superintendent of Police (Ex. Ka-3). He proved the report written on the said letter by the Chief Medical Officer as Ex.Ka-4. In his cross examination, he stated that in his opinion, in the living status, if the dead body is burnt of a living person, then certain particles of carbon necessarily go in the wind pipe, which is called sooty particles. However, in the present case, the wind pipe was congested from inside, which, according to him is reason of death by strangulation. He further stated that the blood was not deposited in the lungs on account of hue because no sooti particles had gone inside. He also stated that the hyoid bone was fractured. He also stated that hyoid bone cannot be fractured in case of pressure at the time of burning. He stated that the dead body of the deceased was about 90% burnt. Thus, it is proved that the deceased had already died before burning.

(18) In view of above, it has been proved that the deceased was killed, thereafter, she was burnt after pouring kerosene oil on her to give it a colour of suicide.

(19) P.W.1, i.e. the complainant, has stated that the appellants used to demand Rs.1000/- as dowry and since he was not in a position to pay the amount, they used to beat his daughter and they also do not give food to her. He also stated that the marriage of his son Shiv Dayal, was fixed for 23.06.1994, therefore, he had sent his another son Ram Chandra on 19.06.1994 to invite her and

bring her home, but she was not sent on the ground that the complainant has not given Rs.1,000/- as demanded by the appellants. He proved the F.I.R. lodged by him. He further stated that on the next day, while he was preparing for going to the house of his daughter's in-laws, he received the information regarding her death. Thereafter he went to the house of his in-laws, where he found her dead body and also came to know that her daughter has been killed, therefore, he gave a written complaint i.e. Paper No.4/2 for lodging the F.I.R. He proved the same as Ex. Ka-1. In the cross examination, he stated that in the room of her daughter he had not found any burnt article except the clothes of his daughter. Her face was also burnt. Besides her saree, six-seven other sarees were found burnt. The dead body was near the cot, where she used to sleep. He denied the suggestion that her daughter had died her natural death.

(20) P.W.2 Ram Chandra, the brother of the deceased has also stated that the appellants used to demand Rs.1,000/-. He also stated that he does not know as to whether his father had given the same or not. He further stated that the marriage of his brother was fixed in the month of June 1994, therefore, he had gone to bring his sister on 19.06.1994 but she was not sent on account of non-payment of Rs.1,000/-. He further stated that he was also told that if the money was not paid, then the life of the girl would be in danger. He had also met his sister Meena, who told him that the appellants used to harass her for the money and if the money would not be given, her life would be in danger. She had also informed that they do not give her food. He had made request for sending his sister but they told that she would not be sent, unless the money was paid. On 20.06.1994, he came to know about the death of his sister. In the cross examination, nothing could be extracted, which may create any doubt about the veracity of the evidence given by P.W.2. All the other witnesses, who proved lodging of F.I.R., inquest report, taking the body for post mortem and the investigation, but nothing could be extracted from them, which may create even a single doubt in their evidence.

(21) The learned trial court, after considering the post mortem examination report and the testimony of P.W.4 Dr. Ashok Kumar, has recorded a finding that at first the deceased was strangulated and thereafter she was set ablaze by sprinkling kerosene oil in attempt to conceal the evidence and to give different version of story. Not only hyoid bone was found fractured but there were no sooty particles found in trachea and bronchitis though there was smell of kerosene oil on the body with absence of redness in the injury which alongwith the symptoms as mentioned in the post mortem, indicates clearly that the burns were post death and that the lady had already died on account of strangulation.

(22) On the basis of above, learned trial court has found that the charges under Section 498 A IPC and Section 302 read with Section 34 IPC have been found proved against all the three accused i.e. the appellants, as the deceased was subjected to cruelty soon before her death by her father-in-law, husband and mother-in-law and they committed murder of Smt. Meena by strangulating her with a common intention and thereafter setting her on fire, after sprinkling kerosene oil and convicted accordingly. However, the learned trial court acquitted the appellants from the charges under Section 304-B IPC and Section 3/5 of D.P. Act, as the charges under the said provisions have not been found proved. The said part of the judgment has not been assailed by either the State or the complainant.

(23) This Court is in agreement with the findings recorded by the trial court and the conclusion drawn. On giving thoughtful consideration to the evidence and material on record, this Court also finds that the deceased was subjected to harassment soon before her death and even she was not being given food. She was killed by strangulation and on account of her harassment, even her hyoid bone was fractured. Thereafter to give colour of suicide, she was burnt by pouring kerosene oil on her.

(24) In the facts and circumstances of the case, and upon considering the case in hand on the touch stone of five golden principles of circumstantial evidence enumerated in the case of ***Sharad Birdichand Sarda versus State of Maharashtra; (1984) 4 SCC 116***, the appellants, who were present at the time of crime could only have committed the crime. The plea of alibi of the husband and mother of deceased by the defence could not be proved as discussed above. The relevant paragraphs 153 and 154 of ***Sharad Birdichand Sarda (supra)*** judgment are extracted here-in-below:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheet of the proof of a case based on circumstantial evidence."

(25) The aforesaid has been followed by the Hon'ble Supreme Court in the case of ***Anwar Ali and Another versus State of Himachal Pradesh (2020) 10 SCC 166.***

(26) The aforesaid golden principles still hold the field and upon testing a case appropriately on the said principles and conclusions arrived thereupon, there cannot be any doubt about the conclusions and the conclusions cannot be said to be erroneous or perverse.

(27) In view of above and considering the overall facts and circumstances of the case, this Court does not find any illegality or error in the conviction of the appellants.

(28) The learned trial court has awarded the punishment of life imprisonment under Section 302 read with Section 34 IPC and further sentenced each of them to undergo rigorous imprisonment for one year each under Section 498 IPC besides a fine of Rs.1000/- payable by each of the accused and in default of payment of fine, to undergo rigorous imprisonment for one month further. This Court does not find any illegality or error in the sentence and fine awarded to the appellants. However, the appellant no.1 Ram Pheran and appellant no.3 Smt. Maharani have died. Thus, appeal on their behalf has already abated.

(29) The appellant no.1 was released on 08.09.2000 in pursuance of Government Order No.1951/22-2-2000-18(75/2000 dated 11.8.2000), on account of completion of 60 years of age and three years of period of incarceration with remission. Appellant No.2 Mansha Ram has been released on 22.02.2019 in compliance of Government Order No.1014/22-2-2019-17 (519)/ 2019 dated 15.02.2019 on remission granted by His/Her Excellency the Governor of Uttar Pradesh under Article 161 of Constitution of India and Government Order No.82/Provation-6/144 dated 20.02.2019 of IG, Jail Administration and Reforms Department, U.P., Lucknow. The appeal on behalf of appellant no.1 has already abated.

(30) Now the question arises as to whether the appellant no.2 is liable to be sent again to jail to serve out remaining sentence or not in view of remission granted to him by the Governor under Article 161 of the Constitution of India.

(31) This Court is of the view that the punishment awarded to the appellants was sufficient and commensurate to the crime committed by the appellants. However, the appellant no.2 has been released on remission after completion of 24 years 6 months 5 days of incarceration and 29 years 11 months 15 days with remission, therefore, he is not required to surrender to undergo the remaining period of sentence because upholding of conviction and dismissal of appeal confirming sentence will not affect the order passed by Governor under Article 161 of Constitution of India. However, it cannot affect the power of this Court to decide the appeal and take decision in regard to conviction and sentence.

(32) The Hon'ble Supreme Court, in the case of ***Union of India versus Sriharan; 2016 (7) SCC 1***, has held that right to claim remission, commutation, reprieve etc. as provided under Article 72 or Article 161 of the Constitution will always be available being constitutional remedies untouchable by the Court.

(33) The Hon'ble Supreme Court, in the case of ***Suresh Yadav versus State of Chhatisgarh; (2022) 19 SCC 469***, in which the appellant was released on remission by the Government and the conviction was upheld, held that dismissal of the appeal shall not be of any adverse effect on such exercise of power of remission by the State Government because under Article 161 of the Constitution of India, the Governor of a State has a power to grant remissions of punishment of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The relevant paragraph 11 is extracted hereinbelow:-

As per the office report and the custody certificate placed before us, it appears that on 07.09.2019, the appellant, after having served the sentence of imprisonment for a period of 15 years 9 months and 27 days, was released under Section 432 Cr.P.C. by the Government of Chhatisgarh. Having regard to the circumstances, we make it clear that dismissal of the appeal shall not be of any adverse effect on such exercise of power of remission by the Government of chhatisgarh.

(34) In view of above and considering overall facts and circumstances of case, the appeal is **dismissed**, upholding the conviction and confirming the sentence awarded by the learned trial court. However, in view of the fact that the appellant no.2 has been released on remission granted by the Governor under Article 161 of the Constitution of India, he is not required to surrender to undergo the remaining period of sentence.

(35) Let a copy of this judgment alongwith the Trial Court's record be sent back forthwith and in any case within a period of one week from today.

(2026) 2 ILRA 83
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.02.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 2044 of 1983

Ali Hasan & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal against a dacoity conviction where seven named co-villagers allegedly committed dacoity at Dhanpal's house, looting cash and ornaments while injuring his mother and sisters.

Headnotes

Criminal law- Indian Penal Code,1860-Sections 395, 397-Criminal Procedure Code,1973-Section 374(2)-Dacoity and attempt to cause death-Inconsistent ocular testimony vs. medical evidence-Testimonies from related witnesses (PW-1, PW-2, PW3) contained significant discrepancies regarding number of dacoits, whether their faces were covered and the specific weapons

carried-The oral testimony of PW-3 alleging a knife injury was directly contradicted by medical findings, which showed injuries caused only by hard and blunt objects-Furthermore, the prosecution failed to prove the injury reports of the sisters of the informant-The investigation was also found lacking as the Investigating Officer failed to collect empty cartridges from alleged gunshots, broken locks, or any evidence of the cash proceeds (Rs. 6000/-) mentioned in the FIR-Despite the arrest of the accused, no looted booty or ornaments were recovered from them, undermining the prosecution's case.-The defense of false implication due to village party-bandi and a prior criminal complaint filed by one of the accused against the informant was not properly considered by the Trial Court-Prosecution failed to prove guilt beyond reasonable doubt-Acquittal of surviving appellants. Appeal allowed.(Para 16 to 29)

Held

The court held that conviction for dacoity unsustainable when the trial court fails to establish the factum of the incident and relies on inconsistent ocular testimony that lacks corroboration from medical or investigative evidence. The parties were co-villagers with a history of documented animosity, including a prior criminal complaint filed by one of the accused against the informant and local political rivalry stemming from a Pradhani election. Trial court erred to first determine if the incident actually occurred before assessing the involvement of the accused. Hence, the conviction set aside. (E-6)

Case law Cited

Jitendra Kumar Mishra alias Jittu Vs State of M.P.(2024) 2 SCC 666-referred to.

List of Acts

Indian Penal Code,1860
Criminal Procedure Code,1973

List of Keywords

Dacoity, Grievous hurt, Ocular testimony, Related and Interested witnesses, Material inconsistencies, Medical Discorroboration, Perfunctory investigation, Cartridges, Village Animosity, Ornaments, Benefit of doubt, Identification in Torchlight, Abatement.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No.- 2044 OF 1983
Ali Hasan & Ors Vs. State of U.P.
From the judgment and order dated 16.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s) :-
Brij Raj, Narendra Kumar, Sanjive Kumar Gupta, Tejram
Adv. for Respondent(s):-
A.G.A.,

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

1. Heard Sri Brij Raj and Sri Sanjive Kumar Gupta, learned counsel for the appellants and Sri Chandra Badan, learned A.G.A. for the State. Perused the record.

2. The oldest criminal appeal has been preferred by seven accused-appellants in the year 1983 under Section 374(2) CrPC from District Badaun, on being aggrieved by the judgment of conviction and sentence passed by the court of Special Sessions Judge, Badaun on 29.08.1983 in Special Sessions Trial No.157 of 1982, arising out of Case Crime No.321 reported on 27.07.1982 at 6:30 a.m. at Police Station Ujhani, District Badaun for offence under Section 395 (punishment for

dacoity) and 397 (dacoity with attempt to cause death or grievous hurt), whereby the trial court has convicted accused-appellants 1 to 3, Ali Hasan, Narain and Nandey, respectively for offence under Section 395 I.P.C. and accused-appellants 4 to 7 Omkar, Harpal, Latoori, Mehndi, respectively for offence under Sections 395 I.P.C. read with Section 397 I.P.C. Therefore, appellants Omkar, Harpal, Latoori and Mehndi were punished for imprisonment of 7 years rigorous imprisonment, whereas accused Ali Hasan, Narain and Nandey were punished with 5 years rigorous imprisonment.

3. During the pendency of appeal, four appellants, Narain s/o Gindu, Nandey s/o Jhammn, Omkar s/o Dhoom Singh and Mehndi s/o Chunni have passed away and by order dated 21.02.2019, the appeal was abated for appellant no.2, Narain, appellant no.3 Nande, appellant no.4 Omkar and appellant no.7 Mehndi.

4. The prosecution case has its genesis from the written information given by Dhanpal (P.W.-1), scribed by Jagdish s/o Bhole Nath disclosing therein that in the intervening night of 26/27.07.1982 at about 1:00 a.m. while he and his brother, Ishwari, were sleeping in the cattle shed near the house, they heard the shrieks of his mother and sisters. His brother Ishwari and he ran towards the house accompanied by Nanhey Singh, Ram Lal, Prakash and other villagers with lighted torch in their hands and found that the miscreants were beating their mother and sisters and looting the valuables. The informant and other villagers including his brother have challenged the miscreants, on which, the miscreants came out from the house, who have been identified in the light of torch. Mehndi was carrying gun, Harpal, Omkar and Latoori had country-made pistols and other accused were carrying lathi in their hands. While exiting the accused made two fires and threatened the informant and other villagers, not to chase them. In exchange Ganga Ram has also shot three fires from his licensed gun. The accused then sprinted away towards South. In the dacoity, the mother and sisters of informant were badly injured. It is further revealed from the F.I.R. that the informant was having cash of Rs 6,000/- at his residence. Rs.3,000/- was the proceeds from onion sale and Rs.3,000/- was the advance money for selling his land. The accused had looted Rs.3,000/-, but could not found other Rs.3,000/-, which was kept hidden. The accused have also looted nine items. One Hasali of silver (2.450 gm); one Hasli silver (2.400 gm); one phool for nose; one pair bara silver; 16 pair of lachche silver for toes; one pair pahunchi of silver; one shirt taricoat yellow colour with lines; one Tehmad of Khadi white colour 2.25 meters; and one Baniyan with sleeves of white colour. The F.I.R. further reveals that the accused had left at the place of incident one lathi, one aguncha, one pair of shoes, one cheni and one summi. The informant was accompanied to police station with his injured mother and sisters.

5. The F.I.R. got registered against seven named persons, who are residents of same village.

6. Smt. Jaya Devi (mother of informant) was examined at District Hospital Badaun on 27.07.1982 at 12:30 p.m. In the medical examination, the doctor found contusion and swelling 8 cm x 8 cm and lacerated wound 1cm x □ cm x1/4 cm in middle and left forearms (X-ray advised); the second injury was lacerated wound 6cm x1/2 cms □ cm on middle of head, 7 cm above nasion; and the third injury was contused swelling on dorsum of right hand with (X-ray advised). It is mentioned that injury nos.1 and 3 are kept under observation and X-ray advised. Injury no.2 is simple in nature and all the injuries are caused by hard and blunt object and duration is about □

day. In supplementary medical report, it is found that there is fracture in the middle third of ulna bone. This medical report is not exhibited.

7. Smt. Ishwarwati (sister of informant) was examined on the same day at 12:45 p.m. at District Hospital Badaun. Three injuries were reported. Injury no.1 is lacerated wound 2 □ cm x 1 cm bone deep on the right side of forehead just above medial end of right eyebrow; the second injury is contusion 3 cm x 1 □ cm on lateral side of right knee; and the third injury is contused swelling on right side of upper lip. It is reported that all the injuries are simple in nature caused by hard and blunt object with duration about half day old. This injury report is also not proved by the prosecution. Nanhi the second sister of informant, though stated to be taken to the police station and hospital, but her injuries have not been examined.

8. The charge has been framed on 18.01.1983 for offence under Section 395 I.P.C. against Ali Hasan, Narain, Nandey, whereas, for offence under Section 395 I.P.C. read with Section 397 I.P.C. against accused Omkar, Harpal, Latoori and Mehndi. They have denied the charge and opted for trial.

9. The prosecution has placed Dhanpal as P.W.-1, who is informant of the case; Ishwari as P.W.-2, brother of informant; Ishwarwati, P.W.-3 sister of informant and Nanhey, P.W.-4 as independent witness. These four are the witnesses of fact. The prosecution has produced Shiv Shankar Sharma, S.I., who has investigated the case, as P.W.-5.

10. The appellants have produced Shankar Lal, the village Pradhan as defence witness-1 and in documentary evidence has filed, copy of application carrying the signatures of Sarpanch Jagat Pal dated 10.02.1982 of Gram Panchayat Adwalganj, in Case No.1 of 1982, which was filed by Mehndi Hasan against Dhanpal, Nanhe, Ramlal and Ram Prakash stating therein that on 10.01.1982 these accused had taken away two chenni, one summi, 15 Hathoras, 25 dhan, 5 sadasi, total 48 items from the shop of Mehndi Hasan, who is a blacksmith and by doing this work, he used to nurture his family.

11. It is submitted by the learned counsel for these surviving appellants that the trial court in its judgment has not deliberated on the point whether in actuality dacoity took place in the house of Dhanpal. On the contrary, the trial Judge has presumed that the dacoity took place in the house of Dhanpal. The only point deliberated by the trial judge is about the involvement of accused in the said dacoity. Further submits that all the witnesses of fact produced by the prosecution are related and interested witnesses, namely, P.W.-1 Dhanpal, P.W.-2 Ishwari and P.W.-3 Ishwarwati are real brothers and sister. Moreover, there is inconsistency in the statements. Ishwarwati P.W.-3 has stated that accused Harpal, Omkar and Ali Hasan had beaten her, who have been identified by her, whereas, P.W.-4 Nanhey has identified Mehndi, Ali Hasan and Harpal. He has stated to be with the informant, whereas, the informant has identified all the seven accused, though in his examination-in-chief, he has stated that there were 10 to 11 dacoits, who entered his house for dacoity. Therefore, the witnesses are not reliable, but were considered as reliable by the trial court. Further submits that the trial court must have considered evidence on record on the point of dacoity being committed or not in the house of Dhanpal because without deciding the basic question of committing of dacoity, the accused-appellants cannot be convicted for committing dacoity. Further

submits that the F.I.R. version if considered to be true, there were five gun shots fires at the place of incident; two fires were shot by the dacoits and three fires by the Ganga Ram through his licensed gun. Ganga Ram has never been produced before the trial court. Even his licensed gun was not checked to see that the fire has been shot from his licensed gun or empty cartridges were collected. The Investigating Officer has neither collected any document pertaining to proposed sale of land by the informant and getting the advance of Rs.3,000/- nor the same is produced before the court. In the same way, the proceed of Rs.3,000/- from the sale of onion is also not examined by the Investigating Officer, which has been narrated specially in the F.I.R. Further submits that the accused-appellants are of same village and are family persons. The trial court has negated this argument of the accused-appellants that the persons of same village can never commit dacoity bare faced if they are not known dacoits and the accused appellants had no criminal history. Further submits that the trial judge has also negated the arguments of the accused that they have been falsely implicated in the case due to village party-bandi and previous animosity nurtured by the informant Dhanpal and scribe of F.I.R. Jagdish. Lastly, because of Pradhani election, wherein the candidate of accused, namely, Shankar Lal D.W.-1 was declared victorious and the candidate of the informant, namely, Ram Prakash was defeated in the election was the cause of false implication. Further submits that there is no recovery of the booty. The informant has specifically stated about the weapons, accused were carrying and has stated that Mehndi was carrying gun, Harpal, Omkar and Latoori had countrymade pistols and all others were carrying lathis, which means that three accused were carrying lathi. If the three accused carrying lathi were seen while exiting from the house of informant then how a lathi was left by the accused in the house of informant. Further submits that the informant has not stated anything about the bundle, wherein the booty was carried away by the accused and who was carrying that bundle. Further submits that the accused-appellants have been falsely implicated in the case of dacoity, who are of same village and four of the appellants have already passed away and surviving appellants are more than 70 years of age. Hence, submitted that the accused-appellants be acquitted in the false case of dacoity and their appeal be allowed.

12. Learned counsel has relied on the judgments of ***Balbir and others Vs. State of U.P.*** decided on 09.07.2020 in ***Criminal Appeal No.648 of 1983*** (relied particularly paragraph nos.6, 9, 10, 11, 12), ***Ram Singh Vs. State*** decided on 31.08.2018 in ***Criminal Appeal No.3152 of 1982*** (relied particularly paragraph nos.7, 8, 11, 19, 20, 21) and ***Rama Shanker and another Vs. State of U.P.*** decided on 19.07.2022 in ***Criminal Appeal No.2269 of 1982*** (relied particularly paragraph nos.18, 20, 21, 22, 23). The judgments of ***Balbir*** (supra) and ***Rama Shanker*** (supra) are not applicable in the present set of facts because in these judgments the issue was dacoity by less than five persons.

13. **Per contra**, learned A.G.A. for the State submits that the F.I.R. has been lodged by the P.W.-1 Dhanpal against seven persons, who have been identified while exiting the house of informant. The injured witness Ishwarwati and independent witness Nanhey have specifically identified three accused each. Ali Hasan and Harpal have been identified by both of these witnesses, whereas, Omkar is identified by P.W.-3 Ishwarwati and Mehndi is identified by P.W.-4 Nanhey. The involvement of accused-appellants and their committing dacoity is explicit from the statement of witnesses. It is a general trend of the society that all the persons, who have seen the incident of dacoity, are not inclined to appear as witness in court, because they fear rivalry and the

accused-appellants are of same village. Further submits that the trial court has rightly appreciated the evidences adduced by the prosecution and recorded conviction. Further submits that the torch light was sufficient to identify the accused. The police has prepared the memo of recovery of torch and it□s return recovered from Nanhey Singh, Ram Lal, Ram Prakash, Nanhey Ram and Dhanpal. Further submits that the lantern was lit in the house of Dhanpal, which was the source of light to identify the accused. Even if there is no source of light, the villagers could easily identify co-villagers. The point of false implication has rightly been dealt by the trial court in the judgment, considering that the witnesses were not aware whether the accused-appellants are the man of Shankar Lal, village Pradhan and negated political or village rivalry between the two. Therefore, submitted that the appeal is liable to be dismissed.

14. This Court has taken into consideration the rival submissions made by the parties and perused the record.

15. The point of concern in the present appeal is whether the learned trial judge has rightly appreciated the evidence on record and convicted accused-appellants for the offence of dacoity and attempt to cause death or grievous hurt for attempting dacoity.

16. The trial court at the very start of judgment has made observation that the factum of dacoity is not a subject of any controversy. This observation has been made because according to the trial judge, the factum of dacoity has not been challenged by the accused. This observation of the learned trial judge is against the basic principles of law of appreciation of evidence, because the accused-appellants at the very start of the trial have denied the allegations of committing dacoity in the house of informant Dhanpal, moreso, they have stated false implication because of party politics and previous enmity between them. Therefore, it is the first and foremost duty of trial court to look into the evidences as to where the incident of dacoity took place in the house of informant Dhanpal.

17. Certain glaring facts, which is derived from the evidence adduced by the prosecution like F.I.R., the site plan and the statements of witnesses of fact, are pointed out below:-

I. P.W.-1 Dhanpal, the informant has stated in his examination-in-chief that there were 10 to 11 dacoits entered his house for committing dacoity, though in the written information the specific names of only seven dacoits, who belong to the same village, were named. P.W.-3 Ishwarwati also stated the number of dacoits as seven, who have committed dacoity. It is found in the statement of Ishwarwati P.W.-3 that the dacoits have fired from the gun during the course of dacoity, whereas, P.W.-1 Dhanpal has stated that while exiting after the dacoity, the dacoits had fired two shots and in retaliation Ganga Ram has fired three shots. The investigating Officer has not collected the pellets and empty cartridges of the bullets shot either by the accused or by Ganga Ram. It is specifically averted in the written information as well as in the statement of P.W.-1 Dhanpal that Ganga Ram had fired shot from his licensed gun. The main purpose of inspecting the gun of Ganga Ram by Investigating Officer was to look into the veracity of the statement of informant whether or not dacoity took place in the intervening night of 26/27.07.1982.

II. The Investigating Officer has also not collected the broken lock, which was stated to be broken by the dacoits, while committing dacoity.

III. The Investigating Officer has not investigated on the point of informant having Rs.6,000/- as cash at his residence, which the informant has specifically stated to have received from the proceed of selling onion and received as advance for selling his land, which is stated to be the reason for committing dacoity in the house of informant.

IV. The informant Dhanpal has mentioned in the F.I.R. and stated in his statement that P.W.-1, with precision stated about the weapons being carried by the accused-appellants. Like, Mehndi was carrying gun, Harpal, Omkar and Latoori had countrymade pistols and other accused were having lathis in their hands. The Investigating Officer P.W.-5 Shiv Shankar Sharma, S.I. has made the memo of recovery of all the items, which were stated to be left by the accused-appellants at the house of informant and lathi was one of the item. If the lathi is left in the house then how the informant has seen lathi in the hands of three accused. Contrary to this, P.W.-3 Smt. Ishwarwati has stated that one of the accused was having knife in his hand and she got injury by knife. It is to be made clear at this juncture that Ishwarwati did not suffer knife injury, as is reflected from her medico legal examination carried out at District Hospital Badaun. This medico legal examination is not proved by the prosecution, but is on record and reveals that all the injuries to Ishwarwati were simple in nature and caused by hard and blunt object.

V. The point of concern in respect to the dacoity is also reflected from the bare perusal of F.I.R., which reveals that nearly 9 items have been looted by the dacoits, but none of the witnesses have seen the bundle of those items and how the accused have carried it. This fact is neither reflected from the statement of P.W.-1 Dhanpal nor from the statement of P.W.-3 Smt. Ishwarwati, who was stated to be inside the house.

18. All these points are the matter of concern and the trial judge has not examined the evidence on the point whether the dacoity took place in the house of informant Dhanpal or the accused-appellants, who are of same village have falsely been implicated in a fake dacoity. All the above mentioned infirmities in the evidence are material in nature, because at one hand, it is the dacoity, which has been carried out and on other hand, the accused-appellants stating false implication.

19. The trial judge while appreciating the evidence has given credence to the testimony of witnesses of fact, who have specifically named the accused-appellants, for committing dacoity, without considering the veracity of statement of witnesses through their cross-examination.

20. Hence, the statement of witnesses are required to be dealt with one by one.

21. P.W.-1 Dhanpal has stated that in the intervening night of 26/27.07.1982, there was dacoity at his residence. He was sleeping at the cattle shed when he heard the shrieks of his mother and sisters, hearing which, he came to the house. There is nothing on record either in the site plan to show where the cattle shed is situated, wherein the informant Dhanpal and Ishwari were sleeping or whether there is possibility of hearing the shrieks of his family members, coming from his house

to the place where he was sleeping. He further submits that hearing the shrieks of his mother and sisters, he along with his brother Ishwari, Nanhey Singh, Ram Lal, Prakash and other villagers lit their torches and ran towards the house and found that dacoits were beating his mother and sisters and looting the valuables. This statement shows that this witness has entered the house while the dacoits were committing the dacoity. During his cross-examination, he has admitted that the scribe of F.I.R. Jagdish is the son of Bhole. There was dacoity in the house of Bhole some 12 years back, wherein the father of accused Harpal was made accused, but was acquitted by the court. Further submits that in the recent Pradhani election, he stated to have supported Ram Prakash, who has lost to Shankar Lal, but has no idea whether Narain, Omkar, Nandey and Latoori were on the side of Shankar Lal. The village party politics and political rivalry has been stated behind the false implication. He further stated that he knew all the accused and their families. He has also stated that Rajwati is daughter of Ram Lal, but has no idea whether the sister of Latoori has entered into the some land deal with Rajwati, which was not finalized and there was dispute between the two pertaining to return of advance amount. He has stated to have seen the incident from the door of Ram Lal and Ishwari was with him. According to the site plan, two houses of Ram Lal are situated on the north of the lane and the door of one house is shown open towards east on north south lane of the lane and the second house of Ram Lal the door is open towards south of east west lane. The house of this witness is situated on the south of the lane and the doors of his house was shown open towards east on north south lane. The site plan further shows that the accused-appellants had exited from this door, which is opening on east and went away towards South. If it is taken to be true that the witnesses were standing at the door of the house of Ram Lal, either the western or eastern house, they could not see the faces of accused. Moreover, the place where witnesses have seen the accused is not shown in the site plan. P.W.-3 Ishwarwati has stated that four of the accused were covering their faces and therefore, she could not see the faces of other accused except Harpal, Omkar and Ali Hasan, who had beaten her. P.W.-1 further stated that after the incident of dacoity, Mehndi Hasan has filed a compliant at Panchayat. This complaint has not been taken into consideration by the learned trial judge, which is exhibited as Kha-1. The copy of complaint reveals that it is filed by Ali Hasan, the blacksmith against Dhanpal, Nanhey, Ram Lal, Ram Prakash for the incident dated 10.01.1982 for the theft of his Chenni, Summi, Hathora, ghan and sadasi, which was witnessed by Lakhi and Murari. The trial Judge has observed that there is no date and time mentioned in the application about its moving, but it contains the signature of Jagpal, Sarpanch with the date 10.02.1982 and it is the copy of complaint, which is registered as Case No.1 of 1982. Therefore, this application is prior to the date of occurrence.

22. P.W.-2 Ishwari has stated that the dacoits have fired during dacoity; his mother did not disclose the name of any dacoit; his sister suffered knife injury; seven dacoits entered the house, they were carrying guns, lathis and knives; he has not stated about the accused carrying countrymade pistols, which is stated by P.W.-1 Dhanpal, but stated about the knife being carried by the accused merely because P.W.-3 Ishwarwati has stated that she has suffered knife injuries.

23. Ishwarwati P.W.-3 has stated to have suffered knife injury and not the injury by the lathi. Her medical examination reveals that she suffered; (1) lacerated wound 2 □ cm x 1 cm bone deep on right side forehead just above medial end of eyebrow; (2) contusion 3 cm x 1 □ cm on lateral side of right knee; and (3) contused swelling on right side of upper lip. As all the injuries were caused by hard and blunt objects, as per the opinion of the doctor mentioned in the medico legal

examination, the injuries does not corroborate with the statement of this witness; she further stated that she did not suffer any injury when the dacoits have snatched her hasli from her neck.

24. P.W.-4 Nanhey has stated that he could identify only three persons, namely, Mehndi, Ali Hasan and Harpal. Mehndi was holding gun, Ali Hasan and Harpal were carrying countrymade pistol. During his cross-examination, he has stated that Dhanpal is his brother by virtue of caste. He has also stated that out of seven dacoits, three were identified and four had covered their faces. Hence, could not be identified.

25. If the statement of all witnesses of fact is taken into consideration, then the points which is culled out from their statements are material inconsistencies on the point of covering of face by the accused, holding the weapon and injuries caused, where P.W.-1 Dhanpal has stated both his sisters had suffered injuries, in his written information and in his statement before the court, he stated that only Ishwarwati and his mother suffered injuries. The accused-appellants are of same village and they are known to the informant and witnesses, most of them are labours and were inimical to the informant, because of recent Pradhani election or the previous complaint or because of land deal. It is hard to believe that the accused, who are having their families in the village, will enter the house of any person of the village bare faced to commit dacoity. Moreover, despite the arrest of the accused, there was no recovery of any item of dacoity. The Investigating Officer has collected only the torch from the witnesses and returned it to them on the same day. The recovery of torch is not sufficient evidence that the witnesses have identified the dacoits.

26. After marshalling the entire evidence on record, this Court found material inconsistencies in the testimonies of witnesses, the benefit of which should be given to the accused. Moreover, the accused-appellants were not the known dacoits, against whom any other case of dacoity was registered, who would fearlessly to enter the houses bare faced. Thus, the observation of the trial judge is not appealing the conscience.

27. In the case of ***Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh*** Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

28. Therefore, the surviving appellants cannot be held guilty for offence of dacoity or any other minor offence and liable to be acquitted for the offence of dacoity and attempt to cause death or grievous hurt, while committing dacoity, giving benefit of doubt, as the trial court has incorrectly adduced evidence. Thus, the judgment of conviction dated 29.08.1983 in Special Sessions Trial No.157 of 1982, arising out of Case Crime No.321, reported on 27.07.1982 for offences under Sections 395, 397 IPC at Police Station Ujhani, District Badaun, is set aside.

29. The appeal is **allowed**. The appellant no.1 Ali Hasan is acquitted for offence under Section 395 I.P.C.; whereas, appellant no.5 Harpal and appellant no.6 Latoori are acquitted of offence under Sections 395 read with 397 IPC.

30. Record be remitted back forthwith alongwith the copy of judgment.

(2026) 2 ILRA 92
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 94 of 2026

K. P. Pankaj (Keshav Prasad Pankaj) Government Contactor & Suppliers ...Appellant
Versus
Chairman, Distric Urban Development Authority ...Respondent

Issue for Consideration

Matter pertains to whether, in the facts and circumstances of the case, the trial court was justified in rejecting the plaint under O. VII R. 11 C.P.C. on the ground of lack of territorial jurisdiction, instead of returning the plaint for presentation before the competent court under O. VII R. 10 C.P.C., particularly when the dispute, as per the terms of the tender, was exclusively triable by the court at Kushinagar.

Headnotes

Civil Procedure Code, 1908 - ss. 20, 96, O.VII R.10, O.VII R.11 - Return of plaint - Jurisdiction clause in Contract - Territorial Jurisdiction - Scope of - Maintainability of Suit - The instant First Appeal u/s 96 C.P.C. has been preferred by the plaintiff - appellant against the judgment and decree whereby the trial court rejected the plaint under O. VII R. 11 C.P.C. on the ground of lack of territorial jurisdiction - The case of plaintiff is that pursuant to a tender floated by the defendants, the plaintiff firm was awarded several work orders for supply of construction materials, which were duly supplied; however, a substantial amount allegedly remained unpaid, giving rise to a claim for recovery along with interest - The defendants contested the maintainability of the suit at Gorakhpur by filing an application under O. VII R. 11 C.P.C., contending that no cause of action arose within its territorial jurisdiction and that, as per the terms of the tender, disputes were triable exclusively at Kushinagar - The trial court accepted the objection and rejected the plaint, leading to the instant appeal before High Court challenging the legality of such rejection.

Held*: It is apparent that as per the terms and conditions of the tender, the dispute was only entertainable by the District Court, Kushinagar, as such, the suit was not maintainable before the District Court, Gorakhpur - Neither the office of defendant no.3 was situated in District Gorakhpur, nor any cause of action ever arose within the territorial jurisdiction of District Court Gorakhpur, as such, the trial court has not erred insofar as concluding that the District Court, Gorakhpur had no jurisdiction to hear and decide the suit, but the trial court has erred in not returning the plaint to the plaintiff under O. 7 R. 10 CPC for presenting before the competent court of jurisdiction -The trial court has erred in rejecting the plaint under O. 7 R. 11 CPC, which was not at all attracted in the facts and circumstances of the case - Thus, impugned judgment and decree dated 02.04.2025 is affirmed but the decision of rejecting the plaint is set aside - **Accordingly, appeal partly allowed**. [Paras 19, 24, 25]* (E-13)

Case Law Cited

Exl Careers and another v. Frankfinn Aviation Services Private Limited **(2020) 12 SCC 667 (By 3 Judges) - referred to**

List of Acts

Civil Procedure Code, 1908

List of Keywords

First Appeal; O. VII R. 11 C.P.C.; Return of plaint; O. VII R. 10; s. 96; C.P.C.; Territorial jurisdiction; Maintainability of suit; Terms of tender; Work order; Supply of construction materials; Recovery of money; Outstanding amount; Interest claim; Contractual dispute; Filing of suit; Objection to jurisdiction; Competent court of jurisdiction; Presentation of plaint; Appellate court powers; Affirmation of finding on jurisdiction; Setting aside of rejection order; Appeal partly allowed

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 94 of 2026

From the Judgment and Decree dated 02.04.2025 passed by the Court of Additional Civil Judge (Senior Division), Court No. 3, Gorakhpur

Appearances for Parties

Adv. for the Appellant:
Ashwani Kumar Pathak

Adv. for the Respondent:
Ugrasen Kumar Pandey

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

1. Heard the learned counsel for the parties.

2. The instant first appeal under Section 96 C.P.C. has been preferred by the plaintiff-appellant in Original Suit No. 244 of 2018 (K.P. Pankaj @ Keshav Prasad Pankaj vs. Chairman, District Urban Development Authority, Kushinagar and others) against the impugned judgment and decree dated 02.04.2025 passed by the Court of Additional Civil Judge (Senior Division), Court No. 3, Gorakhpur, whereby the plaint has been rejected under Order VII Rule 11 C.P.C. on the ground that, as per the terms of the tender, the disputes were to be adjudicated by the competent court at Kushinagar, whereas the plaintiff has filed the suit before the Court at Gorakhpur, which was legally not maintainable.

3. The factual matrix of the case is that a tender was published by the defendants in local newspapers of Gorakhpur on 09.12.2013 and 10.12.2013 for the supply of construction materials for road construction. The plaintiff firm applied pursuant to the said tender which was accepted, and consequently, 13 work orders were awarded to the plaintiff from time to time. On 30.06.2014, the defendants awarded a work order to the plaintiff for the supply of certain construction materials, valued at Rs. 22.31 lakhs.

4. In pursuance of the said work order, the plaintiff firm supplied the construction materials to the defendants strictly in accordance with the terms of the work order.

5. It is the specific case of the plaintiff that a contract was not duly executed between the plaintiff and the defendants in respect of the said work order, and that, from time to time, the

plaintiff firm supplied the construction materials in due fulfillment of the obligations arising out of the work order, so awarded.

6. It was further averred that a payment of Rs. 85.94 lakhs was required to be made to the plaintiff firm by defendant no. 1, but only an amount of Rs.18,54,155/- was paid. Hence, a dispute arose as the defendants failed to pay an amount of Rs. 67,39,845/- towards the construction material supplied by the plaintiff firm in pursuance of work orders awarded to it from time to time. The plaintiff firm claimed that it was also entitled to compound interest at the rate of 18% quarterly on the said outstanding amount. It was further alleged that Mr. P.K. Gupta, acting on behalf of defendant no. 4, demanded a commission of 25%, and since the said commission was not paid, the aforesaid amount was wrongfully withheld from the plaintiff firm.

7. Ultimately, when the amount due to the plaintiff was not paid by the defendants, the plaintiffs have filed this suit for the relief of declaration that they are entitled to get an amount of Rs.67,39,845/- along with 18% quarterly interest from the defendants.

8. During the pendency of the suit, an application no.19-A under Order 7 Rule 11 CPC was filed by defendant nos. 4 to 6 on the ground that the plaintiff has filed a suit for the recovery of Rs.67,39,845/- alongwith interest at the rate of 18% per month. It was averred that the defendant nos.1, 3 and 4 are working in official capacity in District Kushinagar, whereas defendant no.2 is a Government Officer working in Lucknow and defendant nos. 5 and 6 are residents of District Kushinagar. It was averred that defendant no.3 has awarded work orders to the plaintiff, from his office situated in Collectorate, at District Kushinagar and the construction material was also to be supplied in Nagar Panchayat, Hata, District Kushinagar and the cheque paying for the aforesaid material supplied by the plaintiff, was also issued by the above office of defendant no.3, as such, no cause of action ever arose in District Gorakhpur. It was submitted that due to this no cause of action has arisen within the territorial jurisdiction of this Court, hence, the plaint be rejected under Order 7 Rule 11 C.P.C.

9. The plaintiff submitted its objection 21-C to the defendants above application and averred that the plaintiff firm is situated in Gorakhpur and the construction material was also supplied from Gorakhpur, and the payment was also made to the plaintiff firm at Gorakhpur, which was also accepted by defendant nos.4 to 6, as such, the Gorakhpur Court has jurisdiction to hear and decide the suit. It was further averred that the payment made by the defendants have also been received by the plaintiff's bank in Gorakhpur. It was averred that since the cause of action for filing the suit arose within the jurisdiction of District Court Gorakhpur, as such, the suit was legally maintainable.

10. The trial court by impugned order dated 02.04.2025 has concluded that the tender for supplying construction material was published on 09.12.2013 and 10.12.2013 in newspapers, which were published from Gorakhpur, the work order for supplying the construction material dated 30.06.2014 was issued by the defendants from District Kushinagar, the payment of Rs.22.31 lakhs was also sanctioned by Chairman/District Magistrate (DUDA), Kushinagar on 04.03.2014, the plaintiff firm in compliance of work order dated 20.06.2014 supplied material, which was issued by defendant no.4, another work order nos. 32, 33 and 35 were issued to the plaintiff firm by the

Project Officer (DUDA), Kushinagar. The trial court concluded that from time to time work orders were issued to the plaintiff firm for supplying construction material to the defendants.

11. The trial court concluded that as per the terms of the tender, which was accepted by the plaintiff in District Kushinagar, there was a condition that if any dispute arose regarding the terms of the tender, then the jurisdiction for deciding that dispute vested in the Court at Kushinagar. The trial court concluded that the work order was issued to the plaintiff by the Project Director, District Urban Development Authority, Kushinagar and the payment was also to be made by the same authority, and as per terms of the tender, the dispute was only maintainable before the District Court, Kushinagar, hence, the trial court concluded that as per Section 20 of the C.P.C., the District Court at Gorakhpur lacked territorial jurisdiction, as such, the defendants' application under Order 7 Rule 11 CPC was allowed, and consequentially, the plaint was rejected.

12. Learned counsel for the plaintiff-appellant submitted that the tender was published in local newspapers of Gorakhpur, the plaintiff firm is also situated in Gorakhpur, the plaintiff submitted his bid from Gorakhpur, the construction materials were supplied by the plaintiff from Gorakhpur and the part payment by defendants for the construction materials supplied by the plaintiff was also made in the plaintiff's bank account in Gorakhpur, hence, the court at Gorakhpur had the jurisdiction to hear and decide the suit and as such, the trial court has committed error in rejecting the plaint. It was further submitted that instead of rejecting the plaint, it should have been returned for presentation to the competent court under Order 7 Rule 10 CPC, since, the court cannot reject the plaint, for want of jurisdiction under Order 7 Rule 11 CPC. With these submissions, it was prayed that the appeal be admitted and allowed.

13. Per-contra, learned counsel for the defendants-respondents submitted that no cause of action ever arose within the jurisdiction of the District Court at Gorakhpur, as such, the trial court has not committed any illegality in rejecting the plaint under Order 7 Rule 11 CPC.

14. It was submitted that the tender was awarded to the plaintiff firm by the defendants at District Kushinagar. The work order was granted from District Kushinagar, and the construction material in pursuance of the work order, was also supplied by the plaintiff firm at District Kushinagar and the payment was also made by the defendants from District Kushinagar, as such, the dispute was maintainable only before the District Court, Kushinagar.

15. With these submissions, it was prayed that the appeal is meritless and be dismissed at the admission stage.

16. I have heard learned counsel for both the sides, perused the impugned judgment and documents submitted with the appeal.

17. Appeal is admitted.

18. From the documents submitted with the appeal, it is evident that the tender was floated by the defendant no.3 Project Director, District Urban Development Authority (DUDA), District Kushinagar, and the plaintiff firm made a bid for the tender which was accepted at District

Kushinagar and thereafter, from time to time certain work orders were granted to the plaintiff firm by defendant no.3, in compliance of which construction material was supplied at District Kushinagar and when certain payment was not made by the defendants, then the plaintiff has filed the instant suit for the recovery of the balance amount. It is further apparent that except defendant no.2, all the other defendants are resident of District Kushinagar.

19. It is apparent that as per the terms and conditions of the tender, the dispute was only entertainable by the District Court, Kushinagar, as such, the suit was not maintainable before the District Court, Gorakhpur. Neither the office of defendant no.3 was situated in District Gorakhpur, nor any cause of action ever arose within the territorial jurisdiction of District Court Gorakhpur, as such, the trial court has not erred insofar as concluding that the District Court, Gorakhpur had no jurisdiction to hear and decide the suit, but the trial court has erred in not returning the plaint to the plaintiff under Order 7 Rule 10 CPC for presenting before the competent court of jurisdiction.The trial court has certainly erred in rejecting the plaint under Order 7 Rule 11CPC, which was not at all attracted in the facts and circumstances of the case.

20. The Apex Court in the case of ***Exl Careers and another vs Frankfinn Aviation Services Private Limited (2020) 12 SCC 667 (By 3 Judges),***while considering the procedure to be adopted by the Court in case of lack of jurisdiction, held as under:-

"15.Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] , referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co. [Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., 1929 SCC OnLine PC 3 : (1928-29) 56 IA 128 : AIR 1929 PC 103] , Amar Chand Inani v. Union of India [Amar Chand Inani v. Union of India, (1973) 1 SCC 115] , Hanamanthappa v. Chandrashekharappa [Hanamanthappa v. Chandrashekharappa, (1997) 9 SCC 688] , Harshad Chimanlal Modi (2) [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] and after also noticing Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] , arrived at the conclusion as follows: (Modern Construction case [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] , SCC p. 654, para 17)

"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same."

Joginder Tuli was also noticed in Harshad Chimanlal Modi but distinguished on its own facts.

16. We find no contradiction in the law as laid down in Modern Construction pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli . Modern Construction lays down the correct law. We answer the reference accordingly."

21. It is well settled that if the Court is not having a jurisdiction to hear and decide the suit, the plaint cannot be rejected under Order 7 Rule 11 CPC and it has to be accordingly returned to the plaintiff for presentation to the competent court of jurisdiction.

22. It is also apparent that under Explanation to Order 7 Rule 10(1) CPC, the appellate or revisional court can also direct, after setting aside the decree passed in a suit, the return of the plaint for presentation before the competent court of jurisdiction.

23. In view of this, the trial court instead of rejecting the plaint, should have returned it to the plaintiff for presentation to the competent court of jurisdiction under Order 7 Rule 10 CPC.

24. **Accordingly, the appeal is partly allowed.**

25. Consequently, the impugned judgment and decree dated 02.04.2025 insofar as the conclusion of the trial court that it has no territorial jurisdiction to hear and decide the suit, is affirmed but the decision of rejecting the plaint is set aside. The original suit No.244 of 2018 is restored to its original number and the trial court is hereby directed to return the original plaint to the plaintiff in accordance with the provisions of Order 7 Rule 10 CPC, for presentation before the competent Court of jurisdiction.

(2026) 2 ILRA 97
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.02.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE MRS. BABITA RANI, J.

Habeas Corpus Writ Petition No. 47 of 2026

Shivam Chaurasiya **...Petitioner**
Versus
State of U. P. & Ors. **...Respondents**

Issue for Consideration

Whether the reasons and grounds of arrest were supplied to the petitioner and it cannot be said that the arrest is illegal and unjustified from any angle and thus, the writ petition deserves to be dismissed, there being no infirmity in the arrest of the petitioner.

Head Notes

The Constitution of India, 1950-Article 21, 22(1) & 226; The Bharatiya Nagarik Suraksha Sanhita, 2023- Section 36- Perusal of the order passed by the learned Magistrate would indicate that the learned Magistrate though has considered the material available on record yet he has failed to consider that the grounds/reasons of arrest, as detailed separately, do not form part of the arrest memo as they do not find mention anywhere in the arrest memo and further also do not conform to the mandatory provisions of Section 36 of B.N.S.S, 2023 and thus it is apparent that the remand order has been passed in an absolutely mechanical manner and consequently, even if the remand has been given by the learned Magistrate yet the instant writ petition in the nature of habeas corpus would be maintainable.

Held- A writ in the nature of habeas corpus is issued declaring the arrest of the petitioner as illegal. The remand order dated 29.01.2026 being consequential to the illegal arrest, is also set aside. The petitioner be set free provided he is not wanted in any other case- **Petition allowed**. (E-15)

(Para 30, 33 & 34)

Case Law Cited

Mihir Rajesh Shah Vs. State of Maharashtra- 2026 (1) SCC 500; Gautam Navlakha Vs. National Investigation Agency (2022) 13 SCC 542; Serious Fraud Investigation Office Vs Rahul Modi-MANU/SC/0420/2019; Nenavath Bujji Vs. State of Telengana and ors- 2024 (17) SCC 294;

List of Acts

The Constitution of India, 1950; The Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Habeas corpus: Detention; Remand order passed in an absolutely mechanical manner; Grounds/reasons of arrest, , do not form part of the arrest memo ;Mandatory provisions of Section 36 of B.N.S.S

Case Arising From

Praying for a writ of habeas corpus for the petitioner's arrest and detention to be declared illegal and for setting aside the order dated 29.01.2026 passed by the learned Special Judge, POCSO, Pratapgarh and for quashing of the arrest memo dated 28.01.2026

Appearances for Parties

Counsel for Petitioner(s) : Skand Bajpai, Abhyudaya Mishra
Counsel for Respondent(s) : G.A.,

(Delivered by Hon'ble Abdul Moin, J.
&
Hon'ble Mrs. Babita Rani, J.)

1. Heard Sri Skand Bajpai and Sri Abhyudaya Mishra, learned counsels for the petitioner as well as Shri Shiv Nath Tilahari & Shri Anurag Verma, learned Additional Government Advocates appearing on behalf of the respondents no. 1 to 5. Learned AGA states that he is also accepting notice for the respondents no. 7 to 9. Considering the question of law involved in the instant petition, notice to respondent no. 6 is dispensed with.

2. Learned counsels for the petitioner pray for adding the words "Writ of Habeas Corpus" in prayer Clause-A.

3. To the aforesaid prayer, learned AGAs have no objection.

4. Accordingly, the prayer as made by the learned counsels for the petitioner is allowed. Let the learned counsels for the petitioner add " Writ of Habeas Corpus" in prayer Clause -A during the course of the day.

5. Considering the legal issue involved in the instant petition and the respondents having produced the complete records including the case diary before this Court as such, there would not be any requirement of filing of counter affidavit.

6. In this regard, it would be apt to refer to the judgment of the Apex Court in the case of **Union of India and others vs. Shiv Raj and others reported in (2014) 6 SCC 564** wherein it has been held as under:-

"in a case where on the basis of submissions advanced in the court on behalf of the parties the court summons the original record to find out the truth, pleadings remain insignificant".

7. Instant writ petition in the nature of habeas corpus has been filed praying for the following main reliefs:-

"(A). Allow this petition, declare the petitioner's arrest & detention illegal, pass an order (s) setting aside the order dated 29.01.2026 passed by Hon'ble Court of learned Special Judge, POCSO Act, Pratapgarh, U.P. in relation to Case Crime No. 15/2026 registered at Police Station- Kandhai, Pratapgarh, U.P. alleging offences punishable under Sections 137 (2), 87, 64 (1), 351 (3) of B.N.S and 3 & 4 POCSO Act [Annexure-5 from page 49 to 53] and direct the Respondent Nos. 1, 2, 3 & 4 to release the petitioner forthwith by issuance of an order or direction in the nature of writ of Habeas Corpus.

(B). Allow this petition, declare the petitioner's arrest illegal, pass an order (s) quashing the arrest memo dated 28.01.2026 drawn regarding Case Crime No. 15/2026 registered at Police Station- Kandhai, Pratapgarh, U.P. alleging offences punishable under sections 137 (2), 87, 64 (1), 351 (3) B.N.S and 3 & 2 POCSO Act [Annexure-2 from page 34 to 44] and direct Respondent Nos. 1, 2, 3 & 4 to release the petitioner forthwith.

(C). Pass an order (s) or direction (s) in the nature of writ of mandamus commanding the 1st respondent to pay to the petitioner Rs. 10,00,000/- (Rupees Ten Lakh) as compensation on account of illegal deprivation of his liberty within such time as may be deemed fit and proper by this Court.

(D). Pass an order (s) or direction(s) directing the 1st and/ or 2nd respondent to fairly conduct disciplinary proceedings and criminal proceedings against the erring police officials for illegally depriving the petitioner of his liberty within such time as may be deemed fit and proper by this Hon'ble Court."

8. Bereft of unnecessary details, the case set forth by the learned counsels for the petitioner is that the petitioner and the respondent no. 5/ alleged victim, were dating each other but her family was against the said relationship. On 21.01.2026, the First Information Report dated 21.01.2026

registered as Case Crime No. 15 of 2026 under Sections 137 (2), 87, 64 (1), 351 (3) of Bhartiya Nyay Sanhita, 2023 and 3 & 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station- Kandhai District- Pratapgarh was lodged against the petitioner, a copy of which is annexure 1 to the writ petition.

9. It is contended that from a perusal of the First Information Report it emerges that the petitioner had persuaded the daughter of the complainant to establish physical relations by taking a room on rent and had thereafter established physical relations and left her. Subsequently, the petitioner is said to have blackmailed the complainant's daughter by threatening to circulate her video on internet. Certain other allegations have also been levelled in the First Information Report.

10. On the basis of the allegations as levelled and the First Information Report being lodged, the petitioner was asked to reach the Police Station- Narangpur on 28.01.2026. Upon the petitioner having reached the police station, he was detained in the police post. At 07:30 PM, a Sub-Inspector with two constables came out of the chowki and the petitioner was asked to sign an arrest memo. They made the petitioner to sit in a private car. Thereafter the petitioner's brother who was in another car was asked to get down from the car and go home. At about 09:30 PM, the petitioner's arrest was informed to his mother over telephone. The arrest memo dated 28.01.2026, a copy of which is annexure 2 to the writ petition was prepared but the said memo neither contained the reasons for arrest, nor the grounds for arrest except indicating about the aforesaid case crime number being lodged. It is also contended that on 29.01.2026, the authorities produced the petitioner before the learned Special Judge, POCSO Court, Pratapgarh who vide order dated 29.01.2026, a copy of which is Annexure 5 to the writ petition, granted fourteen days judicial custody of the petitioner and sent him to the district jail. It is contended that the learned Special Judge did not even advert to the evidence/material placed by the Investigating Officer and the remand order was passed in the cursory manner.

11. Praying for a writ of habeas corpus for the petitioner's arrest and detention to be declared illegal and for setting aside the order dated 29.01.2026 passed by the learned Special Judge, POCSO, Pratapgarh and for quashing of the arrest memo dated 28.01.2026, the instant writ petition has been filed

12. Argument of the learned counsel for the petitioner is that the arrest memo which has been given to the petitioner does not contain any reasons or grounds for arrest and consequently, the same is patently violative and in the teeth of the judgment of the Apex Court in the case of **Mihir Rajesh Shah Vs. State of Maharashtra- 2026 (1) SCC 500** which thus vitiates the arrest of the petitioner.

13. So far as the role of the learned Magistrate to consider various aspect of the matter while granting remand, reliance has been placed by the learned counsel on the Division Bench judgment of this Court at Allahabad in the case of **Manjeet Singh Vs State of U.P and Ors, reported in 2025 SCC Online All 2119**.

14. On the other hand, Sri Shiv Nath Tilahari & Sri Anurag Verma, learned AGAs take a preliminary objection on the basis of the case diary that the statement of the victim has been

recorded under Sections 180 & 183 of B.N.S.S, 2023, per which the offence against the petitioner is clearly made out and as this Court is exercising jurisdiction under Article 226 of the Constitution of India as such this Court may not exercise the said jurisdiction once an offence has been committed by the petitioner. Learned AGAs also argue that the radiological examination has been conducted per which the age of the victim has been determined to be seventeen years apart the educational records from which it emerges that the victim is a minor and that the reasons and grounds of arrest were given to the petitioner in the arrest memo which duly bear his signatures along with the signatures of the witnesess.

15. Learned AGAs have also placed reliance on the judgment of the Apex Court in the cases of **Serious Fraud Investigation Office Vs Rahul Modi-MANU/SC/0420/2019** to argue that in habeas corpus proceedings, a Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceedings meaning thereby that as subsequent to the arrest of the petitioner, the remand has been granted by the learned Magistrate as such, any illegality which might have occurred at the time of arrest would get obliterated on account of the remand having been granted by the learned Magistrate and as now the petitioner is in custody on account of the remand order as such, the petition in the nature of habeas corpus would not be maintainable.

16. Further, reliance has also been placed on the judgment of the Apex Court in the case of **Kashi Reddy Upendra Reddy Vs. State of Andhra Pradesh and Ors, reported in MANU/SC/0773/2025**, contending that as the reasons and grounds of arrest were in fact supplied to the petitioner consequently, it cannot be said that the arrest is illegal and unjustified from any angle and thus, the writ petition deserves to be dismissed, there being no infirmity in the arrest of the petitioner.

17. Heard learned counsels appearing on behalf of the contesting parties and perused the records.

18. From a perusal of records it emerges that on account of the First Information Report dated 21.01.2026 registered as Case Crime No. 15 of 2026 having been lodged against the petitioner, the petitioner has been arrested on 28.01.2026 and the arrest memo was duly supplied to him. The remand has also been given by the learned Magistrate vide order dated 29.01.2026 and consequently, the petitioner is in custody.

19. The Apex Court in the case of **Mihir Rajesh Shah (supra)** after exhaustively considering the earlier judgments with regard to necessity for supply of grounds of arrest, has held as under:-

"28. It was said that any breach of the constitutional safeguards provided under Article 22 would vitiate the lawfulness of arrest and subsequent remand and entitle the arrested person to be set at liberty. The relevant portion in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] is reproduced herein: (SCC pp. 276 & 278, paras 19-21 & 28-29)

"19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in Roy V.D. v. State of Kerala [Roy V.D. v. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7)

"7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution, Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamentalright would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the 'grounds' of 'arrest' or 'detention', as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be"

31. The relevant portion of Vihaan Kumar [Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799 : (2025) 2 SCC (Cri) 762] is reproduced herein: (SCC pp. 814-15, 817 & 822-23, paras 15, 21 & 40-42)

"15. The view taken in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] was reiterated by this Court in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . In paras 28 and 29, this Court held thus: (Prabir Purkayastha case [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , SCC p. 278)

"28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

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21. An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

N. Kotiswar Singh, J. (supplementing)□I had the benefit of going through the draft opinion of my esteemed Brother Hon'ble Mr Justice Abhay S. Oka and I concur with the analysis and conclusions arrived at. However, I wish to add a few lines in supplement to the aforesaid opinion.

41. The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment. The constitutional mandate of informing the grounds of

arrest to the person arrested in writing has been explained in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] so as to be meaningful to serve the intended purpose which has been reiterated in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . The said constitutional mandate has been incorporated in the statute under Section 50CrPC (Section 47 of the BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-ACrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1)CrPC.

42. The purpose of inserting Section 50-ACrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.

(emphasis in original)

35. In Joginder Kumar v. State of U.P. [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , this Court while framing guidelines regarding the rights of an arrested person has observed that the existence of a power to arrest and the justification to use such power are two different aspects. The person making arrest must be able to justify the arrest with reasons apart from his power to do so. Arrest of a person can cause irreversible damage to his reputation in the society as well as his self-esteem, therefore, arrest cannot be made in a routine manner. The police officer making an arrest must be cautious while arresting a person and ought to satisfy himself after a reasonable investigation to justify the person's complicity and also the effect as well as the need of arrest. This Court has further observed that except in heinous offences, arrest must be avoided.

37. The mandate contained in Article 22(1) of the Constitution of India is unambiguous and clear in nature, it provides that the arrested person must be informed of the grounds of arrest as soon as they can be. It further provides that the arrested person has the right to defend himself by consulting a legal practitioner of his choice. This constitutional mandate has been effectuated by

the legislature in Section 50CrPC (now Section 47 of BNSS 2023) which provides that an arrested person shall be forthwith communicated with the grounds of his arrest.

41. The purpose of securing legal assistance before remand is not merely symbolic, but it is to ensure that the accused is afforded an effective opportunity to oppose the prayer for police custody and to place before the Magistrate any circumstances that may warrant refusal or limitation of such custody. If the accused is not represented through a counsel, he/she should be made aware that he/she is entitled for legal aid. As far as possible, it shall be ensured that every accused person is represented by an advocate, if he is not able to avail such assistance, he should be given free legal aid. A three-Judge Bench of this Court in Ashok v. State of U.P. [Ashok v. State of U.P., (2025) 2 SCC 381 : (2025) 1 SCC (Cri) 744] held that an accused who is not represented by an advocate is entitled for free legal aid at all material stages starting from remand.

43. Section 167CrPC (now Section 187 of BNSS 2023) while dealing with remand provides for a positive mandate on the police officer to forward the accused to the Magistrate before expiry of such period as fixed under Section 57CrPC (now Section 58 of BNSS 2023) when investigation cannot be completed in twenty-four hours. It further mandates that the Magistrate to not authorize the detention of accused unless he is physically produced before him. The purpose of this provision mandating the production of accused before Magistrate for exercise of the power of remanding him to custody under this section is with the dual purpose. First, ensuring physical presence of the accused and second to afford him an opportunity to be heard. The intent of this provision is not merely to be heard at the stage of remand but to be represented by the counsel of his choice. Thereafter, the duty is cast upon the Magistrate to apply his judicial mind to the material produced before him, hear the accused or the counsel representing him to determine whether the accused should be remanded to police custody or should be detained at all within the parameters prescribed in Section 167CrPC (Section 187 of BNSS 2023). The Magistrate is not acting as a post office simply putting a stamp of approval to the remand papers as presented before him. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] this Court held that it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand.

45. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the Constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as ‘No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the Penal Code, 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory

binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

48. As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall ipso facto apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1). Reference at this stage may be made to the Constitution Bench judgment of this Court in Harikisan [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117] wherein while dealing with Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person.

50. Further, the above judgment has been reiterated and followed by this Court in Lallubhai Jogibhai Patel v. Union of India [Lallubhai Jogibhai Patel v. Union of India, (1981) 2 SCC 427 : 1981 SCC (Cri) 463 : (1982) 52 Comp Cas 543] wherein it has been reaffirmed that grounds of detention must be communicated to the detenu in writing in a language which he understands.

51. On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Articles 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.

52. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

55. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.

57. The second issue which requires consideration is when grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for non-compliance of the provisions of Section 50CrPC (now Section 47 of BNSS 2023) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith.

58. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says as soon as may be which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.

62. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.

64. In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.

68. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth."

20. From a perusal of the judgment of the Apex Court in the case of **Mihir Rajesh Shah (supra)** it clearly emerges that the Apex Court has categorically held, after considering Article 22 (1) of the Constitution of India, that no person who is arrested shall be detained in custody **without being informed of the grounds of such arrest** meaning thereby that it casts a mandatory and unexceptional duty on the State to provide the arrested person with the grounds of such arrest. Supply of grounds of arrest have also been held to be grounded in fundamental right of life and

personal liberty under Article 21 of the Constitution of India and that requirement of informing the arrested person the grounds of arrest is not a mere formality but a **mandatory binding constitutional safeguard** which has been included in Part III of the Constitution under the head of "Fundamental Rights".

21. The Apex Court has further held that the grounds of arrest must be furnished in writing in order to attend the true intended purpose of Article 22 (1) of the Constitution of India and have also held that supply of grounds of arrest is the Constitutional mandate. Thereafter, the Apex Court has held that if the grounds of arrest are not furnished to the arrestee in writing, the non compliance will result in breach of constitutional and statutory safeguards rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The aforesaid procedure has been directed to govern all arrest **henceforth** i.e with effect from the date of the judgment of the Apex Court which is dated 06.11.2025.

22. Thus, considering the aforesaid judgment it is apparent that the grounds of arrest are mandatorily to be given to the arrestee.

23. In the instant case, as per prosecution the petitioner has been given the grounds and reasons of arrest as per the arrest memo dated 28.01.2026 which has been annexed with the writ petition. However, Columns 12 & 13 of the arrest memo, which pertain to the reasons of arrest and grounds of arrest, only indicate about Case Crime No. 15 of 2026 having been lodged against the petitioner under Sections 137 (2), 87, 64 (1), 351 (3) of B.N.S, 2023 and Section 3/4 of the POCSO Act, 2012. No grounds or reasons emerge from the arrest memo as to why the petitioner has been arrested. The matter may have ended there but for the fact that the learned AGAs have also produced the copy of reasons for arrest duly bearing the signatures of the petitioner. The said grounds of arrest duly finds placed and noted in the case diary no. CD 8 dated 28.01.2026. For the sake of convenience, the arrest memo and the grounds of arrest, given separately, are reproduced below:-

"प्रत्येक अभियुक्त के लिये अलग-अलग

गिरफ्तारी मेमो

(प्र०सू०रि० सं० 15/2026 दिनांक 21.01.26
धारा 137(2), 87, 64(1), 351(3) BNS व 3/4 पॉक्सो एक्ट 2012
थाना कन्धई जनपद प्रतापगढ़)

(भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 36 के अनुसार)
(माननीय सर्वोच्च न्यायालय के निर्देशानुसार)

1	गिरफ्तारी व्यक्ति का नाम, उपनाम तथा उम्र	शिवम चौरसिया उर्फ वुन्नी उम्र करीब 20 वर्ष
2	गिरफ्तारी व्यक्ति के माता/पिता का नाम	अशोक कुमार चौरसिया
3	गिरफ्तारी व्यक्ति का मो०नं०/आधार सं०	मो० 7570836946, 7570883528, 9621015139

4	गिरफ्तारी व्यक्ति का वर्तमान पता	ग्राम रामपुर बेला पोस्ट बेला रामपुर थाना पट्टी जनपद प्रतापगढ़ उ०प्र०
5	गिरफ्तारी व्यक्ति का स्थायी पता	ग्राम रामपुर बेला पोस्ट बेला रामपुर थाना पट्टी जनपद प्रतापगढ़ उ०प्र०
6	प्र०स०रि० सं० 15/26 धारांतर्गत थाना कन्धई जनपद प्रतापगढ़	137(2), 87, 64(1), 351(3) BNS व 3/4 पॉक्सो एक्ट 2012
7	गिरफ्तारी का स्थान	उडैयाडीह मोड़ पुलिया के पास PS कन्धई
8	गिरफ्तारी की तारीख और समय	28.01.2026 समय 22:15 बजे
9	गिरफ्तारी एवं रखे जाने के स्थान के बारे में जिसे भी सूचित किया है उसका नाम, पता, ईमेल आईडी और फोन नंबर/सूचना का माध्यम (धारा 48(1) BNSS)	अभियुक्त की माँ मीला देवी w/o अशोक कुमार चौरसिया को जरिये दूरभाष मो०नं० 7570883528 पर दी गयी
10	नोडल पुलिस अधिकारी को सूचना देने का विवरण (धारा 48(1) BNSS)	जरिये दूरभाष सूचित किया गया
11	गिरफ्तारी करने वाले अधिकारियों का नाम पद और PNO सं.	उ०नि० पवन कुमार यादव (231044721) का. प्रवीण यादव, का. राहुल कुमार
12	गिरफ्तारी के कारण	मु०अ०सं० 15/26 धारा 137(2), 87, 64(1), 351(3) BNS व 3/4 पाकसो एक्ट 2012 थाना कन्धई, प्रतापगढ़ में वांछित होने के कारण
(A)	पुलिस अधिकारी की उपस्थिति में संज्ञेय अपराध कारित करने के कारण (धारा 35(1)(a) BNSS)	--
(B)	ऐसे व्यक्ति को कोई अग्रेतर अपराध करने से निवारित करने के लिए	जी हाँ
(II)	अपराध के उचित अन्वेषण के लिए	जी हाँ
(III)	ऐसे व्यक्ति को अपराध के किसी साक्ष्य को मिटाने या ऐसे साक्ष्य में किसी भी प्रकार का छेड़छाड़ निवारित करने के लिए	जी हाँ
(IV)	ऐसे व्यक्ति को मामले के तथ्यों से परिचित किसी व्यक्ति को उत्प्रेरित करने, धमकी देने से निवारण करने के लिए ताकि उसे न्यायालय या पुलिस अधिकारी के समक्ष ऐसे तथ्य को प्रकट करने से रोका न जा सके	जी हाँ
(V)	क्योंकि जब ऐसा व्यक्ति गिरफ्तारी नहीं किया जाता है तब उसकी उपस्थिति न्यायालय में जब कभी अपेक्षित हो सुनिश्चित नहीं की जा सकती है।	जी हाँ
13	गिरफ्तारी के आधार	--
(I)	गिरफ्तार किये गये व्यक्ति के बयान एवं साक्ष्यों के साथ साथ वादी मुकदमा दिये गये साक्ष्यों के आलोक में कैसे गिरफ्तारी आवश्यक है।	--
(II)	वह समस्त सामग्री जिससे गिरफ्तार व्यक्ति की अपराध में संलिप्तता स्पष्ट है।	--
(III)	वह समस्त सामग्री/बरामदगी जिसके आधार पर उक्त अपराध में गिरफ्तार किये गये व्यक्ति की गिरफ्तारी की आवश्यकता है।	--
(IV)	विवेचनाधिकारी द्वारा गिरफ्तार किये गये व्यक्ति के सम्बन्ध में गिरफ्तारी के समय तक एकत्र की गयी समस्त सामग्री जिससे गिरफ्तार करने की आवश्यकता हुई।	--
(v)	अन्य ऐसी सामग्री दस्तावेजी साक्ष्य व इलेक्ट्रानिक साक्ष्य आदि जो कि गिरफ्तार किये गये व्यक्ति से सम्बन्धित है, का विवरण	---

(vi)	गिरफ्तार किये गये व्यक्ति के सम्बन्ध में बीएनएस की किन-किन धाराओं में सामग्री /साक्ष्य है, जो कि गिरफ्तारी के लिये आवश्यक है, का विवरण।	धारा 137(2), 87, 64(1), 351(3) BNS व 3/4 पांक्सो एक्ट 2012
14	संज्ञेय व जमानती मामलों में गिरफ्तारी पर जमानत के अधिकार से अवगत कराया गया या नहीं। (धारा 47 (2) BNSS)	जी हाँ
15	शरीर पर कोई चोट अथवा अभिघात आदि के निशान।	कोई जाहिरा चोट नहीं है।
(A)	गिरफ्तारी के दौरान	नहीं
(B)	या अन्यथा।	नहीं
16	यदि गिरफ्तारी व्यक्ति को उसके विधिक अधिकारों/उसका/उसकी पसन्द के अधिवक्ता से मिलने के बारे में बताया गया? (धारा 38 BNSS)	जी हाँ

अभियुक्त को गिरफ्तारी के कारण एवं आधारों व विधिक अधिकारों के बारे में अभियुक्त को समझ आने वाली भाषा में भली भांति अवगत कराया गया तथा मा० सर्वोच्च न्यायालय के निर्देशों एवं BNSS के प्रावधानों का गिरफ्तारी के दौरान पालन किया।

अपठनीय
गिरफ्तारी करने वाले अधिकारी के हस्ताक्षर
नाम व रैंक उ० नि० पवन कुमार यादव
थाना कन्धई प्रतापगढ़
दिनांक 28.01.2026"

24. Further, the grounds of arrest given separately are quoted below:-

आज दिनांक 28.01.2026 को मुझ उपनिरीक्षक/विवेचक द्वारा थाना कन्धई पर पंजीकृत मु०अ०सं० 15/2026 धारा 137(2), 87, 69, 351(3) BNS 2023 व 3/4 पॉक्सो एक्ट 2012 जो कि वादी विजय कुमार चौरसिया पुत्र लालजी चौरसिया निवासी ग्राम परसनी सरायभीम सेन थाना कन्धई जनपद प्रतापगढ़ द्वारा दिनांक 21.01.26 को पंजीकृत कराया गया है जिसमें आप नामजद अभियुक्त हैं, मुकदमा उपरोक्त में अब तक की विवेचनात्मक कार्यवाही साक्ष्य संकलन, बयान वादी, बयान पीड़िता अन्तर्गत धारा 180 BNSS 2023 व बयान पीड़िता अन्तर्गत धारा 183 BNSS 2023 समक्ष मा० न्यायालय व अन्य साक्ष्य संकलन से मुकदमा उपरोक्त की धारा 137(2), 87, 64(1), 351(3) BNS 2023 व 3/4 पाक्सो एक्ट 2012 के अपराध में आपकी संलिप्तता पाये जाने पर आप शिवम चौरसिया उर्फ चुन्नी पुत्र अशोक कुमार चौरसिया निवासी ग्राम रामपुर बेला पोस्ट बेलारामपुर थाना पट्टी जनपद प्रतापगढ़ हिरासत पुलिस में लिया जाता है। आपके विरुद्ध अग्रिम विधिक कार्यवाही की जायेगी। आपके द्वारा कृत अपराध में गिरफ्तारी के सम्बन्ध में लिखित प्रमाण पत्र आपको दिया जा रहा है।

28.01.26
(पवन कुमार यादव)
उ०नि०/विवेचक
थाना कन्धई
जनपद प्रतापगढ़

25. The said separate grounds of arrest have been perused by the Court but no confidence or trust can be reposed on the said grounds of arrest which are alleged to have been supplied separately to the petitioner. The reasons are not far to seek. Apart from the fact that the said reasons for arrest are separate provided on separate paper and do not form part of the arrest memo, the other aspect of the matter is that neither column 12 nor column 13 of the arrest memo dated 28.01.2026

nor anywhere in the arrest memo has it been indicated that the grounds of arrest are being given separately. Further the column no. 13 and sub columns pertaining to providing grounds of arrest have been left blank. As such, there can be no occasion to accept that grounds of arrest has been duly supplied to the arrestee. As per section 36 of the B.N.S.S, 2023, under which the arrest memo is to be issued, it is categorically provided that the memorandum of arrest would be attested by atleast one witness who is the member of a family of a person arrested or a respectable member of the locality where the arrest is made duly countersigned by the person arrested. Though the separate grounds/reasons of arrest are bearing the signature of the petitioner i.e a countersigned by the person arrested- the petitioner, yet there is no witness to the said grounds of arrest. This leads to the only inescapable conclusion that had the said grounds/reasons of arrest been prepared simultaneously with the arrest memo dated 28.01.2026, the same would duly have been mentioned on the arrest memo itself and would also have been attested by the witness who has attested the arrest memo as annexed with the petition. Thus, it is clearly apparent that the said grounds/ reasons of arrest have been prepared subsequently and though may be bearing the signature of the petitioner but do not conform to the mandatory provisions of Section 36 of the B.N.S.S, 2023 and the law laid down by the Apex Court in the case of **Mihir Rajesh Shah (supra).**

26. Thus, it is apparent that the arrest of the petitioner is in the teeth of the law laid down by the Apex Court in the case of **Mihir Rajesh Shah (supra)** and also in breach of constitutional safeguards which thus renders the arrest and remand of the petitioner illegal whereby rendering the petitioner to be set at liberty.

27. So far as the argument of the learned AGAs that as the petitioner is now in custody in pursuance to the remand order passed by the learned Magistrate and thus the illegality, if any, in the arrest gets obliterated which argument has been advanced on the basis of the judgment of the Apex Court in the case of Mihir Rajesh Shah (supra), the same merits to be rejected inasmuch as it is a settled proposition of law that once the edifice goes the super structure collapses meaning thereby that in case the arrest itself is declared illegal even if the remand order has been passed, the same would also be rendered bad keeping in view the law laid down by the Apex Court in the case of **Mihir Rajesh Shah (supra)**.

28. The other aspect of the matter is that the judgment of the Apex Court in the case of **Rahul Modi (supra)** has been considered by the Apex Court in the case of **Gautam Navlakha Vs. National Investigation Agency, reported in (2022) 13 SCC 542** wherein the Apex Court has held has under:-

"Whether a writ of habeas corpus lies against an order of remand under Section 167 CrPC

76. A habeas corpus petition is one seeking redress in the case of illegal detention. It is intended to be a most expeditious remedy as liberty is at stake. Whether a habeas corpus petition lies when a person is remanded to judicial custody or police custody is not res integra. We may notice only two judgments of this Court. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] , we may notice para 24 : (SCC p. 324)

"24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner."

(emphasis supplied)

77. However, the Court also held as follows : (Manubhai Ratilal Patel case [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] , SCC p. 326, para 31)

"31…….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 B. Ramachandra Rao [B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256 : 1972 SCC (Cri) 481] and Kanu Sanyal [Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise 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.

(emphasis supplied)

78. One of us (U.U. Lalit, J.) speaking for a Bench of two, followed the aforesaid line of thought in the decision of Serious Fraud Investigation Office v. Rahul Modi [Serious Fraud Investigation Office v. Rahul Modi, (2019) 5 SCC 266 : (2019) 2 SCC (Cri) 516] and held as follows : (SCC p. 289, para 21)

"21. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition.

79. We may also notice para 19 from the same judgment : (Rahul Modi case [Serious Fraud Investigation Office v. Rahul Modi, (2019) 5 SCC 266 : (2019) 2 SCC (Cri) 516] , SCC p. 285)

"19. The law is thus clear that in habeas corpus proceedings a 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.

80. Thus, we would hold as follows : If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a habeas corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of habeas corpus. Barring such situations, a habeas corpus petition will not lie."

29. From a perusal of the aforesaid judgment of **Gautam Navlakha (supra)** it emerges that the Apex Court has held that the habeas corpus petition would lie when a person is remanded to the judicial custody or police custody where the remand order is passed in an absolutely mechanical manner.

30. A perusal of the order passed by the learned Magistrate would indicate that the learned Magistrate though has considered the material available on record yet he has failed to consider that the grounds/reasons of arrest, as detailed separately, do not form part of the arrest memo as they do not find mention anywhere in the arrest memo and further also do not conform to the mandatory provisions of Section 36 of B.N.S.S, 2023 and thus it is apparent that the remand order has been passed in an absolutely mechanical manner and consequently, even if the remand has been given by the learned Magistrate yet the instant writ petition in the nature of habeas corpus would be maintainable.

31. So far as the preliminary objection raised by the learned AGAs pertaining to the maintainability of the instant petition in the nature of habeas corpus is concerned, apart from the law laid down by the Apex Court in the case of **Gautam Navlakha (supra**), the Apex Court in the case of **Nenavath Bujji Vs. State of Telengana and ors- 2024 (17) SCC 294** has held as under :-

"26. In Halsbury's Laws of England, it is stated thus:

“The writ of habeas corpus ad subjiciendum unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiate. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made.

27. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarised thus:

“The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or Judge

awarding the writ shall consider in that behalf. □Habeas corpus□ literally means □have the body□. By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence.

28. In Constitutional and Administrative Law by Hood Phillips & Jackson, it is stated thus:

"The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judges and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the courts to examine the legality of decision made in reliance on wide-ranging statutory provision. It has been suggested that the need for the □blunt remedy□ of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted ex debito justitiae."

29. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words 'habeas' and 'corpus'. 'Habeas corpus' literally means 'have his body'. The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. In England, the jurisdiction to grant a writ existed in Common law, but has been recognised and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. "***Unlike certiorari or mandamus, a writ of habeas corpus is as of right to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.***

(***emphasis by the Court***)

32. From a perusal of the aforesaid judgment of Nenavath Bujji (supra) it clearly emerges that there is a substantive difference between the writ of habeas corpus and remedies under judicial review inasmuch as the latter are discretionary and the Court may refuse release on practical grounds but a writ of habeas corpus is a **writ of right granted *ex debito justitiae*.**

33. Apart from the above, the Apex Court in the case of **Mihir Rajesh Shah (supra)** has categorically held that supply of grounds to the person being arrested is a constitutional mandate and is not a mere procedural formality and thus a writ alleging violation of fundamental rights would be maintainable and the Court may not have any discretion to refuse the same if the allegation of violation of fundamental rights is found to be correct, as in the instant case. From the discussion as aforesaid, it is clearly demonstrated that the arresting officer has not complied with the mandatory provisions provided in BNSS and the judgment of the Apex Court in the case of **Mihir Rajesh Shah (supra)** while arresting and producing the arrestee before the learned Magistrate/Court concerned for remand, therefore, the arrest of arrestee is bad in the eyes of law, hence, judicial remand granted by the Court for the petitioner upon an illegal arrest, cannot be termed as valid.

34. Keeping in view the aforesaid discussion, the writ petition is allowed. A writ in the nature of habeas corpus is issued declaring the arrest of the petitioner as illegal. The remand order dated 29.01.2026 being consequential to the illegal arrest, is also set aside. The petitioner be set free provided he is not wanted in any other case

35. However, it would be open for the respondents to proceed in accordance with law.

36. The records i.e the Case Diary Nos. CD 1 to CD 13 have been returned back to the learned AGAs after being perused.

37. The Court records the assistance rendered by Mr. Mohd Azam Siddiqui, Research Associate of this Court.

(2026) 2 ILRA 115
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.02.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Special Appeal No. 219 of 2025

Dr. Dipanwita Singh Roy **...Appellant**
Versus
Union of India & Ors. **...Respondents**

Issue for Consideration

(1) Legality of invoking emergency power by the Vice Chancellor without getting approval of Executive Council and without explaining the circumstances of urgency to invoke emergency power.
(2) Validity of Selection Committee, consisting of members having expertise in Bharatnatyam stream different from the Katthak stream for which the selection is to be held.

(3) Validity of selection process, in which a candidate was allowed to participate in preparation of list of External Expert of the Selection Committee in the light of principle of biasness.

Headnotes

(A) Service law – Career Advancement Scheme – Promotion – Post of Professor (Academic level - 14) – Selection Committee – In the absence of Executive Council, the Vice Chancellor constituted Selection Committee by invoking emergency power – No approval of Executive Council was taken – No opinion regarding existence of urgency was formed by the Vice Chancellor – Effect : (E-1)

Held : Though, Section 7C(5) of the Act, 1915 requires decision of the Vice Chancellor to be placed before the authority in the next meeting, who in the ordinary course would have dealt with the matter, but the intention behind conferring the emergency power is an exception to the general power and should be exercised in the manner prescribed under Section 7C(5) of the Act, 1915, therefore, before taking any decision to invoke emergency power under Section 7C(5) of the Act, 1915, there has to be an opinion of the Vice Chancellor formed on the basis of material on record that emergency is such, which requires immediate action to be taken, and if no action is taken, that would be prejudicial or detrimental to the interest of the University or any wing of the University **–** The respondent has not placed any opinion of the Vice Chancellor that the emergency is such that if, emergency power under Section 7C (5) is not invoked, and if no action is taken, this would be prejudicial or detrimental to the interest of the University or any wing of the University. [Para 66]

(B) Service law – Career Advancement Scheme – Promotion – Post of Professor for the field of Katthak stream of Dance – Three members Selection Committee consisted of two members, having no expert knowledge of Katthak stream, but of Bharatnatyam stream – Legality of the constitution of Selection Committee was challenged : (E-1)

Held : Statute 27(b) provides for constitution of Selection Committee – It provides that the Expert should have special knowledge of the subject with which the person to be appointed, meaning thereby the Expert should possess special knowledge of the subject in which the person is to be appointed – It will undoubtedly refer to the Subject Expert nominated by the Executive Council who has special knowledge in the subject in which the person is to be appointed **–** In the case in hand, both the candidates namely, appellant and respondent no. 6 are the candidates to be appointed in Katthak stream as both of them have special knowledge of Katthak Dance and as there is no subject in the name of 'Dance', therefore, the Subject Expert cannot have any special knowledge in the subject of 'Dance'. This means that the candidates are to be appointed in the subject in which they have expertise which in the instant case is 'Katthak' as both the candidates, namely, appellant and respondent no. 6 have specialization in Katthak Dance – Inclusion of two expert members namely, Dr. Aarti H. Shetty and Dr. Uma Rele who have expertise in Bharatnatyam and have no expertise in Katthak would render the constitution of Selection Committee bad. [Para 90, 91, 107, 108 and 120]

(C) Service law – Constitution of India – Article 14 – Selection process –Principle of biasness – Applicability – Respondent no. 6, a candidate under Career Advancement Scheme, participated in preparation of list of External Expert of Selection Committee, and experts from this list of External Experts were the members of Selection Committee, who selected the respondent no. 6 – Permissibility : (E-1)

Held : There is every likelihood of bias in participation of such expert members in the Selection Committee. Therefore, we find that there is an element of bias in the selection process. Thus, for this reason also, we find that selection of respondent no. 6 is vitiated. [Para 127]

(D) Interpretation of Statute – Cardinal rule of interpretation – Application – Held, when the Statute requires a thing to be done in a particular manner, it should be done in that manner only and not in any other manner. [Para 62] (E-1)

(E) Interpretation of Statute – Purposive construction – Application – Held, statute should be interpreted in a manner so as to achieve the object and purpose of the Statute for which it has been legislated. [Para 110] (E-1)

(F) Principle of estoppel – Applicability – Held, there cannot be any estoppel against a Statute. [Para 119] (E-1)

Case Law Cited

Gauhati University and others vs. State of Assam & Others, 2017 (5) Gauhati Law Reports 427; Dr. Triloki Nath Singh vs. Dr. Bhagwan Din Misra & Others, 1990 (4) SCC 510; Dr. (Mrs.) Kalpana Sinha vs. Union of India & Others, 2015 SCC OnLine Patna 5269; Writ A No. 12176 of 2024, Dr. Monika Bansal vs. Union of India & Others; A.K. Kraipak & Others vs. Union of India & Others, 1969 (2) SCC 262; Writ A No.19427 of 2023 (Prof. (Dr.) Mujahid Beg vs. Union of India and Others; Opto Circuit India Limited Vs. Axis Bank & Others 2021 (6) SCC 707; Union of India & Others vs. Mahendra Singh, 2022 SCC OnLine SC 909; Employees State Insurance Corporation vs. Union of India & Others, 2022 (11) SCC 392 – **referred to.**

List of Acts

Banaras Hindu University Act, 1915 – S. 7-C (5); First Statute of BHU – Statute 27 (b).

List of Keywords

Appointment, Probation, Career Advancement Scheme, Promotion, Selection Committee, Academic qualification, Subject of Katthak, External expert, Principle of bias, Specialization in Katthak, Emergency power, Principle of estoppel, Approval of Executive Council, Nomination of expert members, Guidelines, Interest of university, Purpose of processing of valuation, Dance, Katthak stream, Bharatnatyam stream, Element of bias.

Case Arising From

Judgment and Order dated 18.02.2025 passed in Writ A No. 4884 of 2024.

Appearances for Parties

Advs. for the Appellant : Ashok Khare, Sr. Adv.; Mohd. Yasin, Shiv Baboo Singh, Shivendu Ojha, Siddharth Khare.

Advs. for the Respondents : Anant Kumar Tiwari, Amit Sinha, Ashish Kumar Srivastava.

(Delivered by Hon'ble Saral Srivastava, J.)

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Mohd. Yasin, learned counsel for the appellant, Sri Anant Kumar Tiwari, learned counsel for the respondent no.1, Sri Amit Sinha, learned counsel for respondent-Banaras Hindu University and Sri Ashish Kumar Srivastava, learned counsel for private respondent.

2. The present appeal is directed against the judgement and order of learned Single Judge dated 18.02.2025 passed in Writ-A No.4884 of 2024 whereby the learned Single Judge has dismissed the writ petition of the appellant, who was petitioner in Writ-A No.4884 of 2024 before the learned Single Judge.

3. The case of the appellant in the writ petition was that appellant was initially appointed as Assistant Professor (Katthak) at Punjabi University, Patiala vide order dated 27.02.2009 (English translation of the appointment letter is enclosed with the writ petition). The appointment letter indicates that the post on which the appellant was appointed was Lecturer in the Department of Dance at Punjabi University, Patiala.The appellant pursuant to the Advertisement No.07/2014-15 issued by the Banaras Hindu University, Varanasi (hereinafter referred to as the □BHU□) inviting applications for several teaching posts including the post of Associate Professor (Dance) carrying Post Code No.2730 applied for appointment as Associate Professor.

4. The petitioner after having gone through the process of selection was selected as Associate Professor (Dance) by appointment order dated 03.10.2015 issued by the Deputy Registrar (Recruitment and Assessment Cell). The appellant in pursuance of the said appointment order joined as Associate Professor in the Department of Dance, Faculty of Performing Arts, BHU, Varanasi. The appointment of the appellant was on probation for a period of one year. The appellant was subsequently confirmed as Associate Professor by the order of Deputy Registrar (Admin.-Teaching) dated 22.02.2017.

5. The appellant while working as Associate Professor was also appointed as Head of the Department of Dance for the period of three years on rotational basis by order dated 23.11.2019 issued by the Assistant Registrar (General Administration). Presently, the appellant is working as Associate Professor in the Academic Level-13A.

6. On 01.09.2023, a Notification was issued by the Deputy Registrar of the BHU inviting applications on or before 30.09.2023 for consideration of promotion under Career Advancement Scheme to different academic levels including promotion to the post of Professor (Academic Level-14).

7. The appellant being eligible, applied in pursuance to the aforesaid Notification in the prescribed form. After requisite processing, the appellant was required to appear before the Selection Committee on 04.01.2024. The appellant appeared before the Selection Committee on the said date.

8. As per the averments made in the writ petition, there does not exist any Executive Council in the BHU for the past almost two years, due to which, the Vice Chancellor has been passing orders on the recommendations of the Selection Committee at his level.

9. The appellant being aggrieved by the constitution of Selection Committee, which did not include external experts for the subject in consideration, filed a representation on 01.03.2024 before the Vice Chancellor of the BHU.

10. As per the case in the writ petition, respondent no.6-Dr. Vidhi Nagar was appointed as Lecturer in Dance (Katthak) by appointment order dated 02.11.2006 in pursuance to the Advertisement No. 2/2005-06. Subsequently, the respondent no.6 was appointed as Associate Professor by an order dated 30.09.2015 in pursuance of the Advertisement No.07/2014-15 with regard to post bearing Post Code-2730.

11. The appellant and respondent no. 6 both are discharging duties in the discipline of Katthak Dance. The qualifications and experience of appellant and respondent no.6 are in the speciality of Katthak Dance. According to the appellant□s case, neither the appellant nor respondent no.6 has any academic qualification or experience in Bharatnatyam.

12. Challenge to the constitution of Selection Committee has been laid by the appellant in the writ petition on three grounds noted below:-

(i). In the absence of Executive Council, the Vice Chancellor had no authority to constitute Selection Committee and nominate subject experts which can only be nominated by the Executive Council as provided under Statute 27 of the First Statute of BHU.

(ii). The post on which the selection is to be made was on a subject of Katthak in the Department of Dance whereas the subject experts nominated by the Vice Chancellor were not in the field of Katthak.

(iii). The respondent no.6 was herself an applicant for selection of Professor Level-14 under Career Advancement Scheme and was involved in forwarding the names of external experts, who participated in the selection proceedings, and thus, the selection proceedings are vitiated on the principle of bias.

13. In the aforesaid backdrop, the appellant prayed for the following relief in the writ petition:-

"(i) Issue a writ, order or direction of a suitable nature commanding the respondent to produce the recommendations of the selection committee which met on 04.01.2024 for promotion as Professor (Academic Level - 14), in the Department of Dance, Faculty of Performing Arts, Banaras Hindu University and to quash the same.

(ii) Issue a writ, order or direction of a suitable nature restraining the respondent from undertaking any proceedings in pursuance to the recommendations of the selection committee which met on 04.01.2024 for promotion as Professor (Academic Level-14), Department of Dance, Faculty of Performing Arts, Banaras Hindu University, Varanasi.

(iii) Issue a writ, order or direction of a suitable nature commanding the respondent to reconvene a meeting of selection committee for consideration of the petitioner for promotion as Professor (Academic Level-14) after including therein the external expert in the subject/field of Kathak Dance within a period to be specified by this Hon'ble Court.

(iv) Issue a writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(v) Award cost to the humble petitioner throughout of the present writ petition "

14. A counter affidavit has been filed by the BHU denying the averments made in the writ petition stating inter alia that the list of External Subject Experts, Department of Dance, Faculty of Performing Arts, BHU has been forwarded by the respondent no.6 in the capacity of Head of the Department. It is stated that the Departmental Policy Planning Committee (hereinafter referred to as 'DPPC') of the Department of Dance in its meeting held on 17.07.2023 prepared the list of External Subject Experts in which the appellant was not present due to sabbatical leave. It is further stated that the DPPC submits a list of panel of members to the Selection Committee on the basis of experience. The respondent no.6 was the Head of the Department and others including the appellant are the members of the DPPC. Since, the appellant was on sabbatical leave, therefore, she did not attend the meeting.

15. The respondent no.6, being the Head, in the capacity of Chairperson of the DPPC forwarded the panel to the Dean for further necessary action.

16. It is stated that list of panel of said Experts was submitted by the DPPC. It is further stated that the 'subject/field' for which the Selection Committee met on 04.01.2024 was 'subject/field' of Dance, and not specifically Bharatnatyam, Katthak or any other dance form. Further case of the BHU is that there is no categorisation of imparting teaching work in the Department of Dance.

17. It is further stated that the appellant was initially appointed as Associate Professor of Dance. Since, there is a common syllabus for all specific fields of Dance, therefore, respondent no.6 and appellant have been specifically conducting classes in Katthak Dance in that particular semester which was not confined only to Katthak but they can also impart classes in other fields of Dance.

18. It is also stated that Vice Chancellor nominated three Experts out of the panel of the names approved by him in terms of Section 7C(5) of the BHU Act, 1915 (hereinafter referred to as the 'Act, 1915')

19. The appellant filed rejoinder affidavit to the counter affidavit of BHU denying the averments made in the counter affidavit.

20. The respondent no.6 also filed counter affidavit contending inter alia that she did not perform any role of choosing External Experts because there were other members of the Committee of DPPC and all the members chose the list of Experts which was duly signed by the Dean, Faculty of Performing Arts, BHU. It is further stated that the final selection of Experts was in the hands of the Chairman of the Selection Committee i.e. Vice Chancellor. The respondent no.6 denied that she had any role in preparing or finalizing the list of external experts.

21. The learned Single Judge held that the Vice Chancellor under Section 7C(5) of the Act, 1915 has power to nominate the Selection Committee in emergency. He further held that the Selection Committee was constituted by the Vice Chancellor after receiving the directions from the Ministry of Education vide letter dated 06.01.2023.

22. On the contention of the appellant that the Subject Experts nominated by the Vice Chancellor were not in the field of Katthak Dance, whereas the post is in the subject of Katthak Dance in the Department of Dance, the learned Single Judge held that the appellant herself was appointed as Associate Professor in the Department of Dance without any specialization in Katthak or Bharatnatyam, therefore, under the Career Advancement Scheme, there was no requirement of External Experts being an expert of Katthak. Consequently, the second contention was also rejected by the learned Single Judge on the aforesaid reasoning.

23. So far as the contention of the appellant that respondent no.6 was instrumental in preparation of list of External Experts, learned Single Judge held that since the Vice Chancellor has selected the External Experts from the list of 20 External Experts, therefore, merely because the list

of External Experts was forwarded by the respondent no.6, the constitution of Selection Committee cannot be said to be vitiated.

24. Challenging the order of learned Single Judge, learned Senior Counsel appearing for the appellant has submitted that the learned Single Judge has erred in law in holding that the Vice Chancellor could invoke the emergency power under Section 7C(5) of the Act, 1915 to appoint panel of experts. He submits that the decision of the Vice Chancellor as per Section 7C(5) of the Act, 1915 is to be validated by the Executive Council in the next meeting, and since in the instant case, the Executive Council was not in existence, therefore, action of the Vice Chancellor in appointing panel of experts is de hors Section 7C(5) of the Act, 1915.

25. He further submits that it was not a case which required invocation of emergency power by the Vice Chancellor under Section 7C(5) of the Act, 1915 inasmuch as under the Career Advancement Scheme, there is no post and it is only an upgradation on the post on which the candidate is working. He further contends that the promotion under Career Advancement Scheme is personal to the candidate and the promotion is given from the date of eligibility of the candidate, which is also evident from the order of promotion of respondent no.6 that she has been granted benefit of Career Advancement Scheme w.e.f. 30.09.2018, therefore, there was no urgency in the instant case for the Vice Chancellor to invoke the emergency powers under Section 7C(5) of the Act, 1915.

26. He submits that the Statute 11A of the Statute of BHU provides constitution of Policy and Planning Committee. The appellant□s case is covered under Clause (1) (b) & (3) (e) of the Statute 11A. He submits that Clause (1) (b) of the Statute 11A provides for the constitution of Policy and Planning Committee (PPC) for small Department, and Clause (3) (e) provides that the terms of □reference of the PPC□ shall be recommending a list of experts to the Vice Chancellor who may place the same before the Executive Council, therefore, the presence of Executive Council is necessary for two reasons; one for approving the panel of Experts and other for appointing outside panel Experts.

27. Accordingly, it is submitted that in the absence of Executive Council in the BHU, the constitution of Selection Committee and Subject Experts is bad in law in view of Statute 27 of the First Statute of BHU. In this respect, he has placed reliance upon the judgement in the case of ***Gauhati University and others Vs State of Assam & Others, 2017 (5) Gauhati Law Reports 427***.

28. He further contends that the learned Single Judge has erred in law in concluding that since the appointment is being made in the Department of Dance Faculty of Performing Arts without specifying any specialisation in Katthak or Bharatnatyam, inasmuch as there does not exist any generic subject like Dance.

29. He contends that only two dance forms namely, Katthak and Bharatnatyam are taught in the Department of Dance. He contends that prior to appointment as Associate Professor in BHU, the appellant had functioned as Lecturer in Katthak at Punjabi University Patiala, and after appointment as Associate Professor in the Department of Dance at BHU, the appellant has been teaching Katthak. He further submits that since, the appointment has been made on the post of

Professor in the stream of Katthak, therefore, the panel Expert should have been from the Katthak stream.

30. He submits that Selection Committee constituted for selection was bad in law, inasmuch as out of three Experts, two Experts namely, Dr. Arti H. Shetty and Dr. Uma Rele were exponent of Bharatnatyam and did not have any academic qualification and teaching experience or expertise in Katthak Dance.

31. He contends that so far as the third member of the Selection Committee, namely, Dr. Kamalini Asthana is concerned, she was not eligible to be member of the Selection Committee for the reason that she is neither known to have any academic qualification in Katthak nor did she hold the post of Professor or a post equivalent thereto as was a mandatory condition specified in the communication of the Joint Registrar (Recruitment and Assessment Cell) dated 03.07.2023.

32. In this respect he has placed reliance upon the judgement of the Apex Court in the case of ***Dr. Triloki Nath Singh Vs. Dr. Bhagwan Din Misra & Others, 1990 (4) SCC 510 & Dr. (Mrs.) Kalpana Sinha Vs. Union of India & Others, 2015 SCC OnLine Patna 5269.***

33. He contends that the learned Single Judge has erred in law in placing reliance upon the judgement of this Court in the case of Dr. Monika Bansal Vs. Union of India & Others passed in Writ-A No.12176 of 2024.

34. He lastly contends that the Selection Committee is vitiated for the reason that the respondent no.6, who was an applicant and candidate, was instrumental in preparation of the list of External Experts. It is contended that it is a case of bias as the respondent no.6 admittedly was involved in the preparation of panel of Experts, and had forwarded the list of Experts to the Vice Chancellor. In this regard, he has placed reliance upon the judgement of the Apex Court in the case of ***A.K. Kraipak & Others Vs. Union of India & Others, 1969 (2) SCC 262.***

35. Rebutting the aforesaid submissions, learned counsel for the respondents would contend that in the instant case, learned Single Judge has given elaborate reasons in concluding that the Vice Chancellor has rightly invoked the emergency powers under Section 7C(5) of the Act, 1915 which are not unfettered but are subject to checks and balances.

36. He submits that if the Vice Chancellor on the material on record forms an opinion to invoke emergency power under Section 7C(5) of the Act, 1915, the Vice Chancellor is well within his right to constitute the Selection Committee in exercise of emergency power under Section 7C(5) of the Act, 1915, and the decision of the Vice Chancellor is subject to the approval by the Executive Council in the next meeting. He submits that this Court in Writ-A No.18332 of 2023 has issued a direction to the Vice Chancellor to invoke emergency powers under Section 7C(5) of the Act, 1915 to constitute a Selection Committee for promoting the petitioner under Career Advancement Scheme. He further submits that the judgement in Writ-A No.18332 of 2023 has been affirmed by this Court in Special Appeal No.788 of 2024, and therefore, no illegality has been committed by the Vice Chancellor in invoking power under Section 7C(5) of the Act, 1915 to constitute the Selection Committee and finalize the selection.

37. So far as the constitution of Selection Committee is concerned, he submits that the appellant has been appointed as Associate Professor in the Department of Dance, Faculty of Performing Arts carrying Post Code 2730 pursuant to the Advertisement No.07/2014-15, and since, there was no specification/specialization mentioned against the post on which the petitioner was appointed as Associate Professor, therefore, there is no illegality in the constitution of Selection Committee as the appellant's appointment is in the Department of Dance, Faculty of Performing Arts.

38. He submits that in the Department of Dance various subjects are taught which the appellant is to teach, and Katthak is one of the subject amongst other subjects which the appellant is to teach, therefore, it is not necessary that the members of the Selection Committee should belong to stream of Katthak.

39. He contends that Professor Dr. Uma Rele having specialization in Bharatnatyam interviewed the appellant during selection as Associate Professor, therefore, the appellant's contention that the Selection Committee should consist of the Experts of Katthak stream is misconceived and not sustainable in law. In this respect, he has placed reliance upon the judgement in the case of ***Dr. Monika Bansal (supra).***

40. Lastly, he contends that merely because the respondent no.6 forwarded the names of Expert of panel to the Vice Chancellor that would not vitiate the selection proceeding inasmuch panel of Experts is selected by the DPPC, therefore, the contention of the appellant in this regard is also misconceived. In this respect, he has placed reliance upon the judgement of this Court in the Bunch of petitions leading of which is ***Writ-A No.19427 of 2023 (Prof. (Dr.) Mujahid Beg Vs. Union of India and Others).***

41. Sri Ashish Srivastava, learned counsel for the respondent no.6 states that he also adopts the arguments raised by the learned counsel for the University. However, he submits that principles of estoppel would apply in the instant case because of the conduct of the appellant.

42. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

43. The facts have already been delineated above, therefore, they are not being reiterated to unnecessarily burden the judgement. Accordingly, we proceed to deal with the arguments raised by the learned counsel of respective parties.

44. Now coming to the first submission of learned Senior Counsel for the appellant that it is not a case where Vice Chancellor should have invoked his emergency powers under Section 7C (5) of the Act, 1915, it would be apt to reproduce Section 7C (5) of the Act, 1915:-

"***7C. Powers and duties of Vice-Chancellor.***

(1)……

(2)……

(3)……

(4)...

(5) If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires immediate action to be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided that, if the action taken by the Vice-Chancellor is not approved by the authority concerned, he may refer the matter to the Visitor, whose decision thereon shall be final:

Provided further that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the executive Council.

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes, the Ordinances or the Regulations."

45. Now, the question which arises for consideration in the present case is whether the opinion formed by the Vice Chancellor that in the present case there exists an emergency, which requires invocation of emergency power of the Vice Chancellor and as to whether the decision of Vice Chancellor to invoke emergency power is based upon proper appreciation of facts on record.

46. It is not in dispute that Executive Council does not exist in the BHU for the last two years. It is also not in dispute that selection was held for the grant of benefit of Career Advancement Scheme. In Career Advancement Scheme, there is no post, and it is only an upgradation on the post on which a candidate is working and candidate will be promoted from the date of eligibility. The said fact is also evident from the promotion order of respondent no.6 which reflects that the respondent no.6 has been promoted with effect from 30.09.2018. So the delay in not extending the benefit of Career Advancement Scheme do not prejudice the rights of a candidate eligible for the benefit under Career Advancement Scheme.

47. The Statute as well as Ordinance provides that Vice Chancellor after receiving the list of panel of Experts shall place the same before the Executive Council for its approval. Further, the approval of Executive Council is necessary for appointment of outside panel Experts.

48. Statute 11A of the BHU prescribes formation of Policy and Planning Committee (PPC), which is reproduced hereinbelow:-

"***11A. POLICY AND PLANNING COMMITTEE***

(1) The Policy and Planning Committee (PPC) shall consist of:

(a) For a large department (containing ten or more teachers):

(i) Two senior most teachers of the Department;

(ii) The present Head of the Department (Convener)

(iii) The past Head of the Department, preceding the present Head;

(iv) The teacher likely to be appointed as the next Head; after the expiry of the terms of the present Head;

(b) For a small department (containing less than ten teachers):

(i) The past Head of the Department, preceding the present Head;

(ii) The present Head of the Department (Convener)

(iii) The teacher likely to be appointed as the next Head after the expiry of the term of the present Head.

NOTE 1: The programme Coordinator of Centre of Advanced Study/Special Assistance Programme etc., be included in the PPC.

NOTE 2: Whenever the required number of teachers for filling the composition of the Policy & Planning Committee is not available or on account of non eligibility, the Vice-Chancellor may nominate any teacher of the Faculty.

NOTE 3: For the Departments as specified at (a) and (b) above-Institute of Medical Sciences shall have representation to super-specialties.

(2) The Head of the Department shall consult the "PPC" and take action only after the decisions are taken by the "PPC".

(3) The terms of reference of the PPC shall be:

(a) taking decisions in all policy matters which effect the long-term growth of the Department keeping in view the requirements of continuity and stability and steady and consistent development;

(b) formulating and finalizing five-year plan proposals and other development plans;

(c) selecting thrust areas for development and for research;

(d) formulating the qualifications for the posts to be advertised including specifying the specializations, if any;

(e) *recommending a list of experts to the Vice-Chancellor who may place the same before the Executive Council;*

(f) finalizing the equipment to be purchased out of capital grants and their allotment to different laboratories in the Department;

(g) preparing the Annual Report, maintaining an up-to-date information regarding the departmental activities, achievements and other statistical data; and

(h) taking policy decisions on all matters pertaining to discipline and smooth working of the department.

NOTE: In order to ensure the effective working of the Policy and Planning Committee of the Departments all recommendations sent by the Heads of the Departments with respect to Policy and Planning matters to various functionaries of the University be accompanied by a copy of the Resolution passed by the Policy and Planning Committee concerned in respect of recommendations made.

49. Clause-4 of the Ordinance governing the procedure to be followed by the Selection Committee in making recommendations for appointment against the posts of Professor, Associate Professor and Assistant Professor and such other posts as are declared teaching posts by the Academic Council under the provisions of Statute 27 (2) of the Act, 1915 and Statutes provide for nomination of expert members to serve on Selection Committee..

50. According to Sri Ashok Khare, learned Senior Counsel, Statute 11A(1) (b) is applicable in the present case and placing reliance upon said Statute, he contends that PPC shall consist of the persons mentioned in (i), (ii) (iii) of the said Statute. He further submits that as per Statute 11A (3) (e), the terms of reference of PPC shall be recommending a list of experts to the Vice Chancellor who may place the same before the Executive Council.

51. He further contends that Clause 4(a) of the Ordinance mandates the Vice Chancellor to place the list of expert members for all disciplines recommended by the PPC of the Departments and collected from other sources before the Executive Council for it's consideration and approval. He further contends that Clause 4(b) of the Ordinance further makes it obligatory upon the Vice Chancellor to ordinarily invite Experts for attending the meeting of Selection Committee from the panel approved by the Executive Council, and if the Vice Chancellor finds that there is a special urgency, he may make additions to the panel and report the same to the Executive Council.

52. In the counter affidavit filed by the BHU, it is averred that in compliance of the Notification dated 03.07.2023, the Head of Department of Dance, Faculty of Performing Arts of the BHU provided the names of External Experts through its DPPC as per rules, then the Vice Chancellor nominated three Experts out of panel of names approved by him in terms of Section 7C (5) of the Act, 1915. In this regard, paragraph nos.17 and 18 of the counter affidavit filed by the BHU are being reproduced herein below:-

"17. That the contents of paragraph no.29 of the writ petition as stated are not admitted hence denied. In reply it is stated that in compliance of the notification dated 03.07.2023, the Head of the Department of Dance, Faculty of Performing Arts, Banaras Hindu University provided the names of External Experts through its Departmental Policy Planning Committee as per rules. Then, the respondent no.3 nominated the three Experts out of the panel of names approved by him in terms of Section 7-C(5) of the Banaras Hindu University Act, 1915.

18. That the contents of paragraphs no.30 and 31 of the writ petition are not admitted as stated. In reply it is stated that the three External Experts in the Department of Dance, Faulty of Performing Arts were nominated by the Vice-Chancellor by exercising the power vested in him under Section 7C(5) of the Banaras Hindu University Act, 1915. The interview for the post of Assistant Professor (Academic Level-10) and Associate Professor (Academic Level-13A) under the Direct Recruitment as well as for promotion as Professor (Academic Level-14) under Career Advancement Scheme was held accordingly. The recommendation of the selection committee in respect of the promotion under Career Advancement Scheme for various Departments of the University including the Department of Dance, Faculty of Performing Arts, is still under sealed cover. It is pertinent to mention here that the Vice-Chancellor has nominated three External Experts for direct recruitment as well as for promotion under Career Advancement Scheme under the subject of Dance."

53. Perusal of Section 7C(5) of the Act, 1915 reveals that Vice Chancellor is to form an opinion that emergency is such which requires immediate action to be taken.

54. No material has been placed on record to indicate that for invoking power under Section 7C(5) of the Act, 1915, any opinion has been formed by the Vice Chancellor on the basis of material on record indicating that urgency is such which requires immediate action.

55. So far as the letter of Ministry of Education dated 06.01.2023 on which reliance has been placed by the learned counsel for the respondents to support the decision of Vice Chancellor to invoke power under Section 7C(5) of the Act, 1915 is concerned, it would be appropriate to reproduce the letter dated 06.01.2023:-

"Government of India
Ministry of Education
Department of Higher Education
Shastri Bhawan, New Delhi

Dated: 06.01.2023

To,
The Vice Chancellor
Banaras Hindu University (BHU),
Varanasi-221005,
Uttar Pradesh

Subject: Permission of opening the envelopes containing the recommendations of Selection Committee for promotion of faculty members In Banaras Hindu University-reg.

Sir.

I am directed to refer to BHU's letter No. VC/532 dated 17.12.2022 on the subject mentioned above and to say that Section 7(5) of the BHU Act, 1915 provides that:

"....if, in the opinion of the Vice-Chancellor any emergency has arisen which requires immediate action to be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same action for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter."

You are therefore requested to take necessary action in terms of Section 7(5) of the BHU Act, 1915.

This issues with the approval of the competent authority."

56. Perusal of 'subject' of the letter dated 06.01.2023 reveals that selection process for promotion of Faculty members of the University was completed, and recommendation of the Selection Committee for promotion was lying with the Vice Chancellor and to open the same, the Vice Chancellor sought permission from the Government. The letter dated 06.01.2023 was written in reference to the letter no.VC/532 dated 17.12.2022 of the Vice Chancellor of the University which is being reproduced herein below:-

"*Dear Shri Murthy*:

The University as on date has an existing strength of about 1550 teaching faculty. Promotions against various stages as Assistant Professors, Associate Professors and Professors under Career Advancement Scheme are conducted from time to lime on the basis of assessment of academic and research performance of the teaching faculty. In the month of November 2020 selection committee meetings were held for promotion of 48 faculty members in various Departments of the University by the then Vice-Chancellor. The recommendations of selection committees are placed under sealed envelopes.

In spite of the promotions recommended by the Selection Committees the same have not been extended due to lack of approval by the Executive Council. You will agree that holding back promotions by more than two years is a big challenge with respect to faculty morale.

Considering the above situation and the fact that Executive Council of the University is not in place for considerable period, the Vice-Chancellor may therefore be permitted to open the envelopes containing the recommendations of selection committee for promotion so as to enable the University to issue the letters.

With regards,"

57. At this juncture, it would be apt to refer to the letter dated 11.06.2001 issued by the Ministry of Human Resource Development (Department of Secondary Education & Higher Education), which reads as under:-

"*OFFICE MEMORANDUM*

Sub.: Guidelines for observance by the Vice Chancellors of all the Central Universities while invoking their emergency powers:-

1. In all the Central Universities either the Acts or the Statutes vest certain emergency powers in the Vice Chancellor. By virtue of these powers, the Vice Chancellors are authorised, in matters requiring urgent action, to exercise powers vested in any authority of the University. These powers have enabled Vice Chancellors to deal with emergencies and unforeseen contingencies without having to wait for the relevant bodies of the Universities to meet. There have, of late, been complaints that in a few universities this power is being invoked as a matter of routine with the result that the statutory bodies, like the Court, the Executive Council and the Academic Council etc. are being increasingly asked to endorse action taken on their behalf by the Vice Chancellors. Complaints have also been received that such powers are being used to marginalise these bodies and to reduce frequencies of their meetings. This being a rather regressive development needs to be checked thereby enabling statutory bodies to play the critical important role envisaged for them in the overall democratic governance of the Universities.

2-In view of the above, the President, as the Visitor of all the Central Universities, has approved the following guidelines for observance by the Vice Chancellors of all the Central Universities:

(i) Emergency powers conferred on the Vice Chancellors should be exercised with restraint and only in such emergency situations where the authority ordinarily empowered to exercise such powers is unlikely to meet in the near future and deferring a decision for consideration of the appropriate body is likely to create serious administrative inconvenience.

(ii) Routine matters like creation of teaching and academic posts, appointment to the said posts, finalising recruitment procedures, promotions under Merit Promotion Scheme/Career Advancement Scheme, upgradation of posts making them personal to the incumbents should invariably be placed before the authorities MISSI ordinarily empowered to take decisions in such cases. Emergency powers should not be exercised by the Vice Chancellors in such cases.

(iii) Policy matters like amending/making/repealing of Statutes which, in fact, require assent of the Visitor should in no case be decided by the Vice Chancellors by invoking emergency powers.

3-Contents of this communication may please be noted for information, guidance and compliance in future.

4-This issues with the approval of the Visitor.

5-The receipt of this letter may kindly be acknowledged."

58. The Ministry of Human Resource Development, Department of Higher Education, again by letter dated 24.09.2015 reiterated that the Central University is to strictly adhered to the guidelines laid down by the Ministry of Human Resource Development in its letter dated 11.06.2001. Relevant extract of the letter dated 24.09.2015 is reproduced herein below:-

"3. In order to ensure that all Central Universities follow the due procedure in decision making process and approval of the competent statutory authorities is invariably takers in a democratic manner, this Ministry has already circulated the guidelines with the approval of the Visitor vide O.M. No. F.3-9/97-Desk(U), dated 11th June, 2001, regarding invoking of emergency powers by Vice Chancellors (Copy enclosed). It is hereby reiterated that these guidelines should strictly and invariably be complied with by all the Central Universities. It is also requested to ensure that all decisions in the Central Universities are taken with the approval of the concerned competent Statutory Bodies of the University, in accordance with the procedure laid down in the Acts/Statutes.

4. Further, it is to add that the Government has no role in day-to-day functioning of Central Universities.Visitor's nominees in the Statutory Bodies of the Universities have a very vital role to play in taking transparent and fair decisions besides contributing in overall functioning and improvement of the Central Universities. Being nominees of the Visitor, it is also their duty to report the irregularities, if any come to their notice, to the Government. Accordingly, all Central Universities are requested to kindly bring these instructions/guidelines to the notice of all the Members of Court, Academic Council, Executive Council, Finance Committee and Selection Committees for information and strict compliance and send action taken report."

59. The counter affidavit filed by the BHU does not reflect that while invoking power under Section 7C(5) of the Act, 1915 for Career Advancement Scheme, the Vice Chancellor has adhered to the guidelines laid down in the letter dated 11.06.2001 and as provided in Paras 2(i) and (ii).

60. It is pertinent to mention that Executive Council has been entrusted with several essential functions with regard to promotion under Career Advancement Scheme. The Executive Council under Career Advancement Scheme is supposed to perform following functions:-

(i). Under Statute 27 (1)(b)(3) of the First Statute of the University, the Executive Council is required to nominate three persons associated with Selection Committee having special knowledge of the subject with which persons to be appointed would be concerned.

(ii). Regulation 5.1.3 read with 5.1.2 of 2010 UGC Regulation requires nomination of Experts from "the panel of names approved by the relevant Statutory body of the University concerned." Relevant statutory body for approving panel of Expert body in the present case is the Executive Council.

(iii) Clause 4 (a) of the Ordinance mandates the Vice Chancellor to place the list of expert members for all disciplines recommended by the PPC of the Departments and collected from other

sources before the Executive Council for its consideration and approval. Clause 4(b) of the Ordinance provides that the Vice Chancellor shall ordinarily invite the Experts for attending the meeting of Selection Committee from the panel approved by the Executive Council, and in the event of special urgency, the Vice Chancellor is authorized to make additions to the panel and report the same to the Executive Council.

(iv). Executive Council is entrusted with the duty to approve the recommendation of the Selection Committee before they are implemented.

61. The role of Executive Council detailed above in the process of selection cannot be given a go by in a hushed up manner, so as to defeat the object for which the Executive Council is entrusted with the functions, under the relevant provisions for the purpose of grant of benefit of Career Advancement Scheme. The Ministry of Human Resource Development, Department of Higher Education has also laid the guidelines in the letter dated 11.06.2001, extracted above, which the Vice Chancellor is supposed to abide by while exercising power under Section 7C(5) of the Act, 1915.

62. The law is settled that when the Statute requires a thing to be done in a particular manner, it should be done in that manner only and not in any other manner.

63. The Apex Court in paragraph no.14 of the judgement of the Apex Court in the case of ***Opto Circuit India Limited Vs. Axis Bank & Others 2021 (6) SCC 707*** held that if statute provides for a thing to be done in a particular manner, then it should be done in that manner only and not in any other manner. Paragraph no.14 of the said judgement is reproduced herein-below:-

"14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad and in the course of consideration observed as hereunder: (SCC p. 273, para 17)

"17. ….. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."

64. Similarly, the Apex Court in paragraph nos.15 to 17 of the judgement in the case of ***Union of India & Others Vs. Mahendra Singh, 2022 SCC OnLine SC 909*** has held as under:-

"15. A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad held as under:

"17....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372: AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P [AIR 1954 SC 322: 1954 SCR 1098], State of U.P. v. Singhara Singh [AIR 1964 SC 358: (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done....."

16. The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh wherein this Court held as under:

"14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure...."

17. Similarly, this Court in Municipal Corporation of Greater Mambal (MCGM) v. Abhilash Lal and OPTO Circuit India Limited v. Axis Bank has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review."

65. We are of the view that judgement of ***Gauhati University (supra)*** supports the case of the appellant. Paragraph nos.5 & 6 of the said judgement are being reproduced herein below:-

"5. A bare reading of the above quoted section 15A (1) (b) makes it clear that in making recommendations for the appointment of Professors of the University, the Selection Committee shall co-opt the Head of the Department concerned, if he is a Professor, one Professor of the Department to be nominated by the Vice-Chancellor and two persons not in the services of the University to be nominated by the Executive Council out of a panel of not less than five names of persons recommended by the Academic Council, who have special knowledge of the subject for which the Professor is to be selected.

6. Admittedly, in the case at hand, the Selection Committee was not constituted in terms of section 15A (1) (b) of the Act, as the Vice-Chancellor himself nominated two persons as members instead of calling for the nomination of such two persons by the Executive Council.

Section 15A(1)(b) of the Act clearly states that Vice-Chancellor is to nominate one Professor of the Department whereas Executive Council is to nominate two persons who have special knowledge of the subject. The role of participation of such experts is crucial in the selection process because it is expected from the Selection Committee to make endeavour to select the best suitable candidate. Section 15A(1)(b) does not permit the Executive Council to delegate its power on the Vice-Chancellor to nominate two persons who have special knowledge of the subject. Therefore, the nomination of such two persons can be made only by Executive Council and not by the Vice-Chancellor. It is well settled principle of law that a statutory power must be exercised only by the authority or the person on whom it is conferred unless the statute by express words or necessary implication permits delegation. From the language used in section 15A(1)(b) also, it is apparent that requirement of nomination of two persons by the Executive Council from the panel of experts is mandatory, which the learned Single Judge has rightly held by giving cogent reasons in paragraph 31 of the order. There is yet another settled principle of law which says that when power is given to do a certain thing in a certain way, the thing must be done in that way and not at all. In other words, if the manner of doing a particular act is prescribed under any statute the act must be done in that manner and not at all. Therefore, in the constitution of Selection Committee even this principle of law was violated by the appellants"

66. Though, Section 7C(5) of the Act, 1915 requires decision of the Vice Chancellor to be placed before the authority in the next meeting, who in the ordinary course would have dealt with the matter, but the intention behind conferring the emergency power is an exception to the general power and should be exercised in the manner prescribed under Section 7C(5) of the Act, 1915, therefore, before taking any decision to invoke emergency power under Section 7C(5) of the Act, 1915, there has to be an opinion of the Vice Chancellor formed on the basis of material on record that emergency is such, which requires immediate action to be taken, and if no action is taken, that would be prejudicial or detrimental to the interest of the University or any wing of the University. The respondent has not placed any opinion of the Vice Chancellor that the emergency is such that if, emergency power under Section 7C (5) is not invoked, and if no action is taken, this would be prejudicial or detrimental to the interest of the University or any wing of the University.

67. So far as the judgement of this Court in the case of ***Dr. Bhaktiputra Rohtam (supra)*** affirmed by this Court in Special Appeal No.788 of 2024 is concerned, we find that said judgement has been rendered in a different factual backdrop, which is evident from paragraph nos.19 to 22 of the judgement of learned Single Judge. Paragraph no.19 of the judgement of the learned Single Judge reflects that learned Single Judge proceeded on the basis that the promotion under CAS was to be made on the basis of seniority and not on the basis of selection, and therefore, if Executive Council was not there and Vice Chancellor was of the view that papers of the petitioner had reached the assigned cell designated for the purpose of processing of valuation, it was required for the designated cell to have processed the papers. In such circumstances, the learned Single Judge held that Vice Chancellor could have invoked the power under Section 7C(5) and he had no occasion to wait for the decision of the Government asking the Vice Chancellor to act on behalf of Executive Council in purported exercise of power under Section 7C(5) of the Act, 1915.

68. Hence, the judgement of learned Single Judge as well as Appellate Court affirming the judgement of learned Single Judge did not notice the aforesaid aspect of the matter as detailed above while allowing the writ petition and as such are not applicable in the present case.

69. Similarly, the judgement in the case of ***Dr. Monika Bansal (supra)*** relied on the issue of invocation of urgency power by the Vice Chancellor under Section 7C(5) of the Act, 1915 does not help the respondents inasmuch as the said judgement has also not considered the relevant issues, which have been noted by this Court in reference to the powers of Vice Chancellor under Section 7C(5) of the Act,1915.

70. Now, coming to the question as to whether the Selection Committee should consist of the subject expert in the field of Katthak, and for this reason, the constitution of Selection Committee is vitiated as out of the three members of the Selection Committee, two members namely, Dr. Arti H. Shetty and Dr. Uma Rele, who had expertise in Bharatnatyam and were not eligible to act as member of the Selection Committee.

71. According to the appellant, there is no generic subject like Dance and since the appointment was on the post of Professor in the field of Katthak, therefore, the members of the Selection Committee should have expertise in Katthak Dance and not in any other form of Dance.

72. On the other hand, learned counsel for the respondents contends that the appointment of the appellant is in the Department of Dance under Faculty of Performing Arts and Career Advancement Scheme is also for the Department of Dance, Faculty of Performing Arts, in which many subjects are taught and Katthak is only one of the subjects, which the appellant is also supposed to teach, therefore, it is not necessary that the Selection Committee should consist of experts in Katthak Dance.

73. The three experts that were part of the Selection Committee, which met on 04.01.2024 are as follows:-

> "(i) Dr. (Miss.) Uma Rele, Principal, Nalanda Nritya Kala Mahavidyalaya.
>
> (ii) Kamalini Asthana, Padamshree Exponent of Katthak.
>
> (iii) Dr. Aarty H. Shetty, Eminent Katthak Varanasi Style."

74. It is the case of the appellant in the writ petition, that neither the aforesaid three members were qualified or eligible for participating as experts for consideration for promotion as Professor in the discipline of Katthak dance. According to appellant, Dr. Arti H. Shetty and Dr. Uma Rele are exponents of Bharatnatyam and do not have any academic qualification, teaching experience or expertise in Katthak Dance.

75. So far as Dr. Kamalini Asthana is concerned, she is an exponent of Katthak dance. However, she is not known to have any academic qualification in Katthak dance nor she holds the post of Professor or a post equivalent thereto as was mandatorily specified in the communication of

the Joint Registrar (Recruitment and Assessment Cell) dated 03.07.2023. The letter dated 03.07.2023 issued by the Joint Registrar (Recruitment and Assessment Cell) reads as under:-

"Dear Sir/Madam,

As you are aware that in terms of the provisions contained in the Statute 27 of BHU Statutes and UGC Regulations 2018, external subject experts are associated in the Selection Committees for recommending the names of candidates for appointment/ promotion to the teaching posts in the University.

In view of above, I am directed to request you to kindly provide a specialization-wise list of at least 20 names of external subject experts not below the rank of Professor from top 20 NIRF ranking institutions or from Institutions of National Importance or experts of national/international repute; with their complete contact details in the proforma given hereunder, duly approved by the respective PPC of the concerned Department/School/Centre and send it to the Office of the undersigned on or before 17th July, 2023.

This may kindly be given TOP PRIORITY.

LIST OF EXTERNAL SUBJECT EXPERTS

Department _____ Faculty/Institute: _____

Sl. No.	Name of Expert	Area of Specialization	Contact Details					
			Address		Telephone No.		Mobile No.	Email ID
			Office	Residence	Office	Residence		

76. According to the said letter, the subject expert should not be below the rank of Professor from the top 20 NIRF ranking institutions, therefore, according to appellant, Dr. Kamalini Asthana was not eligible to participate as expert in the Selection Committee. The appellant in this respect has made necessary averments from paragraph nos.32 to 37 of the writ petition, which has been replied by the BHU in paragraph no.19 of the counter affidavit.

77. The BHU does not deny the fact that Dr. Uma Rele is an exponent of Bharatnayam, however, it is asserted in paragraph no.19 of the counter affidavit that Dr. Kamalini Asthana and Dr. Aarti H. Shetty have specialization in the field of Katthak.

78. The averments of the respondent University in paragraph no.19 of the counter affidavit that Dr. Arti H. Shetty is an expert in Katthak have been denied by the appellant in paragraph no.6 of the rejoinder affidavit. The appellant in paragraph no.6 of the rejoinder affidavit has reiterated that specialization of Dr. Arti H. Shetty is in Bharatnayam.

79. The petitioner in support of her contention that Dr. Arti H. Shetty is an exponent of Bharatnayam has placed on record the detail of Dr. Arti H. Shetty downloaded from the Official

Website of Amrita Vidyalayam, annexed as Annexure-18 to the paper book, but the BHU has not enclosed any document on record indicating that Dr. Arti H. Shetty had specialization in Katthak also.

80. At this stage, it would be appropriate to reproduce Statute 27 of the First Statute of the BHU which is as follows:-

"27 - Selection Committee:

(1)(a) There shall be Selection Committee for making recommendations to the Executive Council for appointment to the posts of Professors, Readers, Lecturers, Registrar, Controller of Examinations, Librarian and such other posts as are declared teaching posts by the Academic Council.

(b) Every Selection Committee shall consists of Vice Chancellor who shall be the Chairman thereof and a person nominated by the Visitor, and in addition the Selection Committee for making recommendations for appointment to a post specified in column (1) of the Table below shall have as its members the persons specified in the corresponding entry in column (2) of the said Table:

Post	**Members**
Professor	(1) The Dean of the Faculty concerned, provided he is a Professor; except in cases where they are applicants or when the post held by them is being filled up. (2) The Head of the Deptt. concerned, provided he is a Professor, except in cases where they are applicants or when the post held by them is being filled up. (3) Not less than three persons not being in the service of the Executive Council who have special knowledge of the subject with which the person to be appointed will be concerned, to be nominated by the Executive Council.
Reader/Lecturer and Teaching post	(1) Dean of the Faculty concerned; (2) The Head of the Department concerned. (3) Not less than two persons not being in the service of the University or members of the Executive Council who have special knowledge of the subject with which the person to be appointed will be concerned, to be nominated by the Executive Council.
Registrar/ Controller of Examination	Three Members of the Executive Council nominated by it.
Librarian	Not less than three persons not being in the service of the University or members of the Executive Council who have special knowledge of the subject of Library Science to be nominated by the Executive Council.
Professors, Readers and Lecturers and	The Director of the concerned Institute will also be a

Post	Members
other teaching post in the Institute of Technology, Institute of Medical Sciences and the Institute of Agricultural Sciences	member of the Selection Committee constituted as above for the respective post.
Professors, Readers and Lecturers and other teaching post Mahila Mahavidyalaya	Principal, Mahila Mahavidyalaya, will also be a member of the Selection Committee, constituted in as above for the post of Mahila Mahavidyalaya.
Professors, Readers and Lecturers in the Centre of Advanced study/Departments selected for Special Assistance Programme/Schools	Programme Coordinator of the concerned Departments (CAS/SAP and Schools) will also be a member of the Selection Committee

(c) Provided that the meetings of the Selection Committee shall be fixed only after prior consultation with and subject to the convenience of the Visitor's nominee and the persons nominated by the Executive Council under Clause (b) above.

Provided further that the proceedings of the Selection Committee shall not be valid unless:

(i) Where the number of Visitor□s nominee and the persons nominated by the Executive Council is four in all, at least three of them attend the meeting; and

(ii) Where the number of Visitor□s nominee and the persons nominated by the Executive Council is three in all, at least two of them attend the meeting.

(d) Notwithstanding the provision under Statute 27(1)(a) the Executive Council may constitute a Special Committee to suggest names of persons of high academic distinction eminence and professional attainments for filling in Special Chairs of Professors.

(2)The procedure to be followed by a Selection Committee in making recommendations shall be laid down in the Ordinances.

(3)If the Executive Council is unable to except any recommendation made by the Selection Committee, it shall record its reasons and submit the case to the Visitors for orders."

81. Learned counsel for the appellant has laid emphasis upon the word 'concerned subject/field' employed in Regulation 5.1.2 of UGC Regulations. According to him, there is no generic subject like Dance, and Faculty of Dance is imparting education in Katthak or Bharatnatyam. Further he has placed on record the qualifications of the appellant while submitting the application for being appointed as Associate Professor pursuant to the Advertisement No.07/2014-15.

82. He has submitted that the appellant while applying for the post of Associate Professor has disclosed her qualifications showing that she possesses a Degree in Sangeet Prabhakar in Katthak Dance, and M.A. Degree from Indira Kala Sangit Viswavidyalaya in Katthak Dance (both Theory and Practical), Post Diploma from Katthak Kendra, New Delhi in Katthak Dance (Theory & Practical). He has further invited attention of the Court to the application of the appellant with respect to Research Degree, according to which, her specialization is 'Doctoral' in 'Katthak Dance' and Title of Thesis is, 'Comparative Study of the Lucknow and Jaipur Gharanas of Katthak Dance, and for the Post Doctoral, D.Litt/D.Sc., her specialization is, 'Katthak Dance' and Title of Thesis is, Movements Executed On The Technical Compositions of Katthak Dance; an Analytical Study. Thus, considering the qualifications of the appellant, she has been appointed as Associate Professor to teach Katthak.

83. At this stage, it is also relevant to note that respondent no.6 was appointed as Lecturer in Dance (Katthak), which is evident from the appointment letter of the respondent no.6 dated 02.11.2006.

84. The question, which arises for consideration is whether the constitution of Selection Committee consisting two out of three Experts from the stream of Bharatnatyam is a validly constituted Selection Committee when it is not in dispute that when the only two candidates, namely, appellant and respondent no.6, were having expertise in Katthak Dance. Further the issue for consideration is whether the third expert namely, Dr. Kamalini Asthana was eligible to participate as an expert member in the Selection Committee.

85. The appellant in paragraph no.25 of the writ petition has categorically stated that the appellant as well as respondent no.6 are discharging their duties in the discipline of Katthak Dance, qualification of the appellant and respondent no.6 is also in specialty of Katthak Dance. It is also stated that neither the appellant nor the respondent no.6 had any academic qualification nor experience in Bharatnatyam. Paragraph no.25 of the writ petition is reproduced herein below:-

"25. That the petitioner as also Dr. Vidhi Nagar both are discharging duties in the discipline of Katthak Dance. The qualification and experience of the petitioner as also Dr. Vidhi Nagar is in the specialty of Katthak Dance. Neither the petitioner nor Dr. Vidhi Nagar had any academic qualification nor experience in Bharat Natyam."

86. Paragraph no.25 of the writ petition has been replied by the BHU in paragraph no.14 of the counter affidavit. Paragraph no.14 of the counter affidavit is reproduced hereinbelow:-.

"14. That the contents of the paragraph no.25 of the writ petition so far it relates to the petitioner are not admitted as stated and hence denied. In reply it is stated that the petitioner was appointed as Associate Professor in the Department of Dance, Faculty of Performing Arts against Advertisement No.07/2014-2015 under (Post Code-2730) without showing any specialization in Katthak/Bharatnatyam."

87. The respondent no.6 has also replied the paragraph no.25 of the writ petition in paragraph no.18 of her counter affidavit which is also reproduce herein below:-

"18. That, the contents of para no.25 of the writ petition as they stand need no comments."

88. The specific averment made by the appellant in paragraph no.25 of the writ petition, extracted above, with regard to the fact that she as well as respondent no.6 are discharging duties in the discipline of Katthak Dance and they have specialty in Katthak Dance and have no qualification nor experience in Bharatnatyam have not been denied either by the BHU or respondent no.6 in their counter affidavit.

89. So, it is not in dispute that Selection Committee was to adjudge suitability of the candidates for promotion under Career Advancement Scheme of the candidates who admittedly have the qualification and expertise in Katthak Dance, and have been discharging their duties in the discipline of Katthak Dance.

90. The Statute 27(b) provides for constitution of Selection Committee. Column-I of the table below Statute 27 (b) specifies the post and persons referred in Column-II of the said table are the members of the Selection Committee against the post specified in Column-I. Paragraph (3) in Column-II of the table, against the post of Professor prescribes, "not less than three persons who have special knowledge of the subject with which the person to be appointed will be concerned, to be nominated by Executive Council."

91. Thus, the Statute provides that the Expert should have special knowledge of the subject with which the person to be appointed, meaning thereby the Expert should possess special knowledge of the subject in which the person is to be appointed.

92. In the form filled by the appellant for promotion on the post of Professor under Career Advancement Scheme, the appellant at serial no.9 and 10 has given the following details:-

Department	***Dance***
Faculty/Institution Department	*Faculty of Performing Arts*
Present Designation on which you are working	*As an Associate Professor Katthak Dance*

93. From the aforesaid, it is evident that in the application form, the appellant has given the details of her Department as "Dance" and designation on which she is working as Associate Professor Katthak Dance".

94. She has given her details at Serial No.22 in the form as, 'Assistant Professor Katthak' in Punjabi University, Patiala. In the column of 'Fields of Specialization', she has mentioned her specialization in 'Katthak stream'.

95. At this juncture, it is also relevant to note that respondent no.6 was initially appointed as Lecturer in Dance (Katthak), which is evident from her appointment letter dated 02.11.2006 in the Faculty of Performing Arts, BHU. The relevant extract of the appointment letter of respondent no.6 on the post of Lecturer in Dance (Katthak) is reproduced herein below:-

"Dr. (Ms.) Vidhi Nagar
C-1143, Indira Nagar,
Lucknow-226016

Dated: 2.11.2006

Ref: Your application for the post of Lecturer in Dance (Kathak) against Advt. No. 02/2005-06.

Madam,

The Executive Council of the University at its meeting held on 31.10.2006 has been pleased to appoint you as Lecturer in Dance (Kathak) in the Faculty of Performing Arts, Banaras Hindu University, on the terms noted below….."

96. Learned counsel for the respondent-University has emphasized that the Advertisement No.07/2014-15 pursuant to which the appellant was appointed as Associate Professor, she applied against the Post Code-2730 as Associate Professor, and the specialization column in the Advertisement against the Post Code-2730 was blank, whereas in the specialization column against Post Code-2677, □Bharatnatyam□ is mentioned. Therefore, he submits that the appellant was appointed as Associate Professor (Dance) without any specialization, in the Department of Faculty of Performing Arts. On that basis, he submits that when the appellant was selected as Associate Professor, Professor Dr. Uma Rele having specialization in Bharatnatyam interviewed the appellant during her selection as Associate Professor, and thus, it is established that interview for selection on the post of Associate Professor was in the Department of Dance without any specialization. Thus, he submits that the candidates selected against the Post Code-2730 do not belong to any specific subject as the selection was for Department of Dance, Faculty of Performing Arts, BHU.

97. He has further placed the appointment letter of the appellant and also the resolution of the Executive Council to demonstrate that the appointment of the appellant was as Associate Professor in the Department of Dance, Faculty of Performing Arts, BHU.

98. To buttress the said submission, he has pointed out that since the appointment of the appellant is in the Department of Dance without any specialization, and if, she has any specialization that is not relevant as she is to be promoted as Professor in the Department of Dance, Faculty of Performing Arts without there being any specialization.

99. He has also placed on record the syllabus for the Bachelor of Performing Arts to submit that Department of Dance, Faculty of Performing Arts is a composite Department where Dance of various streams namely, Bharatnatyam, Katthak and other forms of Dance are taught, and thus, appellant has been appointed as Dance Teacher without any specialization.

100. We have perused the syllabus of subjects taught in Bachelor of Performing Arts, enclosed with the paper book, wherein various subjects in different semesters are taught to the students, for example in Semester-I students are taught History of Bharatnatyam-1, History of Dance-1

(Common Paper), Nritya Prayog-1 etc. In Semester-II, History of Bharatnatyam-II, History of Dance-II, Nritya Prayog. Similarly, in other semesters, other subjects are taught.

101. Though, it is true that in the Bachelor of Performing Arts, various subjects are taught in different semesters, but we cannot lose sight of the fact that Department of Faculty of Performing Arts also imparts education in the Post Graduate Courses in Dance stream and there is a Post Graduate Course in the name of MPA in Dance Katthak/ Bharatnatyam as per Post Graduate Information Bulletin, 2022. For admission in the aforesaid courses, qualification prescribed is that the candidates should possess B.Music/BPA in Dance in Indian Classical Dance (Katthak/Bharatnatyam).

102. Similarly, the BHU is awarding Post Graduate Degree in Master of Performing Arts Dance (Katthak), and Master of Performing Arts in Bharatnatyam. The BHU is awarding Degree in Bachelor of Performing Arts in specialized subject Katthak, the mark-sheet of various students in respect to Post Graduation as well as Bachelor of Performing Arts have been enclosed by the appellant with the writ petition. The appellant has made submissions in this regard in paragraph nos.47 to 49 which are reproduced herein-below:

"47. That in the Department of Dance the Degrees which are awarded are Bachelor's Degree in Performing Art and Degree in Performing Art. Each such Degree is awarded with reference either to Kathak Dance or Bharat Natyam Dance and there is no Degree awarded generically for Dance as a subject. In support of the aforesaid the petitioner brings on record some mark sheets/degrees pertaining to Bachelor of Performing Art and Master of Performing Art as also Doctorate Degree collectively as Annexure 21 to this writ petition. A perusal of the several degrees so awarded would demonstrate that each such Degree is either in Kathak or in Bharat Natyam Dance.

48. That the petitioner also brings on record the relevant extract of post graduate information bulletin 2022 as Annexure 22 to this writ petition.

49. That clause 3.1.12 (b) of the aforesaid information brochure would demonstrate that University is awarding Master's Degree in Performing Arts either in Kathak Dance or in Bharat Natyam Dance".

103. Paragraphs no.47 to 49 have been replied by the BHU in paragraph no.24 of its counter affidavit and by the respondent no.6 in paragraph no.33 of her counter affidavit.

104. Paragraph no.24 of the counter affidavit of the BHU and paragraph no.33 of the counter affidavit of respondent no.6 are reproduced respectively herein-below:-

"24. That the contents of the paragraphs no. 47, 48, 49 of the writ petition are not admitted as stated. It is further submitted that the Banaras Hindu University is having Department of Dance and the petitioner was appointed as Associate Professor in the Department of Dance, Faculty of Performing Arts without any specialization in Kathak or Bharatnatyam dance. It is

further stated that the syllabus for all courses i.e. Bharatnatyam, Kathak or any other dance course is common. The syllabus is to be taught by the dance teacher irrespective of their specialization".

"33. That, the contents of para nos.47, 48 & 49 of the writ petition as they stand are denied being misconceived and incorrect. In reply it is submitted that syllabus of the courses either Bhratnatyam or Kathak Dance is common. The syllabus is to be taught by the Dance Teacher irrespective of her specialization and the said fact is also proved from the appointment of the petitioner as Associate Professor in the Department of Dance, Faculty of Performing Arts without any specialization in Kathak or Bharat Natyam Dance hence awarding of Degree either in Kathak or Bharatnatayam Dance would not mean that the person who is teaching should also be holding the post of Associate Professor in the said specialized Dance field"

105. The facts delineated above establish that in the Department of Dance, Faculty of Performing Arts, various subjects of different streams are taught, therefore, it is obvious that Expert in those subjects are required to teach those subjects. Various mark-sheets enclosed with the writ petition including thereof graduation and post graduation, and the information brochure would establish that Degrees are being awarded either in Katthak stream or Bharatnatyam stream. The respondents could not demonstrate from the record that there is any Dance form taught in the Department of Dance.

106. The appointment letter of the appellant dated 03.10.2015 states that the appointment of the appellant is made on the post of Associate Professor in the Department of Dance, Faculty of Performing Arts. So, it is evident that there is a Department of Dance in the Faculty of Performing Arts, and there is no subject in the name of 'Dance', which is being taught in the Department of Dance. But Katthak and Bharatnatyam are two streams/subjects of Dance which are taught in the Department of Dance, Faculty of Performing Arts, BHU.

107. If we appreciate the context in which the words in the Statute 27, 'persons should have special knowledge of the subject with which the person to be appointed will be concerned' has been employed, we can say with certainty that it will undoubtedly refer to the Subject Expert nominated by the Executive Council who has special knowledge in the subject in which the person is to be appointed.

108. In the case in hand, both the candidates namely, appellant and respondent no.6 are the candidates to be appointed in Katthak stream as both of them have special knowledge of Katthak Dance and as there is no subject in the name of 'Dance', therefore, the Subject Expert cannot have any special knowledge in the subject of 'Dance'. This means that the candidates are to be appointed in the subject in which they have expertise which in the instant case is Katthak as both the candidates, namely, appellant and respondent no.6 have specialization in Katthak Dance.

109. The purpose of the Selection Committee is to adjudge the suitability of a candidate for the post for which he/she has applied. If, the appointment is to be made in Katthak stream as both the candidates have special knowledge in Katthak, the two Subject Experts in the Selection Committee namely, Dr. Uma Rele and Dr. Aarti H. Shetty, who have expertise in Bharatnatyam,

which said fact is established from the record, obviously cannot assess and adjudge the suitability of the two candidates who are from different stream i.e. Katthak.

110. The law is settled that Statute should be interpreted in a manner so as to achieve the object and purpose of the Statute for which it has been legislated. At this stage, it would also be useful to refer to Regulation 5.1.2 dealing with the constitution of Selection Committee for the Associate Professor and Regulation 5.1.3 dealing with the constitution of Selection Committee for the post of Professor. Regulation 5.1.2 and Regulation 5.1.3 respectively are reproduced herein-below:-

"5.1.2. Associate Professor in the University

(a) The Selection Committee for the post of Associate Professor in the University shall have the following composition:

1. Vice Chancellor to be the Chairperson of the Selection Committee.

2. An academician who is the nominee of the Visitor/Chancellor, wherever applicable.

3. Three experts in the concerned subject/field nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the university concerned.

4. Dean of the faculty, wherever applicable.

5. Head/Chairperson of the Department/School.

6. An academician representing SC/ST/OBC/Minority/Women/ Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.

At least four members, including two outside subject experts, shall constitute the quorum.

5.1.3 Professor in the University

The composition of the Selection Committee for the post of Professor in the University shall be similar in composition as that for the post of Associate Professor set out in Clause 5.1.2 above."

111. Regulation 5.1.2 specifies that Vice Chancellor should appoint three Experts in the concerned subject/field.

112. The appellant has placed reliance upon the judgement of ***Dr. Triloki Nath Singh (supra)*** wherein the advertisement was issued for selection on the post of Reader in Linguistics in

Department of Hindi. However, the Selection Committee consisted of an Expert in Hindi Literature and not in Linguistics, paragraph no.14 of the said judgement is reproduced hereinbelow:-

"14. The above provision laying down essential qualifications also goes to show that first or high second class degree and doctorate in the subject concerned was an essential qualification. As already mentioned above posts were mentioned separately for three Readers in Hindi and one Reader in Linguistics in the Department of Hindi. Explanation II could only apply in a case where the post of teacher to be selected was common to more than one subject of study. Advertisement nowhere provided that one Reader in Linguistics in the Department of Hindi was to be selected as common to more than one subject of study. Merely because the post of Reader in Linguistics was required in the Department of Hindi, it cannot be held that such Reader in Linguistics was to teach the subject of Linguistics as well as the subject of Hindi Language and Literature. It may also be noted that from a perusal of the above advertisement along with the prospectus of the University clearly goes to show that for the post of Reader in Linguistics it was necessary to have an essential qualification of first or high second class master's degree and doctorate in the subject of Linguistics. Explanation II can apply in a case where one common teacher is to be selected for more than one subject of study and in that contingency it provides that the expert may belong to either of such subjects of study. In the case in hand before us the advertisement did not mention that the post of one Reader in Linguistics in the Department of Hindi was common with any other subject of study. Thus the appointment of all the experts in the present case of subject of Hindi for the selection of one Reader in Linguistics in the Department of Hindi was totally wrong and illegal."

113. Reliance has further been placed by the learned counsel for the appellant on the judgement of learned Single Judge in the case of Dr. (Mrs.) Kalpana Sinha (supra) wherein a challenge to the Selection Committee for selection in 'English' was laid on the ground that Selection Committee did not consist of an expert in 'English'.

114. The aforesaid challenge was refuted on the ground that petitioner was to be appointed in the National Institute of Technology (NIT) as Associate Professor in the subject, 'Humanities and Social Sciences', therefore, experts in any field of Humanities and Social Sciences can be treated to be the experts in the 'subject' within the meaning of Clause 23 (5) (a) of the First Statute of National Institute of Technology. Patna High Court in paragraph nos.22 to 25 of the said judgement has held as under:-

"22. As has been noted in the *very opening paragraph of the present judgment, what meaning is to be given to the word "expert" as occurring in "Clause 23(5)(A) of the Statutes is the central point which requires determination in the present case for the purpose of constitution of a Selection Committee, to consider cases for grant of advancement in the scale of Professor with A.G.P. under C.A.S., in the Department of Humanities and Social Sciences in N.I.T., Patna. It has been stated on behalf of the respondents that there are nearly 170 subjects, which fall within the category of "Humanities and Social Sciences" and it has been canvassed that experts in either of these subjects could be appointed as expert-members of the Selection Committee. According to the respondents, in the absence of the word 'subject' mentioned in Clause 23(5)(a) of the Statutes, the*

said word cannot be read into the said provision in order to conclude that expert would mean "subject expert".

23. In my opinion, Clause 23(5)(a) of the Statues requires to be read with the purpose for which it is there in the Statutes. The purpose is manifest and obvious. The fundamental and primary purpose of constitution of the Selection Committee is to evaluate and assess the proficiency and knowledge of a faculty member for recruitment to a post/promotion to higher grade or grant of advancement to higher grade and in the present case to the grade of Professor under CA.S. The Selection Committee consists of 6 members, two of whom should be the experts, to make assessment/evaluation in tune with the guidelines, as contained in letter dated 14.03.2012, issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India. The function and duty of the Selection Committee is thus to assess "proficiency and knowledge in once chosen field of research and teaching" (emphasis added). *Thus, while considering the case of an Associate Professor, whose chosen field of research is English, it would be difficult to accept the plea that persons having no experience or expertise in such field can still assess the proficiency and knowledge of a person being considered for advancement/promotion under C.A.S.*

24. Mr. Kanth, learned senior counsel, appearing on behalf of the petitioner, is right in his contention that the expert, as occurring in Clause 23(5)(a) of the *Statutes for the purpose of constitution of Selection Committee, could not mean expert in any subject of the stream under Humanities and Social Sciences and if such interpretation is given, it would give rise to an anomalous and absurd situation. Purposive construction is an effective well accepted and established tool for Interpreting Statutes*, and has been applied by Supreme Court in the case of New India Assurance Company Ltd. v. Nusii Neville Wadia" (Supra). In case of "N. Kannadasan v. Ajoy Khose" (Supra), the Supreme Court held that if plain meaning assigned to the sections result into absurdity and anomaly, literal meaning would not be applied and held that the Court may have to change the interpretative tool, if necessary to give effective, contextual meaning to a statutory provision. The Court held that construction of Statute must subserve the tests of justice and reason. Relevant portion of paragraph-55 of the said decision is extracted hereinbelow:-

55. Construction of a statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely).

25. *In my opinion, therefore, while selecting experts for constitution of the Selection Committee for the aforesaid purpose, experts in the subject were required to be appointed as members, otherwise, very purpose of selection, with experts as its members would stand frustrated.* I must take note of the fact that though the petitioner was working as an Associate Professor in the Department of Humanities and Social Sciences, but that would not mean that she was appointed to teach all subjects of *Humanities and Social Sciences in the said Department. This is not even the case of the respondents. She was appointed to teach English in the said Department. The subjects which are taught in the subject of Humanities and Social Sciences have been mentioned in Paragraph-4 of the judgment. From the reading of the list of subjects/ sub-subjects, it would*

appear that the petitioner's appointment was for Item Nos.-(i) to (iv) and she had not experience of teaching other items mentioned therein, which position is admitted."

115. As has already been held above that as per the Statute 27 and Regulation 5.1.2, the subject expert in the constitution of Selection Committee refers to the expert having special knowledge of the subject with which the person to be appointed will be concerned, which in the instant case is Katthak, as both the candidates namely, the appellant and the respondent no.6, have qualifications and expertise in Katthak Dance. Further, Katthak is one of the dance forms, which is being taught in the Department of Dance, Faculty of Performing Arts, the said fact is also established from the various mark-sheets of Post Graduation Courses as well as that of Bachelor of Performing Arts, enclosed with the paper book. Therefore, we are of the view that the Selection Committee should consist of experts from the stream of Katthak.

116. The respondents could not demonstrate that there is any subject in the name of Dance or education is being imparted in the Dance stream in the Department of Dance, Faculty of Performing Arts, and since, there is no such subject, there cannot be any expert in Dance, and the expert could only be either in the subject of Katthak or Bharatnatyam, which streams are being taught in the Department of Dance. Therefore, in the case in hand, since, the appellant and respondent no.6 are having qualification and specialization in Katthak Dance, it is obvious that the selection is being made on the post of Professor in Katthak, and mentioning of subject in the specialization column is not relevant in the context of the present case.

117. If, the contention of learned counsel for the respondents that since the selection was being made on the post of Professor in the Department of Dance where various forms of Dance are taught and the appellant is supposed to teach any subject in the Department of Dance, therefore, the composition of Selection Committee consisting of two experts namely, Dr. Arati H. Shetty and Dr. Uma Rele, having expertise in Bharatnatyam would not vitiate the Selection Committee is accepted, that interpretation would render the insertion of words, having special knowledge of subject with which the person to be appointed in Statute 27 otiose and would lead to an absurdity inasmuch as it could not be the intention of the framers of the Statute, while incorporating the said words in the Statute that the expert from other subjects would also be eligible to become members of Selection Committee to adjudge the suitability of a candidate of different stream. The reason why we say so is that the object of formation of the Selection Committee is to adjudge the suitability of the candidate based on qualification, experience and competence in a particular field so that only the best of the candidates are appointed. We find that the aforesaid aspect of the matter has not been considered by the learned Single Judge in the case of ***Dr. Monika Bansal (supra),*** which has been heavily relied upon by the learned counsel for the respondents in support of their arguments.

118. We also do not agree with the finding of learned Single Judge in the case of ***Dr. Monika Bansal (supra)*** that since, the petitioner in that case had been granted the benefit by the same Selection Committee, which had found the petitioner to be unsuitable for promotion at the stage of Level-14, therefore, the petitioner cannot raise objection to the constitution of Selection Committee. Hence, we reject the submissions advanced by the learned counsel for the respondents, who has tried to invoke the principles of estoppel on the ground that the Selection Committee for

the appointment of appellant as Associate Professor consisted of Dr. Uma Rele who has expertise in Bharatnatyam, therefore, it is not open for the appellant to raise objection in respect of the constitution of Selection Committee, at this stage.

119. It is settled in law that there cannot be any estoppel against a Statute. The Apex Court has also stated the said principle of law in the case of ***Employees State Insurance Corporation Vs. Union of India & Others, 2022 (11) SCC 392***.

120. In view of foregoing discussions, we are of the view that inclusion of two expert members namely, Dr. Aarti H. Shetty and Dr. Uma Rele who have expertise in Bharatnatyam and have no expertise in Katthak would render the constitution of Selection Committee bad. Hence, we do not deem it necessary to consider the eligibility of third expert member namely, Dr. Kamalini Asthana of Selection Committee on the ground that she was not eligible to become a member of the Selection Committee.

121. Now, coming to the third submission raised by Sri Ashok Khare, learned Senior Counsel for the appellant that preparation of list of external experts is vitiated because of the fact that there was every likelihood of bias in preparing the list of External Experts as respondent no.6 was also an applicant and a candidate in the selection and was also instrumental in preparing the list of external experts, we may note that the fact of participation in preparation of list of external experts is not disputed by the respondents. However, respondent no.6 has stated that she being the Head of Department forwarded the list of external experts and the appellant as well as respondent no.6 both were eligible to participate in the preparation of list of external experts, and appellant did not participate in the preparation of list of external experts because of sabbatical leave, therefore, there is no element of bias in preparation of list of external experts because of participation of the respondent no.6 in the PPC.

122. At this juncture, it would be apt to have a glance at Note-2 of the PPC, extracted above. Note-2 specifically provides that whenever the required number of eligible teachers for filling the composition of PPC is not available, the Vice Chancellor may nominate any teacher of the faculty.

123. The respondent no.6 was an applicant and candidate for selection, therefore, there is every likelihood that there exists an element of bias in preparation of list of external experts because of participation of respondent no.6 in preparation of panel list. It is true that PPC consists of several members and the decision is taken collectively, but in the instant case, the Vice Chancellor had an option to appoint another member of the Department, where a teacher who is member of PPC is not eligible to function as a member of PPC, therefore, to remove the element of bias in preparation of list of panel of experts, the Vice Chancellor should have appointed another member in place of respondent no.6 in PPC for preparation of list of external experts.

124. It would be apt to reproduce paragraph nos.22 & 23 of the judgement of the Apex Court in the case of ***A.K. Kraipak & Others Vs. Union of India & Others, 1969 (2) SCC 262*** which are as follows:-

"22. It was next urged by the learned Attorney General that the mere fact that one of the members of the Board was biased against some of the petitioners cannot vitiate the entire proceedings. In this connection he invited our attention to the decision of this Court in Sumer Chand Jain v. Union of India. Therein the Court repelled the contention that the proceedings of a departmental promotion committee were vitiated as one of the members of that committee was favourably disposed towards one of the selected candidates.The question before the Court was whether the plea of mala fides was established. The Court came to the conclusion that on the material on record it was unable to uphold that plea. In that case there was no question of any conflict between duty and interest nor any member of the departmental promotion committee was a judge in his own case. The only thing complained of was that one of the members of the promotion committee was favourably disposed towards one of the competitors. *As mentioned earlier in this case we are essentially concerned with the question whether the decision taken by the board can be considered as having been taken fairly and justly.*

23. One more argument of the learned Attorney General remains to be considered. He urged that even if we are to hold that Naqishbund should not have participated in the deliberations of the selection board while it considered the suitability of Basu, Baig and Kaul, there is no ground to set aside the selection of other officers. According to him it will be sufficient in the interest of justice if we direct that the cases of Basu, Baig and Kaul be reconsidered by a Board of which Naqishbund is not a member. Proceeding further he urged that under any circumstance no case is made out for disturbing the selection of the officers in the junior scale. We are unable to accept either of these contentions. *As seen earlier Naqishbund was a party to the preparation of the select list in order of preference and that he is shown as No.1 in the list. To that extent he was undoubtedly a judge in his own case, a circumstance which is abhorrent to our concept of justice*. Now coming to the selection of the officers in the junior scale service, the selections to both the senior scale service as well as junior scale service were made from the same pool. Every officer who had put in service of 8 years or more, even if he was holding the post of an Assistant Conservator of Forests was eligible for being selected for the senior scale service. In fact some Assistant Conservators have been selected for the senior scale service. At the same time some of the officers who had put in more than eight years of service had been selected for the junior scale service. Hence it is not possible to separate the two sets of officers."

125. Learned counsel for the respondents has placed reliance upon the Division Bench Judgement of this Court in the case of ***Prof. (Dr.) Mujahid Beg (supra)*** to contend that the contention of learned Senior Counsel for the appellant on the issue of bias is misplaced. We find that that the judgement relied upon by the learned counsel for the respondents does not help the respondents and is distinguishable on facts, inasmuch as in the said case Professor (Dr.) Mujahid Beg chaired the Executive Council while his wife got recommended by the Visitor for appointment as Vice-Chancellor. In challenge to the appointment of Professor Naima Khatoon, as Vice Chancellor, the respondent contended that the appointment of Vice Chancellor was based on cast of votes as such it was a case of election wherein plea of bias would be unavailable. However, this Court in paragraph no.61 of the judgement has held that appointment on the post of Vice Chancellor was based on selection and not election. Consequently, this Court repelled the objection of respondent-State that concept of bias would not be attracted in the said case.

126. This Court deprecated the participation of husband of Naima Khatoon as Chairperson to Executive Council. However, after appreciating the concept of bias, this Court was of the view that the selection of Naima Khatoon should not be disturbed.

127. The facts of the present case are distinguishable from the facts of ***Prof. (Dr.) Mujahid Beg (supra)*** inasmuch as in the present case, respondent no.6 was an applicant and candidate for consideration for the benefit under Career Advancement Scheme and she had participated in preparation of list of External Experts and experts from the list of External Experts forwarded by respondent no.6 were the members of Selection Committee, who selected the respondent no.6. Therefore, there is every likelihood of bias in participation of such expert members in the Selection Committee. Therefore, we find that there is an element of bias in the selection process. Thus, for this reason also, we find that selection of respondent no.6 is vitiated.

128. It has also been brought on record by the learned counsel for the respondent-University that now the Executive Council has been constituted and selection of respondent no.6 has been approved, copy of Resolution of Executive Council, ECR dated 09.10.2025 has been brought on record by the respondent no.3 through supplementary counter affidavit.

129. However, we are of the view that approval of appointment of the respondent no.6 by the Executive Council would not regularize the illegality committed by the respondents in carrying out the selection and therefore, we set aside the Resolution of Executive Council, ECR dated 09.10.2025.

130. For the reasons detailed above, we hold that constitution of Selection Committee is bad in law, and therefore, the selection of respondent no.6 is also bad in law. Consequently, we set aside the judgement of learned Single Judge as well as the selection of respondent no.6 on the post of Professor, Department of Dance, Faculty of Performing Arts, BHU, Varanasi. We further direct the respondent no.3-Vice Chancellor, Banaras Hindu University, Varanasi to hold fresh selection by constituting a Committee by excluding the appellant and respondent no.6 from the PPC for preparation of panel of Experts and form a Selection Committee consisting of Experts from Katthak stream having essential qualifications to become Subject Expert within a period of two months from the date of production of certified copy of this order.

131. Consequently, the appeal is ***allowed*** with no order as to costs.

(2026) 2 ILRA 149
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.02.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 41622 of 2025

Vikas Chaudhary & Anr. **...Petitioners**
Versus
Union Of India & Ors. **...Respondents**

Issue for consideration

Whether private individuals should be given security at State cost?

Headnotes

A. Criminal Law – As a matter of principle, private individuals should not be given security at State cost unless there are compelling transparent reasons, which warrant such protection, especially if the threat is linked to some public or national service they have rendered and, the security should be granted to such persons until the threat abates. But, if the threat perception is not real, it would not be proper for the Government to grant security at the cost of taxpayers money and to create a privileged class. (Para 9)

B. This Court, while exercising writ jurisdiction u/Article 226 of the Constitution of India, cannot substitute its decision to the decision of the competent Authority in respect of threat perception of the petitioner to his life and property. The threat perception has to be real and the Security Committee has to assess the threat perception, taking into consideration the reports from Intelligence Unit, the concerned police station and past record of the applicant. The security should be provided only to those who face real threat to their life for having done some work in the interest of the society or the nation from terrorist/naxalite or organized gangs and not otherwise. **A personal enmity with other would not come within the parameters for assessing the threat perception of the applicant for providing him security.** (Para 9)

The gravity of threat has to be real and not just based upon perceptive apprehension. The satisfaction of the competent authority cannot be ignored in the absence of any trustworthy, credible and reliable evidence. A Court does not stand as an expert to assess the correctness of the decision of the competent authority and to evaluate the threat, if any, faced by an individual. The same has to be left to the competent authority and its assessment and discretion. (Para 10)

The threat perception in the present case has already been assessed by the competent authority and security has already been provided to the petitioners. Further, the nature and gravity of threat perception essentially is a question of fact which is best assessed by the authorities constituted under the various government orders and the assessment of the same does not lie within the domain of this Court while exercising it's powers u/Article 226 of the Constitution of India. Lastly, the petitioners neither have a statutory right nor a fundamental right to claim police protection and as such, usually the right to claim police protection cannot be enforced in exercise of power u/Article 226 of the Constitution of India. (Para 11)

Writ petition dismissed. (E-4)

Case Law Cited

1. Ramveer Upadhyay Vs. R.M. Srivastava and others, 2015 (13) SCC 370 (Para 7)
2. M.A. Khan Chaman Vs. State of U.P. and others, 2004 SCC Online All 373 (Para 8)
3. Abhishek Tiwari, Vs. State of U.P. and others, Writ Petition No. 10867(MB) of 2021, decided on 04.08.2021 (Para 9)
4. Jaskirat Singh Chahal Vs. State of Punjab and others, Division Bench of Punjab and Haryana High Court in LPA No. 2165 of 2017, decided on 28.03.2022 (Para 10)

List of Keywords

Security, protection, privilege, gravity, threat, jurisdiction.

Appearances for Parties:

For Petitioner(s): M Afzal Parvej, Akhilesh Kumar Tiwari, Arif Ikbal, Sarphraj
For Respondent(s): A.S.G.I., C.S.C., Vinay Kumar Singh

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Heard learned counsel for the petitioners and learned standing counsel for the State-respondents.

2. The petitioners have filed the present writ petition seeking a direction for the Secretary, Ministry of Home Affairs, Government of India to immediately provide armed Central Security Force Protection (CRPF) to the petitioners in the light of the grave and persistent threat to the lives of the petitioners.

3. The contention of the petitioner is that three FIRs have been lodged by the petitioners, the first FIR bearing Case Crime No. 185 of 2020 in respect of breaking of boundary wall and labour quarters in the brick-kiln of the petitioners, the second FIR bearing Case Crime No. 700 of 2020 relating to a false trust/deed (as alleged in the writ petition) and the third FIR bearing Case Crime No. 173 of 2023 relating to hacking of the mobile phone of the petitioners. Under the circumstances, it is contended that the petitioners are facing an imminent threat to their lives and as such they are seeking protection.

4. However, the perusal of the pleadings in the writ petition do not disclose a single specific instance on the basis of which it can be assumed that the petitioners have any threat to their lives. Further, other than the persons who have been named in the FIRs lodged at the instance of the petitioners, not a single person has been named including those named in the FIRs in the writ petition who has hurled any life threat to the petitioners or their family members. It is also duly admitted that vide order dated 06.08.2023, the petitioners have been granted police protection by providing one security guard. Hence, it is evident that the petitioners have already been provided police protection keeping in view the threat perception as assessed by the competent authority.

5. Keeping in view the circumstances of the case and the law laid down in this regard, it can very well be held that the nature of threat perception and the liability to provide security has to be left to be decided by the authorities concerned, since this is clearly a question of fact to be dealt with by the authorities entrusted with the duty and not for this Court to determine while exercising it's jurisdiction under Article 226 of the Constitution of India. Moreover, we find that the provision for security in the shape of police personnel has become more of a status symbol by means of which, a privileged class has been created at the expense of the State and the taxpayers? money.

6. In a country governed by the rule of law and democratic polity, a class of privileged persons should not be created by the State. Our country has got a written Constitution and as per the preamble, the goal of the Indian Democratic Republic is to secure justice to all citizens, socially, economically and politically, and equality of status and of opportunity to all. The State cannot be seen as creating a privileged class in the society as it would amount abdication of the very principle of justice and equality enshrined in the Constitution. There may be cases where public interest demand to provide personal security but same should be done in a transparent and fair manner and the State should be able to justify it's decision if, the same is challenged in the Court of law.

7. In this regard, the Hon'ble Supreme Court in the case of ***Ramveer Upadhyay Vs. R. M. Srivastava and others, 2015 (13) SCC 370*** arising out of a case where Z category security of a Minister in the State of U.P. had been downgraded after he ceased to be a Minister, the Hon'ble Court had held as under:

"6. However, in our experience, we have hardly seen any security of "Z" or "Y" category provided to any ordinary citizen, howsoever grave the threat perception or imminent danger may be to the person concerned. The petitioner, however, has claimed it obviously as a "privileged class" by virtue of being an ex-Minister which at times, may be justified even to an ex-Minister or any other dignitary, considering the nature and function of the duties which he had discharged, which could facilitate the assessment of his threat perception even after laying down the office. ***But what exactly is his threat perception and whether the same is grave in nature, obviously will have to be left to be decided by the authorities including the authorities of the State or the Centre which may include even the Intelligence Bureau or any other authority concerned which is entitled to assess the threat perception of an individual. But insofar as the court of law is concerned, it would obviously be in a predicament to come to any conclusion as to whether the threat perception alleged by a person claiming security is grave or otherwise which would hold him entitled to the security of a greater degree, since this is clearly a question of factual nature to be dealt with by the authorities entrusted with the duty to provide security after assessing the need and genuineness of the threat to any individual.***"

8. A Coordinate Bench of this Court in the case of ***M.A. Khan Chaman Vs. State of U.P. and others, 2004 SCC Online All 373***, wherein the petitioner had sought continuous security that too free of cost, this Court had held as under:

"There is no right of the petitioner to enjoy this privilege ad infinitum. It is regrettable that on flimsy grounds people exercise undue influence and manage to secure gunners and security at State expense and at tax payers cost. In fact acquisition of a gunner has begun to be treated as a status symbol. This practice must be brought to an end. In the circumstances, it cannot be said that the petitioner is entitled as a matter of right to be provided a security guard at State expense or at reduced cost."

9. Another Coordinate Bench of this Court in Writ Petition No. 10867(MB) of 2021 (Abhishek Tiwari, Vs. State of U.P. and others) decided on 04.08.2021, wherein the petitioner had been refused personal security by the competent authority while dismissing the writ petition, this Court had held as under:

"29. As a matter of principle, private individuals should not be given security at State cost unless there are compelling transparent reasons, which warrant such protection, especially if the threat is linked to some public or national service they have rendered and, the security should be granted to such persons until the threat abates. But, if the threat perception is not real, it would not be proper for the Government to grant security at the cost of taxpayers money and to create a privileged class. In a democratic country governed by rule of law and written Constitution providing security at State expense ought not to become an act of patronage to create a coterie of ?obliged? and ?loyal? persons. The limited public resources must be used carefully for welfare

schemes and not in creating a privileged class. From a report of Bureau of Police Research and Development (BPR&D), police think tank of the Ministry of Home Affairs (MHA), more than 20,000 additional policemen than the sanctioned strength were deployed in VIP protection duty in the year 2019. As per the report, Data on Police Organizations, 2019, as many as 66,043 policemen were deployed to protect 19,467 Ministers, Members of Parliament, Judges, Bureaucrats and other personalities and, thus number is growing up in every year.

32. This Court, while exercising writ jurisdiction under Article 226 of the Constitution of India, cannot substitute its decision to the decision of the competent Authority in respect of threat perception of the petitioner to his life and property. From the facts as emanate from the record, it is evident that the petitioner does not face any real threat to his life or property. He has been asking for security as authority of symbol to flaunt his status a VIP. This practice, creating a privileged class on State expense and taxpayers money, is to be deprecated. It is, therefore, provided that the threat perception has to be real and the Security Committee has to assess the threat perception, taking into consideration the reports from Intelligence Unit, the concerned police station and past record of the applicant. The security should be provided only to those who face real threat to their life for having done some work in the interest of the society or the nation from terrorist/naxalite or organized gangs and not otherwise. A personal enmity with other would not come within the parameters for assessing the threat perception of the applicant for providing him security."

10. Similarly, a Division Bench of Punjab and Haryana High Court in ***LPA No. 2165 of 2017 (Jaskirat Singh Chahal Vs. State of Punjab and others)*** decided on 28.03.2022 while relying upon the law laid down by this Court in the case of ***Abhishek Tripathi*** (supra) has held as under:

"10. The gravity of threat has to be real and not just based upon perceptive apprehension. In the event the competent authority in the State Govt. is convinced that the threat has abated, there can be no justification to extend a personal security cover at the State's expense, only as an act of patronage or as an act aimed to create a coterie of obliged and loyal persons. Limited public resources cannot be deployed for display of eminence and as an attempt to bolster the ego of the recipient of such protection. The satisfaction of the competent authority cannot be ignored in the absence of any trustworthy, credible and reliable evidence. A Court does not stand as an expert to assess the correctness of the decision of the competent authority and to evaluate the threat, if any, faced by an individual. The same has to be left to the competent authority and its assessment and discretion.

11. This Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot substitute its decision for that of the competent authority pertaining to the threat apprehension entertained by the appellant. The facts that emanate from the record do not establish any real threat and it seems that the demand for security is more to display it as an authority of symbol and to flaunt his status as a VIP. This practice of creating a privileged class on the State's expense, by using the taxpayers' money has to be deprecated."

11. Hence in the above background, we are of the view that the threat perception in the present case has already been assessed by the competent authority and security has already been provided to the petitioners. Further, the nature and gravity of threat perception essentially is a question of

fact which is best assessed by the authorities constituted under the various government orders and the assessment of the same does not lie within the domain of this Court while exercising it's powers under Article 226 of the Constitution of India. Lastly, the petitioners neither have a statutory right nor a fundamental right to claim police protection and as such, usually the right to claim police protection cannot be enforced in exercise of power under Article 226 of the Constitution of India.

12. Under the circumstances, we are not inclined to issue any direction to the authorities concerned for the reasons detailed above.

13. Hence, the writ petition is dismissed. No order as to costs.

(2026) 2 ILRA 154
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 04.02.2026

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 528 BNSS No. 368 of 2026

Mayank Tripathi & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the Magistrate can take cognizance and issue summons without affording the accused an opportunity of hearing under Section 223 BNSS, 2023.
Whether postponement of process and inquiry under Section 225 BNSS, 2023 is mandatory when the accused resides outside the territorial jurisdiction of the Magistrate.
Whether failure to comply with Sections 223 and 225 vitiates the summoning order.?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section – 192, 200, 202, 482, - Bharatiya Nagarik Suraksha Sanhita, 2023 – Section – 210, 212, 223, 1223(1), 225, 226, 528 - Bharatiya Nyaya Sanhita, 2023 (BNS) - Section - 85, 115(2), 352, 351(2), - Dowry Prohibition Act, 1961 – Section – 3, 4: - Application under Section 528 BNSS – seeking quashing of summoning order as well as criminal proceedings – complaint case - offences under Sections 85, 115(2), 352, 351(2) BNSS and 3/4 D.P. Act - statements recorded - summons issued - applicants pleaded violation of Section 223 BNSS (no opportunity of hearing before cognizance) and Section 225 BNSS (no inquiry despite accused residing outside jurisdiction) - State opposed but conceded legal position - Court finds that opportunity of hearing is substantive safeguard - inquiry under Section 225 mandatory, failure to comply vitiates order – held - Magistrate must examine complainant/witnesses, consider dismissal under Section 226, and only thereafter issue notice and take cognizance – consequently, impugned order unsustainable - order impugned set aside - application allowed with directions to Magistrate to proceed afresh in accordance with law. (Para – 16, 17, 18)
Application Allowed. (E-11)

CASE LAW CITED

Prateek Agarwal v. State of U.P., 2024 SCC OnLine All 8212

Basanagouda R. Patil v. Shivananda S. Patil, 2024 SCC OnLine Kar 96
Suby Antony v. Judicial First-Class Magistrate, 2025 SCC OnLine Ker 532
Sunil Todi v. State of Gujarat, (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174
Udai Shankar Awasthi v. State of U.P., (2013) 2 SCC 435
Shivjee Singh v. Nagendra Tiwary, (2010) 7 SCC 578
A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500

LIST OF ACTS

Code of Criminal Procedure, 1973 – Bharatiya Nagarik Suraksha Sanhita, 2023 - Bharatiya Nyaya Sanhita, 2023 (BNS) - Dowry Prohibition Act, 1961 –

LIST OF KEYWORDS

Summoning order, Cognizance, Opportunity of hearing, Postponement of process, Inquiry, Dismissal of complaint, BNSS safeguards, Territorial jurisdiction, Procedural defect.

CASE ARISING FROM

Criminal Case No. 5524 of 2024 - Order dated 04.10.2024 passed by Additional Civil Judge (S.D.)-I/Additional Chief Judicial Magistrate, Sultanpur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Prabhu Ranjan Tripathi,
Counsel for Respondent(s): - AGA.

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

1. Heard Sri Prabhu Ranjan Tripathi, learned counsel for the applicant and learned A.G.A. for the State.

2. In view of the settled legal position, this Court is not inclined to issue notice to opposite party no.2.

3. The applicants have instituted instant application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (here-in-after referred as BNSS) seeking following relief(s):-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the entire criminal proceeding of Criminal Case No. 5554 of 2024 inclusive of impugned summoning order dated 04.10.2024 passed by Additional Civil Judge (S.D.)-I/Additional Chief Judicial Magistrate, Sultanpur, by which the learned Court below has summoned the petitioners in routine and mechanical manner in relation to offences Under section 85, 115(2), 352, 351 (2) B.N.S. & 3/4 D. P. Act (Annexure No. 1), in order to meet ends of justice."

4. In view of relevant provisions pointed out, at the very outset it is stated that at this stage the prayer of the applicant which relates to procedure adopted by learned Additional Civil Judge (S.D.)-1/Additional Chief Judicial Magistrate, Sultanpur (in short Magistrate) while passing the order dated 04.10.2024 in Criminal Case No.5524/2024 be considered leaving it open to challenge the pending criminal proceedings, if cause arises. Prayer acceded.

5. Learned counsel for the applicants submitted that by means of the impugned order dated 04.10.2024 the applicants have been summoned to face the trial for the offence under section(s) 85, 115(2), 352, 351(2) B.N.S. and 3/4 D.P. Act.

6. It is further submitted that impugned order dated 04.10.2024 is in violation of the statutory provision i.e. Section 223 of BNSS, according to which before taking cognizance and summoning the accused the Magistrate/Court concerned is under obligation to issue notice(s) for affording an opportunity of hearing, and in the instant case only after recording all the statement(s) of the complainant and the witnesses, the Magistrate has passed the order dated 04.10.2024.

7. Reference has been made to Section 200 Code of Criminal Procedure (in short 'Cr.P.C.') (now repealed) and Section 223 of BNSS which reads as under:-

Section 200 of Cr.P.C., 1973	**Section 223 of BNSS, 2023**
Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses— (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.	**Examination of complainant.** (1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard: Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212: Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them. (2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless- (a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and (b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

8. Reliance has also been placed on judgment passed by a co-ordinate Bench of this court dated 26.11.2024 in **Application under Section 482 Cr.P.C. No.10390 of 2024 (2024 SCC OnLine All 8212) Prateek Agarwal Vs. State of U.P. and Another**, judgment of the High Court of Karnataka passed in the case of **Basanagouda R. Patil Vs. Shivananda S. Patil; 2024 SCC Online Kar 96** and judgment rendered by the High Court of Kerala at Ernakulam in the case of **Suby Antony S/o Late P.D. Antony Vs. Judicial First-Class Magistrate passed in Crl. MC 508 of 2025 on 22.01.2025 (2025 SCC OnLine Ker. 532).**

8.1 The relevant paras of **Basanagouda (Supra)** are being extracted hereinbelow:-

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

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

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

A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate / concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.

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

8.2. The relevant paras of **Suby Antony v. Judicial First-Class Magistrate-III, 2025 SCC OnLine Ker 532**, are being extracted hereinbelow:-

4. As the term cognizance is not defined in BNSS, it will be profitable to refer the following erudite exposition of the Supreme Court in S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. [(2008) 2 SCC 492].

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an

offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

5. Thus, the taking of cognisance of an offence occurs when the Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence alleged to have been committed by the accused. Once cognisance is taken, then the Magistrate has to decide whether to issue process to the accused or not. Section 225 confers power on the Magistrate to postpone the issue of process to the accused even after taking cognisance of the offence. At that stage the Magistrate can either inquire into the case himself, or direct investigation to be made by a police officer or such other person for the purpose of deciding whether there is sufficient ground for proceeding. The Apex Court in Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi [(1976) 3 SCC 736], dilating on the limited scope of inquiry under Section 202 Cr. P.C., corresponding to Section 225 of BNSS, held as under;

4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint- (i) on the materials placed by the complainant before the court : (ii) for the limited purpose of finding out whether a prima facie csse for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

The above decision leaves no room for doubt that under the Code the accused had no locus standi even at the stage where the Magistrate decides whether or not to issue process to the accused.

6. While on this question, it will also be profitable to refer the decision of the Apex Court in A.R. Antulay v. Ramdas Sriniwas Nayak [(1984) 2 SCC 500], wherein the procedure to be followed by the Magistrate upon filing of a complaint is detailed as under;

"When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 CrPC. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceeding and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the form of a summons or a warrant, as the case may be. It may be that after examining the complainant and his witnesses, the court in order to doubly assure itself may postpone the issue of process, and call upon the complainant to keep his witnesses present. The other option open to the court is to direct investigation to be made by a police officer.

Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in Section 202 when it says that the Magistrate may "if he thinks fit, postpone the issue of

process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer… for the purpose of deciding whether or not there is sufficient ground for proceeding". Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. Therefore, there is no merit in the contention that by entertaining a private complaint, the purpose of speedy trial would be thwarted or that a pre-process safeguard would be denied."

7. Indeed, a radical change in procedure is brought about by the proviso to Section 223(1) of BNSS. Pertinently, in spite of the proviso to Section 223(1) making it mandatory to provide opportunity of hearing to the accused before taking cognisance, Section 226 does not reckon the accused's objection at the stage of taking cognisance as a relevant factor for dismissing the complaint. Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that, after the complaint is filed, the Magistrate should first examine the complainant and witnesses on oath and thereafter, if the Magistrate proceeds to take cognisance of the offence/s, opportunity of hearing should be afforded to the accused. I am also in complete agreement with the following procedural drill delineated by the High Court of Karnataka in Basanagouda's case (supra);

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

10. Therefore, the procedural drill would be this way : A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter."

8.3. In the case of Prateek Agarwal (supra) similar view has been taken by this court.

9. It is also stated that the impugned order dated 14.10.2024 is also in violation of Section 225 BNSS, akin to Section 202 Cr.P.C. (now repealed). As the applicants are resident of District-Lucknow and complaint was filed at District-Sultanpur and therefore, the Magistrate exercising its power/jurisdiction, in view of Section 225 BNSS, ought have been postponed the issue of process for deciding that whether there is sufficient ground for proceeding. The referred provisions are reproduced hereinunder:-

Section 202 of Cr.P.C., 1973	**Section 225 of BNSS,2023**
Postponement of issue of process-	**Postponement of issue of process.-**

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit,[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding Provided that no such direction for investigation shall be made,-- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200. (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.	(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223. (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on an officer in charge of a police station except the power to arrest without warrant.

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

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

11. Learned A.G.A. for the State, though opposed the prayer but he could not contradict the legal position. He further submits that the impugned order may be quashed and the matter may be remitted back, so that the learned Magistrate may proceed in accordance with law and the respondent No.2 cannot be said to be prejudiced at this juncture.

12. Considered the submissions of learned counsel for the parties and perused the record.

13. The instant case relates to Section 223 BNSS(1). This provision provides that the Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by

the Magistrate. The first proviso appended to this Section provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. The second proviso appended to this Section provides certain contingencies under which, the Magistrate need not examine the complainant and witnesses.

14. Considering the aforesaid, this Court is of the view that after filing of complaint under Section 210 BNSS, the learned Magistrate has to first examine upon oath the complainant and the witnesses, if any, and the substance of such examination is to be reduced in writing, which shall be signed by the complainant and the witnesses and also by the Magistrate as per Section 223(1) of BNSS and thereafter, after considering the same, if he finds that there is no sufficient ground to proceed, he shall dismiss the complaint under Section 226 BNSS and if he finds that it can not be dismissed as such, he shall afford opportunity to the accused for which the notice of being heard shall be issued at that stage and the Magistrate would take cognizance only after affording an opportunity of hearing to the accused the Magistrate would take cognizance and regulate its procedure thereafter. It is for the reason that the accused may not be harassed unnecessarily. This opportunity of hearing shall not be a mere formality.

15. On the issue related to Sections 225 BNSS, akin to Section 202 Cr.P.C. (now repealed) it would be useful/appropriate to refer some pronouncements in which section 202 Cr.P.C. (now repealed), akin to Section 225 BNSS was considered and explained:-

15.1 The relevant paras **of Sunil Todi v. State of Gujarat, (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174**, are being extracted hereinbelow:-

"35. The second submission which has been urged on behalf of the appellants turns upon Section 202 CrPC, which is extracted:

***"202. Postponement of issue of process**.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.″

36. Under sub-section (1) of Section 202, a Magistrate upon the receipt of a complaint of an offence of which he/she is authorised to take cognizance is empowered to postpone the issuance of process against the accused and either : (i) enquire into the case; or (ii) direct an investigation to be made by a police officer or by such other person as he thinks fit. The purpose of postponing the issuance of process for the purposes of an enquiry or an investigation is to determine whether or not there is sufficient ground for proceeding. However, it is mandatory for the Magistrate to do so in a case where the accused is residing at a place beyond the area in which the Magistrate exercises jurisdiction.

37. The accused persons in the present case reside at Aurangabad while the complaint under Section 138 was filed before the Magistrate in Mundra. The argument of the appellants is that in these circumstances, the Magistrate was duty-bound to postpone the issuance of process and to either enquire into the case himself or to direct an investigation either by a police officer or by some other person. Section 203 stipulates that if the Magistrate is of the opinion on considering the statement on oath, if any, of the complainant and of the witnesses, and the result of the enquiry or investigation if any under Section 202 that there is no sufficient ground for proceeding, he shall dismiss the complaint recording briefly his reasons for doing so. The requirement of recording reasons which is specifically incorporated in Section 203 does not find place in Section 202. Section 204 which deals with the issuance of process stipulates that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, he may issue : (a) in a summons case, a summons for attendance of the accused; (b) in a warrant case, a warrant or if he thinks fit a summons for the appearance of the accused. These proceedings have been interpreted in several judgments of this Court. For the purpose of the present case, some of them form the subject-matter of the submissions by the appellants and the second respondent.

38. The provisions of Section 202 which mandate the Magistrate, in a case where the accused is residing at a place beyond the area of its jurisdiction, to postpone the issuance of process so as to enquire into the case himself or direct an investigation by police officer or by another person were introduced by Act 25 of 2005 with effect from 23-6-2006. The rationale for the amendment is based on the recognition by Parliament that false complaints are filed against persons residing at far-off places as an instrument of harassment. In ***Vijay Dhanuka v. Najima Mamtaj [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479]*** *, this Court dwelt on the purpose of the amendment to Section 202, observing : (SCC p. 644, paras 11-12).*

"11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process 'in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment,

in the opinion of the legislature, was essential as false complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:

'False complaints are filed against persons residing at far-off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.'

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

39. This Court has held that the Magistrate is duty-bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a prima facie sufficient ground for proceeding. In ***Mehmood UI Rehman v. Khazir Mohammad Tunda [Mehmood UI Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]*** *, this Court followed the dictum in* ***Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400]*** *, and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements recorded or the enquiry conducted constitute a violation of law. The Court observed : (Mehmood Ul Rehman case [Mehmood UI Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124], SCC pp. 429-30, paras 20 & 22)*

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the

accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.″

These decisions were cited with approval in ***Abhijit Pawar v. Hemant Madhukar Nimbalkar [Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192]*** *. After referring to the purpose underlying the amendment of Section 202, the Court observed : (SCC p. 541, para 25)*

"25. ... the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment in ***Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood UI Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] …"***

40. While noting that the requirement of conducting an enquiry or directing an investigation before issuing process is not an empty formality, the Court relied on the decision in ***Vijay Dhanuka [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479]*** *which had held that the exercise by the Magistrate for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused is nothing but an enquiry envisaged under Section 202 of the Code.*

41. In ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828]*** *, the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted : (SCC p. 628, para 26).*

"26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204CrPC or whether the complaint should be dismissed by resorting to Section 203CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.″

42. Hence, the Court held : ***(Birla Corpn. Ltd. case [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828] , SCC p. 631, para 33)***

"33. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood UI Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]

43. The above principles have been reiterated in the judgment in ***Krishna Lal Chawla v. State of U.P. [Krishna Lal Chawla v. State of U.P., (2021) 5 SCC 435 : (2021) 2 SCC (Cri) 601]***

44. In this backdrop, it becomes necessary now to advert to an order dated 16-4-2021 of a Constitution Bench in Expeditious Trial of Cases under Section 138 of NI Act, 1881, In re [Expeditious Trial of Cases under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116] . The Constitution Bench notes "the gargantuan pendency of complaints filed under Section 138" and the fact that the "situation has not improved as courts continue to struggle with the humongous pendency". The Court noted that there were seven major issues which arose from the responses filed by the State Governments and the Union Territories including in relation to the applicability of Section 202 CrPC. Section 143 of the NI Act provides that Sections 262 to 265 CrPC (forming a part of Chapter XXI dealing with summary trials) shall apply to all trials for offences punishable under Section 138 of the NI Act. On the scope of the inquiry under Section 202 CrPC in cases under Section 138 of the NI Act, there was a divergence of view between the High Courts. Some High Courts had held that it was mandatory for the Magistrate to conduct an inquiry under Section 202 CrPC before issuing process in complaints filed under Section 138, while there were contrary views in the other High Courts. In that context, the Court observed : (SCC p. 125, paras 10-11)

"10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-6-2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See : ***Vijay Dhanuka v. Najima Mamtaj [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , Abhijit Pawar v. Hemant Madhukar Nimbalkar [Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828]*** *). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.*

11. The learned Amici Curiae referred to a judgment of this Court in ***K.S. Joseph v. Philips Carbon Black Ltd. [K.S. Joseph v. Philips Carbon Black Ltd., (2016) 11 SCC 105 : (2016) 4 SCC (Civ) 616 : (2017) 1 SCC (Cri) 270]*** *where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in* ***Vijay Dhanuka [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , Abhijit Pawar [Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and Birla Corpn. Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828]*** *, the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.″*

45. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2)CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.

46. In the present case, the Magistrate has adverted to:

(i) The complaint;

(ii) The affidavit filed by the complainant;

(iii) The evidence as per evidence list and; and

(iv) The submissions of the complainant.

47. The order passed by the Magistrate cannot be held to be invalid as betraying a non-application of mind. In ***Chief Controller of Imports & Exports v. Roshanlal Agarwal [Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139 : 2003 SCC (Cri) 788]*** *, this Court has held that in determining the question as to whether process is to be issued, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can only be determined at the trial. [See also in this context the decision in* ***Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872]].***

48. The High Court did not quash the complaint against the appellants since it was prima facie established that they were triable for dishonour of cheque. Section 141 of the NI Act provides:

"141. Offences by companies.-(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, manager, secretary or other officer of the company, such Director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

49. Section 141 of the NI Act stipulates that if a company is alleged to have committed an offence under Section 138, then every person who "was in charge of, and responsible to, the company for the conduct of the business of the company" shall also be deemed guilty of the offence. The proviso provides an exception if she proves that the offence was committed without her knowledge or that she had exercised due diligence. ***In Sunil Bharti Mittal v. CBI [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687]*** *, a three-Judge Bench of this Court observed that the general rule is that criminal intent of a group of people who undertake business can be imputed to the Company but not the other way around. Only two exceptions were provided to this general rule : (i) when the individual has perpetuated the commission of offence and there is sufficient evidence on the active role of the individual; and (ii) the statute expressly incorporates the principle of vicarious liability. Sikri, J. writing for a three-Judge Bench observed : (SCC p. 638, paras 43-44)*

"43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. ***In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241]*** *, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the*

Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

50. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975]*** *, a three-Judge Bench while construing the provisions of Section 141 of the Negotiable Instruments Act, 1881, has noted that the position of a Managing Director or a Joint Managing Director of a company is distinct since persons occupying that position are in charge of and responsible for the conduct of the business. It was observed that though there is a general presumption that the Managing Director and Joint Managing Director are responsible for the criminal act of the company, the Director will not be held liable if he was not responsible for the conduct of the company at the time of the commission of the offence. The Court observed : (SCC pp. 98-99, paras 9-10)*

"9. The position of a Managing Director or a Joint Managing Director in a company may be different. These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

10. .... Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a Director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time."

(emphasis supplied)

51.The same principle has been followed by a Bench of two Judges in ***Mainuddin Abdul Sattar Shaikh v. Vijay D. Salvi [Mainuddin Abdul Sattar Shaikh v. Vijay D. Salvi, (2015) 9 SCC 622 : (2015) 4 SCC (Civ) 685 : (2015) 4 SCC (Cri) 55] : (SCC p. 627, para 12)***

"12. The respondent has adduced the argument that in the complaint the appellant has not taken the averment that the accused was the person in charge of and responsible for the affairs of the Company. However, as the respondent was the Managing Director of M/s Salvi Infrastructure (P) Ltd. and sole proprietor of M/s Salvi Builders and Developers, there is no need of specific averment on the point. This Court has held in ***National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010)***

3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] *, as follows : (SCC p. 346, para 39)*

'39. …. (v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.'"

52. The test to determine if the Managing Director or a Director must be charged for the offence committed by the company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e. whether the individual was in charge of and responsible for the affairs of the company during the commission of the offence. However, the determination of whether the conditions stipulated in Section 141 of the MMDR Act have been fulfilled is a matter of trial. There are sufficient averments in the complaint to raise a prima facie case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process.

53. In the present case, it is evident that the principal grounds of challenge which have been set up on behalf of the appellants are all matters of defence at the trial. The Magistrate having exercised his discretion, it was not open to the High Court to substitute its discretion. The High Court has in a carefully considered judgment, analysed the submissions of the appellants and for justifiable reasons has come to the conclusion that they are lacking in substance. "

15.2 The relevant paras of **National Bank of Oman v. Barakara Abdul Aziz, (2013) 2 SCC 488** , are extracted hereinbelow:-

"9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10. Section 202 CrPC was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,"

The notes on clauses for the abovementioned amendment read as follows:

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or

direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) dated 21-6-2006.

11.We are of the view that the High Court has correctly held that the above mentioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 CrPC. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court."

15.3. The relevant paras of **Udai Shankar Awasthi v. State of U.P., (2013) 2 SCC 435 : (2013) 1 SCC (Civ) 1121 : (2013) 2 SCC (Cri) 708** , are extracted hereinbelow:-

"37. It is evident that in the said complaint, no reference was made by the complainant as regards the arbitration proceedings. There was also no disclosure of facts to show that earlier complaints in respect of the same subject-matter had been dismissed on merits by the same court.

38. A copy of the award made by the arbitrator was placed on record, wherein Issue 13 which dealt with the present controversy i.e. some material and documents were placed in the premises of Iffco and the return of the same was refused. The claim as regards the same has been rejected. There has been no mention of such claim and its rejection by the said concern in either of the writ petitions filed before the High Court earlier or even for that matter, in the application filed by the said concern before Iffco, for the purpose of making appointment of an arbitrator or in the application filed under Section 11 of the 1996 Act before the High Court.

39. In the counter-affidavit filed by Respondent 2, it has been submitted that the contract was terminated by Iffco fraudulently, to usurp the entire amount towards the work done by it and that Iffco took illegal possession of all the goods and articles belonging to the firm lying within its premises, and as the amount had not been paid, the officers were guilty of criminal breach of trust and were therefore, liable to be punished. However, the fact that earlier complaints had been filed by the brother of Respondent 2 Sabha Kant Pandey has been admitted. It has further been admitted that arbitration proceedings are still pending, but it has also simultaneously been urged that criminal prosecution has nothing to do with the arbitral award.

40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases. (See also Shivjee Singh v. Nagendra Tiwary [(2010) 7 SCC 578 : (2010) 3 SCC (Cri) 452 : AIR 2010 SC 2261] , SCC p. 584, para 11 and National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488 : JT (2012) 12 SC 432] .)"

15.4 The relevant paras of **Shivjee Singh v. Nagendra Tiwary, (2010) 7 SCC 578 : (2010) 3 SCC (Cri) 452** , are extracted hereinbelow:-

"11. Section 202(1) empowers the Magistrate to postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person whom he thinks fit for the purpose of deciding whether or not there exists sufficient ground for proceeding. By amending Act 25 of 2005, the postponement of the issue of process has been made mandatory where the accused is residing in an area beyond the territorial jurisdiction of the Magistrate concerned. Proviso to Section 202(1) lays down that direction for investigation shall not be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session or where the complaint has not been made by a court unless the complainant and the witnesses have been examined on oath under Section 200.

12. Under Section 202(2) the Magistrate making an inquiry under sub-section (1) can take evidence of the witnesses on oath. If the Magistrate thinks that the offence complained of is triable exclusively by the Court of Session then in terms of the proviso to Section 202, he is required to call upon the complainant to produce all his witnesses and examine them on oath.

13. Section 203 empowers the Magistrate to dismiss the complaint if, after considering the statements made by the complainant and the witnesses on oath and the result of the inquiry or investigation, if any, made under Section 202(1), he is satisfied that there is no sufficient ground for proceeding. The exercise of this power is hedged with the condition that the Magistrate should record brief reasons for dismissing the complaint. Section 204, which talks of issue of process lays down that if the Magistrate taking cognizance of an offence is of the view that there is sufficient ground for proceeding then he may issue summons for attendance of the accused in a summons case. If it is a warrant case, then the Magistrate can issue warrant for causing attendance of the accused.

14. Section 207 casts a duty on the Magistrate to supply to the accused, copies of the police report, the first information report recorded under Section 154, the statements recorded under Section 161(3), the confessions and statements, if any, recorded under Section 164 and any other document or relevant extract thereof, which is forwarded to the Magistrate along with the police report. Section 208 provides for supply of copies of statement and documents to the accused in the cases triable by the Court of Session. It lays down that if the case, instituted otherwise than on a police report, is triable exclusively by the Court of Session, the Magistrate shall furnish to the accused, free of cost, copies of the statements recorded under Section 200 or Section 202, statements and confessions recorded under Section 161 or Section 164 and any other document on which prosecution proposes to rely.

15. Section 209 speaks of commitment of a case to the Court of Session when offence is triable exclusively by it. This section casts a duty on the Magistrate to commit the case to the Court of Session after complying with the provisions of Section 208. Once the case is committed, the trial is to be conducted by the Court of Session in accordance with the provisions contained in Chapter XVIII.

16. The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the

complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process.

17. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so.

18. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI CrPC finds adequate support from the judgments of this Court in ***Ramgopal Ganpatrai Ruia v. State of Bombay [AIR 1958 SC 97 : 1958 Cri LJ 244 : 1958 SCR 618] , Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar [AIR 1960 SC 1113 : 1960 Cri LJ 1499 : (1961) 1 SCR 1] , Chandra Deo Singh v. Prokash ChandraBose [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] , Nirmaljit Singh Hoon v. State of W.B. [(1973) 3 SCC 753 : 1973 SCC (Cri) 521] ,Kewal Krishan v. Suraj Bhan [1980 Supp SCC 499 : 1981 SCC (Cri) 438] , Mohinder Singh v. Gulwant Singh [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] and Chief Enforcement Officer v. Videocon International Ltd. [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471]***

19. ***In Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639]*** *, it was held that where there was prima facie evidence, the Magistrate was bound to issue process and even though the person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by an appropriate forum at an appropriate stage. It was further held that the issue of process can be refused only when the Magistrate finds that the evidence led by the complainant is self-contradictory or intrinsically untrustworthy.*

20. In ***Kewal Krishan v. Suraj Bhan [1980 Supp SCC 499 : 1981 SCC (Cri) 438]*** *, this Court examined the scheme of Sections 200 to 204 and held: (SCC p. 503, para 10)*

"10. ... At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is 'sufficient ground for proceeding' against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges."

16. From the observations made in pronouncement(s) referred above as also the observations of the Hon'ble Apex Court in the case of **A.R. Antulay v. Ramdas Sriniwas Nayak (1984) 2 SCC 500**, relevant paras of which has been referred in para 6 of the judgment passed in the case of **Suby Antony (supra)**, this Court is of the view that the inquiry or the investigation, as the case may be,

indicated in Section 225 BNSS, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

17. Upon due consideration of the facts of the case, relevant statutory provisions and also the pronouncements related to the issues involved in the case, this court is of the view that impugned order dated 04.10.2024 is liable to be set aside. It is for the reasons that from the order in issue dated 04.10.2024 it is apparent that an opportunity of hearing was not provided to the accused by the Magistrate before passing the impugned order dated 04.10.2024, which ought to be in view of the aforesaid.

18. The instant application is accordingly **allowed**. The impugned order dated 04.10.2024 passed by learned Additional Civil Judge (S.D.)-1/Additional Chief Judicial Magistrate, Sultanpur in Criminal Case No.5524/2024, is hereby set aside. It is open for the Magistrate to proceed afresh as per law.

(2026) 2 ILRA 173
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.02.2026

BEFORE

THE HON'BLE RAJEEV BHARTI, J.

Application U/S 482 No. 5062 of 2016

Shiv Pratap @ Jokhu **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether permission under Section 155(2) Cr.P.C. for investigation of a non-cognizable case can be granted by the Magistrate on an application moved by the complainant or aggrieved person?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section - 155(2), 482 - Indian Penal Code, 1860 - Sections - 352, 504, 427: - Application u/s 482 Cr.P.C. – for quashing of charge sheet, summoning order as well as impugned order by which trial court granting permission under Section 155(2) Cr.P.C. – NCR - offences under Sections 352, 504, 427 IPC – investigation - charge sheet - cognizance taken - Trial initiated – applicant pleaded that permission under Section 155(2) Cr.P.C. could only be sought by police officer, hence proceedings vitiated – reliance placed on *Navin Chandra Pandey* and *Vijesh Pillai* – Court finds that Section 155(2) imposes restriction only on police, does not bar complainant from approaching Magistrate – Judicial supervision is the object - technicalities should not frustrate justice - later decision in *Brij Lal Bhar* preferred, Karnataka Rules not applicable in U.P., procedural technicalities should not frustrate justice – held, Magistrate may grant permission on application of complainant or aggrieved person, investigation valid – hence, application dismissed – interim order vacated. (Para – 10, 11, 12, 15, 16, 17)
Application Allowed. (E-11)

CASE LAW CITED

Navin Chandra Pandey v. State of U.P., 1995 All LJ 1688

Brij Lal Bhar v. State of U.P., 2006 (4) ALJ 731
Vijesh Pillai v. State of Karnataka, 2023 LiveLaw (Kar) 229
State of Bihar v. Kalika Kuer @ Kalika Singh, (2003) 5 SCC 448
Union of India v. Raghubir Singh, (1989) 2 SCC 754
Sakiri Vasu v. State of U.P., (2008) 2 SCC 409

LIST OF ACTS

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

LIST OF KEYWORDS

Application under Section 155(2) Cr.P.C. - Non-cognizable offence - Magistrate's permission - Judicial discipline - Technicality vs. justice – investigation – summon order – co-ordinate bench - Quashing proceedings - Section 482 Cr.P.C. – advance justice – not to frustrate legitimate prosecution – power to ensure proper investigation – statutory requirement – judicial mind – not to restrict access to justice – miscarriage of justice – jurisdictional illegality – interim order – vacated – dismissed.

CASE ARISING FROM

NCR No.30 of 2014, P.S. Sammanpur, District Ambedkar Nagar - Offences under Sections 352, 504, 427 IPC.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ranvijay Singh,
Counsel for Respondent(s): Shri S.P. Tripathi, Shri S.K. Pandey, AGA.

(Delivered by Hon'ble Rajeev Bharti, J.)

1. Heard Shri Ranvijay Singh, learned counsel for the applicant, Shri S.P. Tripathi, learned counsel for opposite party no.2, Shri S.K. Pandey, learned A.G.A. and perused the material available on record.

2. By means of the present application under Section 482 Cr.P.C. the applicant has prayed for quashing of order dated 28.03.2014 passed by the learned Chief Judicial Magistrate, Ambedkar Nagar granting permission under Section 155(2) Cr.P.C., charge sheet dated 10.06.2015 and summoning order dated 21.11.2015, arising out of N.C.R. No.30 of 2014, under Sections 352, 504 and 427 I.P.C., Police Station- Sammanpur, District- Ambedkar Nagar.

Factual Matrix of the case

3. An N.C.R. was lodged on 26.03.2014, thereafter the complainant moved an application before the learned Chief Judicial Magistrate seeking permission under Section 155(2) Cr.P.C. to investigate the matter. The learned Chief Judicial Magistrate allowed the application on 28.03.2014 pursuant thereto, investigation was conducted and charge sheet was submitted on which cognizance was taken and the applicant was summoned.

Submission made by learned counsel for the applicant

4. Shri Ranvijay Singh, learned counsel for the applicant submits that under Section 155(2) Cr.P.C., the permission for investigation could have been sought only by the police officer. Since

the application was moved by the complainant, the permission granted by the learned Chief Judicial Magistrate is illegal. Consequently, the entire investigation and subsequent proceedings are vitiated.

5. Reliance has been placed upon the case of **Navin Chandra Pandey Vs. State of U.P.** reported in **1995 All LJ 1688** wherein this Court has held as under.

"3. The material difference in between the cognizable and non-cognizable offence is that in the former case the police starts investigation without any order of a magistrate but in non-cognizable case the police can start investigation only after an order of the Magistrate is passed allowing him to do the investigation. So the responsibility lies with the police to obtain the order and not on the complainant."

6. Learned counsel for the applicant has also placed reliance upon the judgment of Karnataka High Court in the case of **Vijesh Pillai Vs. State of Karnataka** reported in **2023 LiveLaw (Kar) 229**, especially para nos.19 and 20 which read as under.

"19. Chapter V Rule 1 of Karnataka Criminal Rules of Practice, 1968 also deals with investigation of non-cognizable case. The said provision reads as follows:-

"INVESTIGATION AND PROSECUTION

**1. Report under Section 154.-(1) On receipt of the report of the Police Officer under Section 154 of the Code, the Magistrate shall make a note on the report of the date and time of the receipt thereof and initial the same. Before initialing, the Magistrate shall also endorse on the report whether the same has been received by the post or muddam.*

2. (1) When a Magistrate directs an investigation of a case under Sections 155(2), 156(3) or 202 of the Code, he shall specify in his order the rank and designation of the Police Officer or the Police Officers by whom the investigation shall be conducted."

20. Therefore, under Rule 1, the Magistrate shall endorse on the report whether the same has been received by post or muddam. Under Rule 2, Magistrate has to specify in his order the rank and designation of the Police Officer or the Police Officer by whom the investigation shall be conducted. Considering the mandatory requirement of Section 155(1) and (2) of Cr. P.C., and Rule 1 and 2 of Chapter V of the Karnataka Criminal Rules of Practice, this Court proceed to laid down the following guidelines for the benefit of the judicial Magistrate working in the State.

i) The Jurisdictional Magistrates shall stop hereafter making endorsement as 'permitted' on the police requisition itself Such an endorsement is not an order in the eyes of law and as mandated under Section 155(2) of Cr.P.C.

ii) When the requisition is submitted by the informant to the Jurisdictional Magistrate, he should make an endorsement on it as to how it was received, either by post or by Muddam and direct the office to place it before him with a separate order sheet. No order should be passed on the requisition itself. The said order sheet should be continued for further proceedings in the case.

iii) When the requisition is submitted to the Jurisdictional Magistrate, he has to first examine whether the SHO of the police station has referred the informant to him with such requisition.

iv) The Jurisdictional Magistrate should examine the contents of the requisition with his/her judicious mind and record finding as to whether it is a fit case to be investigated, if the Magistrate finds that it is not a fit case to investigate, he/she shall reject the prayer made in the requisition. Only after his/her subjective satisfaction that there is a ground to permit the police officer to take up the investigation, he/she shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.

v) In case the Magistrate passes the orders permitting the investigation, he/she shall specify the rank and designation of the Police Officer who has to investigate the case, who shall be other than informant or the complainant."

Submissions made by learned counsel for opposite party no.2 as well as learned A.G.A.

7. Per contra, learned counsel for opposite party no.2 and learned A.G.A. placed reliance on the judgment of **Brij Lal Bhar Vs. State of U.P. through Principal Secretary** reported in **2006 (4) ALJ 731** wherein this Court has held as under.

"6. Now I deal with issue no.2. According to the provision of Section 155 Cr.P.C. only officer-in-charge or any police officer of a police station concerned can move an application to obtain the order for investigation from the magistrate concerned of a non-cognizable case and there is no legal bar for moving such application by the first informant, Section 155(2) Cr. P.C. also envisages that no police officer shall investigate a non-cognizable case without the 'order' of magistrate, here the word 'order' as mentioned above, it is relevant to deal with issue no. 2, in the wording of the provision of Section 155(2) the word 'without order' is used. Therefore, the order may be passed by the magistrate concerned on the application of police officer concerned or on the application of the first informant also. According to the provisions of Section 154 Cr. P.C. also the case is registered on the information given to the officer in-charge of a police station, relating to the commission of a cognizable offence. In default, the first informant may move an application under Section 156(3) for passing the 'order' for doing investigation, it provides a right to the first informant to move an application on this analogy the first informant is also a competent person to move an application under Section 155(2) Cr.P.C."

Analysis

8. After hearing the submissions advanced by learned counsel for the parties, the following issue for determination has been made:-

(i) Whether permission under Section 155 (2) Cr.P.C. for investigation of a non-cognizable case can be granted by the Magistrate on an application moved by the complainant or aggrieved person?

9. After perusal of the above case laws, this Court perused the statutory provision of Section 155 (2) Cr.P.C., which is hereby reproduced for a ready reference.

"155. Information as to non-cognizable cases and investigation of such cases. *- (1) When information is given to an officer in charge of a police station of the commission within the*

limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

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

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

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

10. Section 155(2) Cr.P.C. provides that "no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial". The provision restricts the power of investigation, but it does not specify the person who may approach the Magistrate. In **Navin Chandra Pandey (supra)**, it was held that police cannot investigate a non-cognizable case without Magistrate order. Responsibility lies with the police to obtain such permission, however, the judgment does not lay down that the complainant is barred from moving application before the Magistrate. In **Brij Lal Bhar (supra)**, the later Co-ordinate bench held that there is no legal bar for the first informant to move an application under Section 155(2) Cr.P.C. The Magistrate may pass the order on the application of police or the informant, the provision only requires an order of a Magistrate and not a specific applicant.

11. Both the aforesaid decisions are by Co-ordinate Benches. It is a settled principle that a Bench of equal strength is bound by decision of a Co-ordinate Bench. However, in case of divergence, the later decision should ordinarily be followed, unless the matter is referred to a larger bench. Reference may be made to a judgment of the Hon'ble Supreme Court in the case of **State of Bihar Vs. Kalika Kuer @Kalika Singh & Ors.** reported in **(2003) 5 SCC 448 and Union of India & Another Vs. Raghubir Singh (Dead) By LRs. Etc.** reported in **(1989) 2 SCC 754**, the Hon'ble Supreme Court has emphasized that certainty and consistency are essential for judicial discipline. Since the later decision in **Brij Lal Bhar (supra)** examines the statutory scheme in detail and clarifies the legal position, this Court respectfully follows the same.

12. The reliance placed upon by the learned counsel for the applicant in the case of **Vijesh Pillai (supra)** is misplaced, as the said rules are based on Karnataka Criminal Rules of Practice, 1968, which have no application in the State of Uttar Pradesh. In the State of Uttar Pradesh, the requirement under Section 155(2) Cr.P.C. is only that Magistrate should apply his judicial mind and pass an order permitting investigation. There is no statutory requirement to follow the procedural formality as provided under Karnataka Criminal Rules of Practice, 1968. There is no specific rules in the State of Uttar Pradesh equivalent to Karnataka Criminal Rules of Practice, 1968.

13. The Hon'ble Supreme Court has repeatedly held that procedural provisions relating to investigation should be interpreted to advance justice and not to frustrate legitimate prosecution.

14. A reference may be made in the case of **Sakiri Vasu Vs. State of U.P. & others**, reported in **2008 (2) SCC 409**, wherein it has been held by Hon'ble the Supreme Court that *the Magistrate has vide power to ensure proper investigation*. This decision indicates that procedural technicalities should not invalidate proceedings unless jurisdictional illegality or miscarriage of justice is demonstrated.

15. Section 155(2) Cr.P.C. imposes a restriction only on the police officer and it does not prohibit the complainant from approaching the Magistrate. The object of the provision of Section 155(2) Cr.P.C. is to ensure judicial supervision over investigation, not to restrict access to justice. Once the Magistrate has applied his judicial mind and granted permission, the investigation conducted pursuant thereto cannot be held illegal merely because the application was moved by the complainant.

16. Interference under Section 482 Cr.P.C. is warranted only where proceedings are without jurisdiction or there is an abuse of process or continuation would result in miscarriage of justice. No such circumstances is made out in the present case. The issue raised in the present case is purely technical and does not affect the jurisdiction of the Magistrate.

17. In view of the law laid down in **Brij Lal Bhar (supra)** and the settled principle of judicial discipline, this Court holds that permission under Section 155(2) Cr.P.C. may be granted by the Magistrate on an application moved by the complainant or any aggrieved person, and the investigation conducted pursuant thereto is not vitiated.

18. In view of the foregoing reasons, no ground for interference in this application under Section 482 Cr.P.C. is made out. The application u/s 482 Cr.P.C. is hereby **dismissed**. Interim order, if any, stands vacated.

(2026) 2 ILRA 178
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.02.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS No. 15439 of 2025

Neeraj Kumar & Anr. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the charge sheet, cognizance order, and criminal proceedings against the applicants under IPC and IT Act offences should be quashed under Section 528 BNSS, considering allegations of repeated rape, blackmail, and transmission of obscene material ?

HEADNOTES

Criminal Law – Code of Criminal Procedure (CrPC), 1973 – Section 161 - Bharatiya Nyaya Suraksha Sanhita (BNSS), 2023 – Sections 528, 180, 183 - Indian Penal Code (IPC), 1860 – Sections 376(2)(n), 323, 354(d), 506 - Information Technology (Amendment) Act, 2008 – Section 67: - Application u/s 528 BNSS – for quashing the impugned charge sheet, cognizance order as well as the entire criminal proceedings – FIR lodged belatedly - alleging offences under Sections 376(2)(n), 323, 354(d), 506 IPC and Section 67 IT Act – victim's statements recorded - husband admitted receipt but deleted videos - father denied receipt - no CCTV or recovery – chargesheet - cognizance order - Trial initiated – applicants pleaded delay, contradictions, absence of evidence, consensual relations, IT Act not attracted - prolonged sexual relationship without timely complaint indicates consent – prosecution argued delay explained by threats, consent vitiated by fear of viral videos – Court finds that, victim is consenting party - prolonged association, absence of corroboration, unseen video, intimate chats indicate consent - whose consent has neither been obtained for the fear of death of her children nor on blackmailing her with indecent video and photographs – held - improbable prolonged sexual relations without voluntary consent and no evidence against applicant no. 2 – therefore, proceedings an abuse of process of law – consequently, charge sheet, cognizance order, and the entire case quashed – application allowed.

(Para – 16, 17, 21, 22, 23, 25)

Application Allowed. (E-11)

CASE LAW CITED

Tomaso Bruno v. State of U.P. (2015) 7 SCC 178
Hasmukhlal D. Vora v. State of T.N. (2022) 15 SCC 164
Chanchalpati Das v. State of W.B. (2023) 20 SCC 120
Pankaj Singh v. State of Haryana [2024(3) JIC 124 (SC)]
Shiv Pratap Singh Rana v. State of M.P. [2024(128) ACC 966]
Deepak v. State of Haryana (2015) 4 SCC 762
Manendra Prasad Tiwari v. Amit Kumar Tiwari (2022) 20 SCC 757
Raghav Kumar v. State of U.P. (Allahabad HC, 2019)
Prashant v. State (NCT of Delhi) (2025) 5 SCC 764
Rajnish Singh @ Soni v. State of U.P. (2025) 4 SCC 197

LIST OF ACTS

Bharatiya Nyaya Suraksha Sanhita (BNSS), 2023 – Indian Penal Code (IPC), 1860 – Information Technology (Amendment) Act, 2008 - Code of Criminal Procedure (CrPC), 1973.

LIST OF KEYWORDS

Quashing of proceedings, consent, delay in FIR, blackmail, obscene videos, PCS aspirant, WhatsApp chats, prolonged sexual relationship, evidentiary gaps, coercion vs. consent.

CASE ARISING FROM

Criminal Case No. 1686/2025 (*State vs. Neeraj Kumar & Another*) - Case Crime No. 883/2024, P.S. Izzatnagar, District Bareilly.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amit Kumar Srivastava.
Counsel for Respondent(s): Shri Anurag Kumar Pandey, Shri Chandra Badan, A.G.A.

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

1. The present application under Section 528 BNSS has been moved by the accused-applicants to quash the Charge Sheet No. 70/2025 dated 12.02.2025, the cognizance taking order dated 28.02.2025 and the entire proceedings of Criminal Case No. 1686/2025 (State Vs. Neeraj Kumar and another) arising out of Case Crime No. 883/2024, for offence under Section 376(2)(n), 323 &

506 IPC and Section 67 of Information Technology (Amendment) Act, Police Station- Izzatnagar, District- Bareilly against applicant no. 1 and Sections 354(d) & 506 IPC and Section 67 of Information Technology (Amendment) Act against applicant no. 2.

2. Heard Shri Amit Kumar Srivastava, learned counsel for applicants, Shri Anurag Kumar Pandey, learned counsel for opposite party no. 2 and Shri Chandra Badan, learned A.G.A. for State.

3. The first information report has been lodged by opposite party no. 2 on 01.12.2024 at 20:37 hours against the accused applicants alleging therein that opposite party no. 2 (victim) is a married woman whose husband is in Army. During her preparation of PCS (Provincial Civil Service), she became friend with one Mamta, who has introduced the victim with her brother accused applicant no. 1 Neeraj Kumar. On 07.08.2022 accused applicant no. 1 has called the victim at Rajrani Hotel, Pilibhit bypass road Bareilly to attend his birthday celebration, on that date accused has forcefully raped her and recorded her indecent videos and photographs. The victim was then threatened that he will make the video viral. On threatening of making the video viral, the accused has again called the victim at Rajrani Hotel on 14.08.2022, thereafter on 27.10.2022 and committed rape on her. She was again called to hotel Radisson Bareilly on 18.11.2023, where she was again subjected to rape on being blackmailed. On 19.05.2024, the accused has called the victim on her mobile phone and threatened to make her video viral. Thereafter, he has transferred those video and photo to his cousin brother, applicant no. 2, who has also threatened her to make her video viral and asked her for sexual favours, but she has refused the demand, on which the accused applicant no. 2 has sent the videos and photographs to the family members of victim and made her life became miserable, she has also thought of ending her life.

4. In the statement of victim recorded under Section 180 BNSS, she has stated that while preparing for PCS examination, she came in contact with one Mamta, who has intimated her that her brother Neeraj is also preparing for PCS examination and she could take his help. The victim has started visiting the house of Neeraj for taking notes. After sometime Neeraj has called the victim at Rajrani Hotel to celebrate his birthday, where he has forcefully entered into physical relation with her and recorded her videos. Subsequently, he has started blackmailing her and called her to hotel and committed rape on her. Further reveals that he has transferred the videos to his cousin brother Shobhit, who has also started blackmailing her and has passed all the videos to her family members.

5. The victim in her statement under Section 183 BNSS has further disclosed that she came in contact with Mamta through facebook in the year 2022, while she was preparing for her PCS examination. Mamta has intimated her that her brother Neeraj got selected in PCS and could help in getting her examination cracked. The two started visiting each other's house and sometime she also meet Neeraj outside but only for the purpose of taking guidance. She further stated that once Neeraj has called her at Rajrani Hotel on his birthday. She entered the room of the hotel. She was tired and drank the water kept in the hotel room, within no time she felt dizziness, on which Neeraj entered the room and has forcefully raped her. He has also recorded videos of committing rape, he has not shown it to her but has been consistently threatening that the video would be made viral. The applicant no. 1 also beat her and she was repeatedly subjected to rape on threatening of getting the videos viral. Whenever she refused to enter into sexual intercourse, the accused used to threaten

that he will kill her children and kidnap them, due to which she could not intimate the same to her husband. Subsequently, accused Neeraj has transferred the videos to his brother Shobhit, who has also started blackmailing her. She further submits that, last time accused Neeraj has entered into sexual intercourse with her at her residence. The cousin brother of Neeraj has also blackmailed her and tried to enter into physical relations, but she has refused. On which both the applicants have transferred the videos and photographs to her husband and family members. She further states that she has two sons of 13 & 12 years of age. Further submits that on 18.11.2023 she was called at hotel Radisson and was not only beaten up but also raped.

6. The statement of husband of victim recorded under Section 161 CrPC is considered on the point, what the victim has stated about the transfer of video. He on questioning about the video received to his mobile phone, has stated that he has deleted the videos and photographs, which were sent by Neeraj and Shobhit, hence, presently not available with him.

7. Raja Ram the father of victim has stated in his statement under Section 161 CrPC that he has not received any videos or photographs. He further submits that his elder daughter (victim) was married in the year 2006, having two sons.

8. The statement of Mamta Rani, whose name is reflected in the FIR, has stated in her statement under Section 161 CrPC that she did not know the victim but received a friend request on 03.04.2021 on her facebook account. For about a year, she did not accept the friend request but finally has accepted the same on 03.04.2022 and started chatting. With no time there was friendship between the two and frequent visits between the families. She states that she is already married, having two children and working in primary school at Bareilly, since 2016.

9. She further states that within no time she became apprehensive of the behaviour of victim and maintained distance with her, but she has no knowledge about the relations between Neeraj and Suman (victim). She submits that accused Neeraj is her real brother and working as Child Development Program Officer under the Government of Uttar Pradesh, Director of ICDS.

10. Shri Adesh Kumar, the Manager of hotel Rajrani has given his statement under Section 161 CrPC that the hotel registers of the year 2022-23 are with CO-III, as such, he could not provide any report about the stay of visitors during that period.

11. Jakir Ali, the Manger of hotel Radisson has stated that on 18.11.2023 one Room No. 506 was booked through makemytrip.com app by Neeraj Kumar for two persons. On 18.11.2023 at about 15:12 hrs. there was entry in the hotel and on 19.11.2023 at about 9:39 hrs. exit from the hotel. He has provided the IDs and bill of the visitors but stated that the CCTV camera records is kept only for 15 days, which is not available.

12. Learned counsel for applicants submits that the FIR is grossly delayed. The informant is a married lady having two children, who has some oblique motive to fulfil. The record shows that the victim herself has sent friend request to the sister of accused through facebook, came closer to her and thereafter made distance with Mamta and came closer to accused applicant Neeraj. It is the statement of victim that initially the accused applicant Neeraj and victim used to meet at their residence and sometime outside. The victim has changed her stand in the FIR and in her statement

that on the date of birthday celebration of accused applicant Neeraj, she was called at Rajrani Hotel. At one place she has stated that she was being forcefully raped and at the other, she states that she has taken the water kept in hotel room, which has a dizziness effect on her and she was raped. She herself has stated that her video of sexual intercourse was shot by the accused Neeraj but he has not showed it to her but has blackmailed her through those videos and raped her at hotels. Further submits that there is no material that the videos and photographs of victim were transferred to her husband and family members because the husband of victim has stated that he received videos but deleted the same and father of the victim states that he never received any videos. Thus, submits that the basis of blackmail does not exist and the victim was consistently being raped, which is only considered to be the consensual and consenting sexual relations between the accused applicant no. 1 and the victim. Further submits that invoked provision of Information Technology Act is not attracted against the applicants. In substantiation of arguments, learned counsel has relied on the judgments in **Tomaso Bruno and another Vs. State of Uttar Pradesh** reported in **(2015) 7 SCC 178 (Paragraph No. 21 & 27)** , on the point of non availability of best evidence. On the point of delay of lodging the FIR the applicant relied on the judgments in **Hasmukhlal D. Vora and another Vs. State of Tamil Nadu** reported in **(2022) 15 SCC 164 (Paragraph No. 23 & 24) and Chanchalpati Das Vs. State of West Bengal and another** reported in (2023) 20 SCC 120 (Paragraph No. 21), on the point of quashing of charge sheet relied on the judgments in **Pankaj Singh Vs. State of Haryana** reported in **[(2024(3) JIC 124 (SC)] (Paragraph No. 11 & 15) and Shiv Pratap Singh Rana Vs. State of M.P. and another reported in [2024(128) ACC 966] (Paragraph No. 24 & 25)** . Further submits that the mobile chats annexed with the application shows that it is the victim, who has pressurized the accused applicant no. 1 to enter into relations. The relevant paragraphs of each citation are quoted underneath:-

In Tomaso Bruno (supra):-

21. To invoke Section 106 of the Evidence Act, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. PW-1 Ram Singh-Hotel Manager stated that CCTV cameras are installed in the boundaries, near the reception, in the kitchen, in the restaurant and all three floors. Since CCTV cameras were installed in the prominent places, CCTV footage would have been best evidence to prove whether the accused remained inside the room and whether or not they have gone out. CCTV footage is a strong piece of evidence which would have indicated whether the accused remained inside the hotel and whether they were responsible for the commission of a crime. It would have also shown whether or not the accused had gone out of the hotel. CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence which is missing. Omission to produce CCTV footage, in our view, which is the best evidence, raises serious doubts about the prosecution case.

……..

27. As per Section 114 (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of Negotiable Instruments Act, where the court has no option but to draw statutory presumption under Section 114 of the Evidence Act. Under Section 114 of the

Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114(g) of Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.

In Hasmukhlal D. Vora (supra):-

23. In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.

24. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

In Chanchalpati Das (supra) :-

"21. As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D. Vora v. State of T.N. that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint."

In Pankaj Singh (supra) :-

"11. In this case, no charge was framed against the appellant- accused for the offence punishable under clause (f) of sub-Section(2) of Section 376 of the IPC. A perusal of clause (f) of sub- Section (2) of Section 376 shows that the punishment for the offence covered by sub-Section (2) of Section 376 is more stringent than the punishment for the offence under sub-Section (1) of Section 376. In the absence of the charge framed at any stage against the appellant-accused for the offence punishable under clause (f) of sub-Section (2) of Section 376 of the IPC, now, at this stage, neither the prosecution nor the victim can contend that clause (f) of sub-Section (2) of Section 376 of the IPC was applicable. Another important aspect which goes to the root of the matter is that in his examination under Section 313 of the Cr.PC, the case that he was in a position of trust to the victim, was not put to him. In any event, the contention of the learned counsel appearing for the Prosecutrix that the appellant-accused was a person in a position of trust as far as the Prosecutrix is concerned is completely erroneous. There was no fiduciary relationship between the appellant-accused and the Prosecutrix, which will be apparent when we examine the Prosecutrix's evidence. Therefore, on the face of it, the presumption under Section 114A of the Evidence Act will not apply, and, therefore, the burden will be on the prosecution to prove that the sexual intercourse was without the consent of the Prosecutrix. We may also add here that in our jurisprudence unless there is a specific legislative provision which puts a negative burden on the accused, there is no burden on the accused to lead evidence for proving his innocence. The accused may have some burden to discharge in case of a statutory prescription, such as Section 114A of the Evidence Act. In this

case, the burden was on the prosecution to lead evidence to prove the guilt of the accused beyond a reasonable doubt.

……..

15.Thus, the evidence of the Prosecutrix and the other prosecution witnesses shows that more than one month before the alleged incident, the appellant-accused and the Prosecutrix exchanged frequent WhatsApp messages. Secondly, the appellant- accused met the Prosecutrix when she was travelling on the way to Hansi. The Prosecutrix had informed the appellant about her visit to Hansi. Thirdly, while coming out of the hotel room, the Prosecutrix did not raise any protests, did not make any hue and cry, or did not complain. She signed the hotel register while leaving the hotel with the appellant. Lastly, while entering the Hotel, the appellant-accused and the Prosecutrix posed as husband and wife. All this has to be appreciated in light of the fact that we are dealing with a case of a well-educated victim who was married and a graduate. Her age at the time of the incident was about 28 years.″

In Shiv Pratap Singh Rana :-

"24. Learned counsel for respondents had relied heavily on the expression "misconception of fact". However, according to us, there is no misconception of fact here. Right from the inception, it is the case of the prosecution that while the appellant was insisting on having a relationship with the prosecutrix, the later had turned down the same on the ground that appellant was the friend of her younger brother and a distant relative of her jijaji. That apart, according to the prosecutrix, the appellant was younger to her. Nonetheless, the prosecutrix had accompanied the appellant to a temple, where she had voluntarily taken bath under a waterfall. Her allegation that appellant had surreptitiously taken photographs of her while she was bathing and later on changing clothes and was blackmailing her with such photographs remain unfounded in the absence of seizure of such photographs or the mobile phone on which such photographs were taken by the appellant. If, indeed, she was under some kind of threat from the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra alongwith the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged. As already pointed out above, neither the affidavit nor stamp papers have been recovered or seized by the police; so also the jewellery. The alleged cheque of the prosecutrix's mother given to the appellant or the bank statement to indicate transfer of such money have not been gathered by the police. In the absence of such materials, the entire sub-stratum of the prosecutrix's case collapses. Thus, there is hardly any possibility of conviction of the appellant. As a matter of fact, it is not even a case which can stand trial. It appears to be a case of a consensual relationship which had gone sour leading to lodging of FIR. In the circumstances, Court is of the view that compelling the

appellant to face the criminal trial on these materials would be nothing but an abuse of the process of the Court, result of the trial being a foregone conclusion.

25. From the factual matrix of the case, the following relevant features can be culled out:

(i) the relationship between the appellant and the prosecutrix was of a consensual nature;

(ii) the parties were in a relationship for a period of almost two years; and

(iii) though there were talks between the parties and their family members regarding marriage, the same did not fructify leading to lodging of FIR.″

13. Learned counsel for opposite party no. 2 and learned A.G.A. for State have stated that the delay in lodging the FIR is fully explained as there were threats of life on the victim, moreover, the victim was merely saving her family and family life being a married woman. On the point of delay in lodging the FIR and its explanation the learned counsel has relied on the judgment in **Deepak Vs. State of Haryana** reported in **(2015) 4 SCC 762 (Paragraph No. 15)** and **Manendra Prasad Tiwari Vs. Amit Kumar Tiwari and another** reported in **(2022) 20 SCC 757 (Paragraph Nos. 21, 22 and 23)**. The relevant paragraphs of each citation are quoted underneath:-

In Deepak (supra):-

15. The courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to got to the police station and to make a complaint above the incident, which concerned the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool though and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by the victim or by any members of her family. Indeed, this has been the consistent view of this Court as has been held in State of Punjab v. Gurmit Singh.

In Manendra Prasad Tiwari (supra):-

"21. At the cost of repetition, we state that the impugned order of the High Court is utterly incomprehensible. We have yet to come across a case where the High Court has thought fit to discharge an accused charged with the offence of rape on the ground of delay in the registration of the FIR.

22. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person.

23. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the

quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."

14. Further submits that accused applicant no. 1 is a public servant and the opposite party-victim is aspirants of PCS examination. She was taking guidance from the accused applicant no. 1 but the applicant has committed rape on the victim and shot indecent videos and photographs to blackmail her. The several act of rape on victim was due to blackmailing her to viral the video. Further submits that the accused no. 1 has after exploiting the victim through indecent videos and photographs has transferred those obscene videos to his cousin brother, who has started blackmailing the victim. It is then that the victim has protested and lodged the FIR. Further submits that there is no consent of victim for the sexual intercourse, on the contrary, she was subjected to continuous fear of injury and her consent was subjected to that fear. Hence, it cannot be considered that the accused applicant entered into sexual intercourse with the victim on her consent, which has been obtained on fear of getting the videos viral. On this point of argument, learned counsel has relied on the judgment of co-ordinate Bench of this Court in **Raghav Kumar Vs. State of U.P. and another** passed in **Application U/S 482 No. 9501 of 2019 (Paragraph Nos. 20, 22 & 23)**. The relevant paragraphs are quoted underneath:-

*"20. In **Pramod Suryabhan Pawar (supra)**, while dealing with the consent for the offence under Sections 375, 376 I.P.C. the Apex Court has observed as under:*

"18. To summarise the legal position that emerges from the above cases, the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

22. Thus, in the light of the judgements of the aforesaid position of law, if the facts of the instant case are examined, we will find that though the applicant and the opposite party no.2 were friends, the opposite party no.2 had never agreed for any relationship with the applicant other than the friendship and that is apparent from the fact that initially the opposite party no.2 has rejected the proposal of marriage with the applicant. However, she was continuously in talking terms with the applicant. As per the allegations in the F.I.R., which are supported in her 161 Cr.P.C. statement as well as in her 164 Cr.P.C. statement, the applicant herein has taken opposite party no.2 to his house on the pretext of illness and hospitalization of his mother where she has been given tea which was intoxicated and after consuming the said tea the opposite party no.2 became unconscious and she was sexually assaulted without her consent and nude pictures of the opposite party no.2 were taken, thereafter, she was blackmailed to give consent to the relationship. Therefore, for the initial incident as alleged in the F.I.R. there was no consent on the part of the

opposite party no.2 herein. Therefore, the offence of rape is prima facie constituted against the applicant, however, the subsequent relationship of the applicant with the opposite party no.2 was initially under threat perception created by the applicant and his family members and subsequently a promise of marriage was also stated to have been given by the applicant, which was accepted by the opposite party no.2 under the threat perceptions created by the applicant and his family members. However subsequently, they are stated to have been in consensual relationship for sufficiently a long period of time and applicant and his family member have refused to marry the opposite party no.2, the instant F.I.R. has been lodged and the fact that they were in continuous physical relationship is sufficiently established during the investigation and even by the photographs annexed as Annexure '21' in the instant application, which has also been found established during the investigation from the examination of the hotel staff where they used to stay.

CONCLUSION

23. Therefore, in the considered opinion of this Court since the initial relationship was established by the applicant with an element of cheating, threat etc., against the will of the opposite party no.2, prima facie an offence under Section 376 I.P.C. is made out against the applicant. Though, the subsequent relationship, which appears to be a consensual relationship under the promise of marriage, however, such consent is also stated to be given by the opposite party no.2 initially under the threat perception created by the applicant herein. Therefore, in the considered opinion of this Court the judgements relied upon by the applicant in ***Shivashankar (supra), Pramod Suryabhan Pawar (supra)*** *and* ***Jiyaullah (supra)*** *are of no help to the applicant, in view of the initial act committed against the will of the opposite party no.2. Therefore, this Court does not find any good reason to quash the proceedings as prayed by the applicant, in view thereof, the instant application is accordingly* ***dismissed****.*

15. This Court has taken into consideration, rival submissions made by the parties and perused the record.

16. The point of concern before this Court, on the point of quashing of charge sheet, cognizance taking order and the proceeding of the criminal case is whether there is prima facie case of repeated rape of victim by accused applicant no. 1 and disrobing the modesty of victim by accused applicant no. 2 which required to be tried or the trial of the case would lead to prejudice cause to the applicants and would be an abuse of process of law.

17. If the contents of the FIR, statements under Sections 180 & 183 BNSS of the victim is prima facie taken into consideration, following points have been culled out from the bare of perusal on the same:

17.1 The victim is a married woman having children, who was married to an army man in the year 2006 and her children are aged about 13 & 12 years;

17.2 The victim was preparing for Uttar Pradesh Public Service Commission examination in the year 2022, due to which she started meeting accused no. 1 Neeraj Kumar for guidance, who has already cleared the examination. There is nothing on record to show that the victim is U.P.

Public Service Commission exam aspirant and when she has filled the form and which attempt she is going to take. This is an important fact not disclosed, but necessary because victim is a married woman and meeting with accused only for the purpose of qualifying the examination and prosecution case starts with this fact;

17.3 The victim has entered into friendship with Mamta, sister of accused applicant no. 1 through facebook and started the intimacy with her and met the applicant, though Mamta was already married and the applicant , being her brother was residing at his parental home;

17.4 The victim started meeting accused applicant no. 1 in his house as well as outside;

17.5 On 07.08.2022 accused applicant Neeraj Kumar has called the victim at Rajrani Hotel to celebrate his birthday. In the FIR, it is stated that the accused applicant has forcefully raped her and taken out her indecent videos and photographs, whereas, in her statement under Section 183 BNSS, she has stated that she entered the hotel room, she was tired and took the water kept in the room and after taking water she felt dizziness, then the accused applicant no. 1 had entered the room and raped her. She was not shown the video shot by the accused applicant no. 1. This shows that the victim was not having specific knowledge about the video shot by the accused applicant no. 1 but remain apprehensive of getting that video viral;

17.6 It is on the basis of this unseen video that the victim was consistently raped by accused applicant no. 1 at different hotels on 14.08.2022, 27.10.2022 and 18.11.2023 on the threat perception of making that video viral;

17.7 The said video, which was shot on 07.08.2022, was then transferred to accused applicant no. 2 sometime before 19.05.2025 and on 19.05.2024 accused applicant no. 2 has called the victim on her mobile and threatened to make the video viral, or she may agree to sexual favour, which she has refused;

17.8 It is thereafter that the video has been sent to the family members and husband of victim. When this video was sent to the husband or the family member and which of the family members is not disclosed either in the FIR or in the statement of victim. The father of victim has refused to have received any such video, whereas the husband of victim has stated that he received the video but deleted the same, without disclosing that when he received the video;

17.9 Despite the video sent to the family members and husband of victim, the FIR was lodged with delay on 01.12.2024.

18. The contents of FIR and the statements of victim is being considered in the preceding paragraphs. If the facts alleged is considered to be true, the test is whether it can stand trial ? It is an admitted fact that the victim is a married woman having two children. The rape for the first time was allegedly committed by the accused on 07.08.2022 when the victim was called to celebrate birthday in a hotel, whereby victim herself has took water kept in the hotel room and stated that she felt dizziness and was subjected to rape. The victim is an educated married lady and when subjected to rape, why she has not reported the rape, soon thereafter or intimated to her husband.

Subsequent fact is that she was subjected to rape on specific dates in hotel three times in the year 2022 and once in the month of November 2023. There was ample time to report the incident, but she was subjected to blackmail for the video or photo, which she has not seen.

19. The sexual intercourse was consented or forceful sexual act is to be considered in the light of other alleged facts stated by the victim herself. She has stated specific dates when the accused applicant no. 1 has called the victim to the hotel and she under fear of getting her video viral always admit to the notice of applicant no. 1, without ensuring that the accused applicant is having any video or not. The victim herself has stated that she has not seen the video on 07.08.2022. This is hard to believe that a married woman was consistently subject to sexual intercourse at the hotel under the fear that her video be made viral by the accused applicant no. 1, who himself is a public servant. Hon'ble the Supreme Court in **Prashant Vs. State (NCT of Delhi)** reported in **(2025) 5 SCC 764**, while considering the sexual intercourse between the parties for a long period as forceful sexual act, found that it is inconceivable that the parties could maintain a prolonged physical relations in absence of voluntary consent. The relevant paragraph nos. 17 & 18 are reiterated underneath:-

"17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself."

20. In the case of **Rajnish Singh @ Soni Vs. State of U.P. and another** reported in **(2025) 4 SCC 197**, Hon'ble the Supreme Court has again taken to consideration the sexual act between the parties, who are highly qualified, to be under any forceful act and consider that where the complainant kept quite about the sexual abuse meted out her for a prolonged period shall only be considered as consenting.

21. In the present case the victim is a married woman who has stated to be pursuing the Provincial Civil Services examination and to achieve success in the competitive exams she came in contact with applicant no. 1, but there is nothing on record to show that she is really an aspirant of competitive exams. The victim herself has stated that she met applicant no. 1 at his residence and even outside. She came to attend the birthday of accused applicant no. 1 at hotel and subsequently she under duress of getting the video viral, which she has never seen, succumbed to the alleged pressure. The record is silent about the transfer of any indecent video or photographs of victim either to her husband or to family members. There is no CCTV footage of hotel. All these facts

shows that the victim is a consenting party, whose consent has neither been obtained for the fear of death of her children nor on blackmailing her with indecent video and photographs.

22. The accused applicant no. 2 has also been roped in this case. There is no evidence even against the accused applicant no. 2 that he has ever transferred any video or photo of victim or used it for the purpose of blackmailing the victim.

23. Before parting with, it would be appropriate to mention that the accused applicant has annexed the whatsapp chatting between the accused applicant no. 1 and victim and mentioned it in paragraph 17 of the application, which is replied in paragraph 10 of the counter affidavit in a way that chatting is frequent but only for the purpose of guidance. These chats on the face of it reveals intimate communications other than guidance for study.

24. The application moved under Section 528 BNSS has merit and is **allowed**.

25. Consequently, the Charge Sheet No. 70/2025 dated 12.02.2025, the cognizance taking order dated 28.02.2025 and the entire proceedings of Criminal Case No. 1686/2025 (State Vs. Neeraj and another) arising out of Case Crime No. 883/2024, for offence under Section 376(2)(n), 323 & 506 IPC and Section 67 of Information Technology (Amendment) Act, Police Station- Izzatnagar, District- Bareilly against applicant no. 1 and Sections 354(d) & 506 IPC and Section 67 of Information Technology (Amendment) Act against applicant no. 2, are hereby **quashed**.

(2026) 2 ILRA 190
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.02.2026

BEFORE

THE HON'BLE SATYA VEER SINGH, J.

Application U/S 528 BNSS No. 50246 of 2025

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

ISSUE FOR CONSIDERATION

Whether the impugned order rejecting the applicant's request for further opportunity to produce defence evidence (like handwriting expert report) in a cheque dishonour case under Section 138 NI Act should be quashed under Section 528 BNSS, 2023?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Section 528 - Negotiable Instruments Act, 1881 – Sections 138, 143, 144, 145 - Constitution of India, 1950 – Article 21 - Code of Criminal Procedure, 1973 - Sections 260, 265 : - Application under Section 528 BNSS, 2023 – filed by accused – against judgment and order of Judicial Magistrate as well as seeking quashing of entire proceedings under NI Act, - complaint filed in 2013 regarding cheque dishonour – statement of accused recorded, evidence and cross-examination concluded – defence sought further opportunity to produce

handwriting expert report but failed despite repeated chances – Application filed by applicant-accuse for further opportunity to provide to produce defence evidence – trial court rejected the application – court finds that, proceeding in question under the NI Act are summary proceedings - and Supreme Court directions for expeditious disposal – further, accused had sufficient opportunities, but delayed proceedings for over 13 years – court held that, justice delayed is justice denied and right to speedy trial under Article 21 violated by protracted pendency – thus, no illegality in trial court's order as more than sufficient opportunities of defence were provided by the trial court and therefore, prayer for quashing the proceedings is refused - application dismissed with direction for expedite disposal of trial. (Para – 15, 17, 19, 20, 21)
Application Disposed of. (E-11)

CASE LAW CITED

Damodar S. Prabhu vs. Sayed Babalal H. (2010) 5 SCC 663
Indian Bank Association vs. Union of India (2014) 5 SCC 590
Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta (2018) 1 SCC 560
Makwana Mangaldas Tulsidas vs. State of Gujarat (2020) 4 SCC 695
In Re: Expeditious Trial of Cases Under Section 138 NI Act (Suo Motu Writ Petition (Crl.) No. 2 of 2020; (2021) 16 SCC 116)
Sanjabij Tari vs. Kishore S. Borcar & Anr. (Criminal Appeal No. 1755 of 2010, decided 25.09.2025)

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Negotiable Instruments Act, 1881 – Constitution of India, 1950 – Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Summary trial - Cheque dishonour - Defence evidence - sample signature - Handwriting expert report - examination-in-chief and cross-examination - Speedy trial Justice delayed is justice denied - Abuse of process - *In diem vivere in lege sunt detestabilis* - stalling tactics in legal proceedings are abhorrent to justice - *Defer no time; delays have dangerous ends* - Expeditious disposal.

CASE ARISING FROM

Misc. Case No. 3817 of 2024 (*Anand Kumar vs. Brijesh Kumar*) under Section 138 NI Act, pending before Judicial Magistrate, Court No. 22, Azamgarh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Raj Nath Bhakta.
Counsel for Respondent(s): Shri Subhendra Singh and Mr. B.P. Pandey, A.G.A.

(Delivered by Hon'ble Satya Veer Singh, J.)

1. Heard Mr Raj Nath Bhakta, learned counsel for the applicant, Mr. Subhendra Singh along with Mr B.P. Pandey, learned A.G.A. for the State and perused the record.

2. The present application under Section 528 BNSS, 2023 has been filed with the prayer to quash the impugned judgment and order dated 16.10.2025 passed by the learned Judicial Magistrate, Court No. 22, Azamgarh, in Misc. Case No. 3817 of 2024 (Anand Kumar vs. Brajesh Kumar), under Section 138 The Negotiable Instruments Act, 1881 (hereinafter referred as N.I. Act), Police Station Kotwali, District Azamgarh. It is further prayed that the Hon'ble Court may be pleased to quash the entire proceeding of Misc. Case No. 3817 of 2024 (Anand Kumar vs. Brijesh Kumar), under Section 138 N. I Act, Police Station - Kotwali, District - Azamgarh, pending in the

court of learned Judicial Magistrate, Court No.22, Azamgarh, during pendency of the present application, otherwise applicant shall suffer irreparable loss and injury.

3. Learned counsel for the applicant submits that the application dated 08.09.2025 has been rejected by the impugned order dated 16.10.2025. It is further submitted that the impugned order is illegal as no proper opportunity was provided to produce the defence evidence; therefore, the impugned order is not sustainable in the eyes of law and is liable to be quashed.

4. By the impugned order dated 16.10.2025, the trial court rejected the application filed by the applicant-accused with the prayer to reject the order dated 18.08.2025, by which further opportunity to produce evidence was closed, i.e. production of the report of the verification of writing and signature by the expert for the just decision of the case. The relevant portion of the order dated 16.10.2025 is reproduced below:-

"सुना व पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से यह विदित है कि दिनांक 18.04.2023 को न्यायालय के समक्ष अभियुक्त के हस्ताक्षर का नमूना लिया गया था परन्तु अभियुक्त द्वारा पैरवी के अभाव में हस्तलेख विशेषज्ञ का परिणाम प्रस्तुत नहीं किया गया। न्यायालय द्वारा आदेश दिनांक 30.06.2025 के माध्यम से हस्तलेख विशेषज्ञ को पुनः रिमान्डर (अनुस्मारक) जारी करने हेतु पैरवी का आदेश किया गया था, परन्तु अभियुक्त की ओर से कोई पैरवी उपरोक्त आदेश पर नहीं की गयी। न्यायालय द्वारा पुनः पैरवी हेतु दिनांक 21.07.2025 को अन्तिम अवसर के साथ अभियुक्त को निर्देशित किया गया था परन्तु अभियुक्त द्वारा उपरोक्त आदेश का भी अनुपालन नहीं किया गया। न्यायालय द्वारा दिनांक 18.08.2025 को अदम पैरवी साक्ष्य का अवसर समाप्त किया गया। अतः अभियुक्त द्वारा प्रस्तुत प्रार्थना पत्र बिना किसी आधार के आदेश दिनांक 18.08.2025 को निरस्त किये जाने का प्रार्थना पत्र प्रस्तुत किया गया है जो कि आधारहीन है और निरस्त किये जाने योग्य है।

आदेश

विपक्षी द्वारा प्रस्तुत-प्रार्थना पत्र खारिज किया जाता है। तद्नुसार आपत्ति निस्तारित की जाती है। पत्रावली वास्ते परिवादी बहस दिनांक 04.11.2025 को पेश हो।"

5. Per contra, Learned A.G.A. submits that the proceedings under Section 138 N.I. Act are summary proceedings. Therefore, the proceeding should be concluded expeditiously within six months and has placed reliance on various judgments of the Hon'ble Supreme Court, namely: **Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663, Indian Bank Association and Ors. vs. Union of India and Ors., (2014) 5 SCC 590, Meters and Instruments Pvt. Ltd. & Anr. vs. Kanchan Mehta, (2018) 1 SCC 560, Makwana Mangaldas Tulsidas vs. State of Gujarat and Ors, (2020) 4 SCC 695** and **In Re: Expeditious Trial of Cases Under Section 138 N.I. Act (Suo Motu Writ Petition (Criminal) No. 2 of 2020).**

6. Considering the submissions, it is an admitted fact that a complaint under section 138 N.I. Act was filed in the year 2013, and since then, the said complaint has been pending. More than 12 years have already passed, rendering this case a stark exemplification of inordinate delay in the adjudication of a summary trial. Such protracted pendency constitutes a gross abuse of the process of Court in summary trial cases.

7. In the old code, i.e. Code of Criminal Procedure, 1973 (Now repealed), summary trials were introduced in Chapter XXI from Section 260 to 265, and the summary trials have been provided in the new code, i.e. BNSS, 2023, in Chapter XXII from Section 283 to 288.

8. So far as the cases under the N.I. Act are concerned with expeditious disposal, the legislature, in its wisdom, introduced the provision for summary trial by way of amendment in the year 2002. Section 143 was inserted by Act 55 of 2002, and by the same amendment act, Sections 144 and 145 were also inserted. Sections 143 to 145 of the N.I. Act are reproduced below :-

*"[**143.** Power of Court to try cases summarily.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:*

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

*[**143A**. Power to direct interim compensation.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant-*

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

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

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

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

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

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.]

*[**144**. Mode of service of summons.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works; for gain, by speed post or by such courier services as are approved by a Court of Session.*

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.]

***145**. Evidence on affidavit.-(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.*

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

9. As per the intent of legislation under Section 143 to conduct a trial so far as applicable consistently with the interest of justice, it is to be continued from day to day until its conclusion. Unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing, and in Section 143, the intent of legislation is to conclude the trial as expeditiously as possible, and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint. The above-mentioned provisions are also intended to make the transaction smoother by using cheques instead of cash and to protect the commercial rights of the parties and save time from long litigation, as litigation between the parties is the worst position in business transactions and development and is a loss of mental peace. These provisions are intended to secure justice within a reasonable time and protect the rights of both parties, and are consistent with the concept of a speedy trial, i.e., a fundamental right of the litigant.

10. Under Section 145, i.e. evidence on affidavit is also to save the valuable time of the litigants and the Court; therefore, the trial courts are duty-bound to follow the above-mentioned provisions strictly.

11. The N.I. Act is a special act. The summary trial in N.I. Act is for quick disposal. The intent of the legislation is to try the cases on a day-to-day basis until their conclusion, as expeditiously as possible, within six months, and the object is to facilitate smooth transactions by cheque.

12. The Apex Court in the case of **Suo Motu Writ Petition (Crl.) No. 02 of 2020** titled as **In Re: Expeditious Trial of Cases Under Section 138 of N.I. Act ,[(2021) 16 SCC 116]**, pleased to issue various directions regarding the conduct of trials of complaints under Section 138 of N.I. Act. Para 24 of the said judgment is reproduced below :-

"24. The upshot of the above discussion leads us to the following conclusions:

24.1. The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

24.2. Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

24.3. For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

24.4. We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

24.5. The High Courts are requested to issue practice directions to the trial courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

*24.6. Judgments of this Court in **Adalat Prasad** (supra) and **SubramaniumSethuraman** (supra) have interpreted the law correctly and we reiterate that there is no inherent power of trial courts to review or recall the issue of summons. This does not affect the power of the trial court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.*

24.7. Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

24.8. All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject-matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee."

13. For compliance with directions issued in **In Re: Expeditious Trial of Cases under Section 138 of N.I. Act** (supra), a circular letter was issued bearing Letter No. 10383/2022/Admin G-II/ Allahabad/ Dated : 23.08.2022, having Sub : For compliance of directions issued by Hon'ble

Court with regard to expeditious disposal of cases under Section 138 N.I. Act 1881 addressed to all the District Judges subordinate to the High Court of Judicature at Allahabad.

14. The Hon'ble Apex Court in the case of **Sanjabij Tari vs. Kishore S. Borcar & Anr. (Criminal Appeal No. 1755 of 2010)** decided on 25.09.2025, took into consideration the substantial backlog and protracted pendency of complaints u/s 138 of the NI Act, and issued the following guidelines :-

"KEEPING IN VIEW THE MASSIVE BACKLOG OF CHEQUE BOUNCING CASES, THE FOLLOWING GUIDELINES ARE ISSUED

33. Before parting with this matter, this Court takes judicial notice of the fact that despite repeated directions by this Court in various judgments including ***Indian Bank Association and Ors. v. Union of India and Ors., (2014) 5 SCC 590, Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 and In Re: Expeditious Trial of cases Under Section 138 of NI Act 1881, (2021) 16 SCC 116****, pendency of cheque bouncing cases under the NI Act in District Courts in major metropolitan cities of India continues to be staggeringly high. For instance, the pendency of Section 138 cases as on 01st September 2025 in Delhi District Courts is 6,50,283 (Six Lakhs Fifty Thousand Two Hundred Eighty Three), Mumbai District Courts is 1,17,190 (One Lakh Seventeen Thousand One Hundred Ninety) and Calcutta District Courts is 2,65,985 (Two Lakhs Sixty Five Thousand Nine Hundred Eighty Five) [Source: National Judicial Data Grid]. This pendency is putting an unprecedented strain on the judicial system as in some States, cases Under Section 138 of the NI Act constitute nearly fifty per cent (50%) of the pendency in Trial Court (in Delhi Section 138 NI Act cases constitute 49.45% of total Trial Court pendency).*

34. In ***P. Mohanraj and Others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258****, this Court while re-iterating the position of law with regard to the nature of offence Under Section 138 of the NI Act, has held as under:*

"53. A perusal of the judgment in Ishwarlal Bhagwandas [S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190: AIR 1965 SC 1818] would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed Under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, ***it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases****, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.*

(emphasis supplied)

35. Admittedly, the offence Under Section 138 of the NI Act is quasi-criminal in character and is compoundable [See: ***Damodar S. Prabhu (supra)]. Recently, in Gian Chand Garg v. Harpal Singh and Anr. (Criminal Appeal No. 3789 of 2025*** *dated 11th August 2025), a co-ordinate Bench of this Court has set aside concurrent convictions rendered by the Courts below on*

the ground that the proceeding Under Section 138 of the NI Act is essentially a civil proceeding and it is open to the parties to enter into a voluntary compromise. Consequently, this Court is of the view that not only a voluntary compromise can bring the proceedings Under Section 138 NI Act to an end, but the accused under the said offence are entitled to benefit under the Probation of Offenders Act, 1958 [See: ***Chellammal& Another vs. State Represented by the Inspector of Police, 2025 SCC OnLine SC 870]****. Observations to the contrary by Kerala HC in* ***M.V. Nalinakshan v. M. Rameshan and Anr. 2009 All MR (Cri) Journal 273*** *are set aside.*

36. Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed Under Section 138 of the NI Act continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, this Court issues the following directions:-

A. In all cases filed Under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued dasti i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed. The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under sub-Sections 1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') like Delhi BNSS (Service of Summons and Warrants) Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint, provide the requisite particulars including e-mail address, mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent.

B. The complainant shall file an affidavit of service before the Court. In the event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.

C. In order to facilitate expeditious settlement of cases Under Section 138 of the NI Act, the Principal District and Sessions Judge of each District Court shall create and operationalise dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the Respondent/Accused has the option to make payment of the cheque amount at the initial stage itself, directly through the said online link. The complainant shall also be informed of such payment and upon confirmation of receipt, appropriate orders regarding release of such money and compounding/closure of proceedings Under Section 147 of the NI Act and/or Section 255 of Cr.P.C./278 BNSS, 2023 may be passed by the Court in accordance with law. This measure shall promote settlement at the threshold stage and/or ensure speedy disposal of cases.

D. Each and every complaint Under Section 138 of the NI Act shall contain a synopsis in the following format which shall be filed immediately after the index (at the top of the file) i.e. prior to the formal complaint:

Complaint Under Section 138 of the Negotiable Instruments Act, 1881

I. Particulars of the Parties

(i) Complainant: _____
(ii) Accused: _____
(In case where the Accused is a company or a firm then Registered Address, Name of the Managing Director/Partner, Name of the signatory, Name of the persons vicariously liable)

II. Cheque Details

(i) Cheque No. _____
(ii) Date: _____
(iii) Amount: _____
(iv) Drawn on Bank/Branch: _____
(v) Account No.: _____

III. Dishonour

(i) Date of Presentation: _____
(ii) Date of Return/Dishonour Memo: _____
(iii) Branch where cheque was dishonoured: _____
(iv) Reason for Dishonour: _____

IV. Statutory Notice

(i) Date of Notice: _____
(ii) Mode of Service: _____
(iii) Date of Dispatch & Tracking No.: _____
(iv) Proof of Delivery & date of delivery: _____
(v) Whether served: _____
(vii) Reply to the Legal Demand Notice, if any _____

V. Cause of Action

(i) Date of accrual: _____
(ii) Jurisdiction invoked Under Section 142(2): _____
(iii) Whether any other complaint Under Section 138 NI Act is pending between the same parties, If Yes, in which court and the date and year of the institution.

VI. Relief Sought

(i) Summoning of Accused and trial Under Section 138 NI Act

_____

(ii) Whether Award of Interim compensation Under Section 143A of NI Act sought _____

VII. Filed through:

Complainant/Authorized Representative

*E. Recently, the High Court of Karnataka in **Ashok v. FayazAahmad 2025 SCC OnLine Kar 490** has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the Accused before taking cognizance (Under Section 223 of BNSS) of complaints filed Under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the Accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.*

*F. Since the object of Section 143 of the NI Act is quick disposal of the complaints Under Section 138 by following the procedure prescribed for summary trial under the Code, this Court reiterates the direction of this Court in **In Re: Expeditious Trial of cases Under Section 138 of NI Act** (supra) that the Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. To facilitate this process, this Court clarifies that in view of the judgment of the Delhi High Court in **Rajesh Agarwal v. State and Anr., 2010 SCC OnLine Del 2511**, the Trial Court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, Under Section 251 Code of Criminal Procedure/Section 274 BNSS, 2023 including the following questions:*

(i) Do you admit that the cheque belongs to your account? Yes/No
(ii) Do you admit that the signature on the cheque is yours? Yes/No
(iii) Did you issue/deliver this cheque to the complainant? Yes/No
(iv) Do you admit that you owed liability to the complainant at the time of issuance? Yes/No
(v) If you deny liability, state clearly the defence:

(a) Security cheque only;
(b) Loan repaid already;
(c) Cheque altered/misused;
(d) Other (specify).

(vi) Do you wish to compound the case at this stage? Yes/No

G. The Court shall record the responses to the questions in the order-sheet in the presence of the accused and his/her counsel and thereafter determine whether the case is fit to be tried summarily under Chapter XXI of the Cr.P.C./Chapter XXII of the BNSS, 2023.

H. Wherever, the Trial Court deems it appropriate, it shall use its power to order payment of interim deposit as early as possible under Section 143A of the NI Act.

I. Since physical courtrooms create a conducive environment for direct and informal interactions encouraging early resolution, the High Courts shall ensure that after service of summons, the matters are placed before the physical Courts. Exemptions from personal

appearances should be granted only when facts so warrant. It is clarified that prior to the service of summons the matters may be listed before the digital Courts.

J. Wherever cases Under Section 138 of the NI Act are permitted to be heard and disposed of by evening courts, the High Courts should ensure that pecuniary limit of the cheque amount is realistic. For instance, in Delhi, the jurisdiction of the evening courts to hear and decide cases of cheque amount is not exceeding Rs. 25,000/-. In the opinion of this Court, the said limit is too low. The High Courts should forthwith issue practice directions and set up realistic pecuniary benchmarks for evening Courts.

K. Each District and Sessions Judge in Delhi, Mumbai and Calcutta shall maintain a dedicated dashboard reflecting the pendency and progress of cases Under Section 138 of the NI Act. The dashboard shall include, inter alia, details regarding total pendency, monthly disposal rates, percentage of cases settled/compounded, average number of adjournments per case and the stage-wise breakup of pending matters. The District and Sessions Judges in aforesaid jurisdictions shall conduct monthly reviews of the functioning of Magistrates handling NI Act matters. A consolidated quarterly report shall be forwarded to the High Court.

L. The Chief Justices of Delhi, Bombay and Calcutta are requested to form Committee on the Administrative side to monitor pendency and to ensure expeditious disposal of Section 138 of the NI Act cases. These Committees should meet at least once a month and explore the option of appointing experienced Magistrates to deal with Section 138 of the NI Act cases as well as promoting mediation, holding of LokAdalats and other alternative dispute resolution mechanisms in Section 138 NI Act cases.

37. It is pertinent to mention that this Court framed guidelines for compounding offences under the NI Act nearly fifteen years back in ***Damodar S. Prabhu*** *(supra). The relevant portion of the said judgment is reproduced hereinbelow:*

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

XXXXXXXXX

24. We are also conscious of the view that the judicial endorsement of the above quoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 Cr.P.C. cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.

26. Even in the past, this Court has used its power to do complete justice Under Article 142 of the Constitution to frame guidelines in relation to the subject-matter where there was a legislative vacuum.″

38. Since a very large number of cheque bouncing cases are still pending and interest rates have fallen in the last few years, this Court is of the view that it is time to 'revisit and tweak the guidelines'. Accordingly, the aforesaid guidelines of compounding are modified as under:

(a) If the accused pays the cheque amount before recording of his evidence (namely defence evidence), then the Trial Court may allow compounding of the offence without imposing any cost or penalty on the accused.

(b) If the accused makes the payment of the cheque amount post the recording of his evidence but prior to the pronouncement of judgment by the Trial Court, the Magistrate may allow compounding of the offence on payment of additional 5% of the cheque amount with the Legal Services Authority or such other Authority as the Court deems fit.

(c) Similarly, if the payment of cheque amount is made before the Sessions Court or a High Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

(d) Finally, if the cheque amount is tendered before this Court, the figure would increase to 10% of the cheque amount.

39. This Court is of the view that if the Accused is willing to pay in accordance with the aforesaid guidelines, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power Under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.″

15. For the compliance of these above mentioned guidelines issued by Hon'ble Apex Court, a circular Letter No. 14295 2025/Admin G-II/ Allahabad, Dated 04.11.2025 has been circulated with the judgment of Hon'ble Apex Court addressed to all the District Judges, Principal Judges of Family Courts & Presiding Officers of MACTs, LARRAs and Commercial Courts of State of Uttar Pradesh with the request to circulate the same amongst all the Judicial Officers working under their kind supervision and Administrative control for information and necessary compliance and the copy of the judgment was also sent to the Director, Judicial Training & Research Institute, Lucknow for information.

16. Guidelines issued by Hon'ble Apex Court in the Case of **Sanjabij Tari vs. Kishore S. Borcar & Anr.** (Supra) are to be followed by the Courts/Magistrates handling N.I. Act matters strictly in its letter and spirit.

17. Reverting to the merits of the case, considering the arguments of learned counsel for the parties and after perusing the record, this Court finds that there is no need to issue notice to opposite party no. 2 at this stage. As per the record, the complaint under Section 138 N.I. Act has been filed on 01.02.2013 which is annexed as Annexure No. 1 to the application, and as per Annexure No. 4, it reflects that the statement of the accused applicant has been recorded on 30.07.2021 and on the last questionnaire, the accused applicant has been asked as below :-

"प्रश्न-४-क्या आपको कुछ कहना है?
उत्तर- सफाई साक्ष्य प्रस्तुत करनाहै।"

18. On query, learned counsel for the applicant has replied that no document could be filed in defence after 30.07.2021 till the filing of this petition.

19. On perusal of the impugned order, it appears that the first application was given on 11.08.2022, followed by the second application on 10.01.2023 and upon that application, on 18.04.2023, the expert obtained a sample signature of the accused, but after that, the accused-applicant did not pursue and ultimately after giving so many reminders, the opportunity of the accused-applicant was closed. It further appears that the examination-in-chief and cross-examination were concluded, and also the statement of the accused-applicant under Section 313 Cr.P.C. was recorded. Much later, the application for a further opportunity to produce evidence was filed on 08.09.2025, which was rejected by the impugned order dated 16.10.2025.

20. On perusal of the records annexed as annexure to the affidavit filed in support of the application, in the present matter, the complaint under Section 138 N.I. Act was filed on 01.02.2013, and now 2026 is running. Almost 13 years have passed. In the hallowed pursuit of justice, the maxim "In diem vivere in lege sunt detestabilis" stands as an eternal rebuke to protracted litigation and signifies that unnecessary procrastination or stalling tactics in legal proceedings are abhorrent to justice. Such tardiness not only erodes public confidence but also renders the law an instrument of distress rather than relief. In this context, the words of William Shakespeare ring true: "Defer no time; delays have dangerous ends." Such prolonged legal proceedings starkly illustrate the maxim 'Justice Delayed is Justice Denied'. Furthermore, such

delays also run counter to the essence of the right to speedy trial under Article 21 of the Constitution of India, 1950.

21. In view of the above discussion, this Court finds no illegality or irregularity in the impugned order as more than sufficient opportunities of defence were provided by the trial court. Therefore, the prayer for quashing the impugned judgment and order dated 16.10.2025, as well as to quash the entire proceeding is refused. This Court is of the considered view that such matters which are affected by unnecessary delay at the ends of the parties should be expedited, and an endeavour should be made to dispose of them within the statutory period unless there are orders of the higher courts staying the proceeding. This judgment be placed before the learned District and Sessions Judge concerned. The office to do needful.

22. With the above observation and directions, the application is finally disposed of.

(2026) 2 ILRA 203
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Civil Misc. Arbitration Application No. 19 of 2025

M/S Progressive Construction Company ...Appellant
Versus
Engineer-In-Chief & H.O.D., Pwd & Ors. ...Respondents

Issue for Consideration

Issue pertains to whether, in exercise of jurisdiction u/s 11(6) of Arbitration and Conciliation Act, 1996, the High Court can appoint a sole arbitrator for adjudication of disputes between the parties, notwithstanding the arbitration agreement providing for a panel of three arbitrators, in a situation where the parties have failed to constitute the arbitral tribunal in terms of the agreed procedure and the applicant seeks such modification to reduce costs.

Headnotes

Arbitration and Conciliation Act, 1996 - s. 11(6) - Appointment of Arbitrator - Arbitration Clause - Deviation from agreed procedure - Failure of parties to appoint arbitrators - Power of Court - The applicant, entered into a contract dated 06.11.2015 with the opposite parties, namely the Engineer-in-Chief and others of the Public Works Department, which contained an arbitration clause (Clause 25.1.3) providing for resolution of disputes through arbitration - Upon arising of disputes, the applicant invoked the arbitration clause and requested the appointment of an arbitrator in terms of agreement - The Executive Engineer, Construction Division-II, PWD, by letter dated 06.12.2024, recommended the appointment of an arbitrator to the competent authority, however, no arbitrator was appointed by respondents in accordance with the agreed procedure - Consequently, the applicant filed the instant application u/s 11(6) of Arbitration and Conciliation Act, 1996 before the High Court seeking appointment of an arbitrator, while the respondents did not dispute the existence of arbitration agreement, nor that the Executive

Engineer, by letter dated 06.12.2024, had requested the Superintending Engineer to appoint an arbitrator.

Held: Although the arbitration agreement contained provision for constituting a panel of three arbitrators - one arbitrator to be appointed by each of the parties and the third arbitrator or the umpire being appointed by the two arbitrators, the parties fail to appoint their arbitrators, an application u/s 11(6) of the Arbitration and Conciliation Act, 1996 is filed and a party requests that it is not willing to bear the high cost of arbitration to be conducted by a panel of three arbitrators and in order to reduce the costs, it requests appointment of a sole arbitrator, the Court can accede to the request - **Accordingly, arbitrator appointed for adjudication of the disputes between the parties, thus, application allowed**. [Para 12, 13] (E-13)

Case Law Cited

Union of India v. Singh Builders Syndicate: **(2009) 4 SCC 523;** *24 Secure Services Pvt. Ltd. v. Competent Automobile Ltd.* **2024 SCC OnLine Delhi 4358; referred to**

Jhajharia Nirman Ltd. v. South Western Railways through Dy. Chief Engineer/IV Construction **reported in 2024 SCC OnLine Del 7133 - followed**

List of Acts

Arbitration and Conciliation Act, 1996

List of Keywords

Arbitration application; s. 11(6) of Arbitration and Conciliation Act, 1996; Appointment of arbitrator; Adjudication of disputes; Contract dated 06.11.2015; Arbitration clause (Clause 25.1.3); Request for appointment; Recommendation by Executive Engineer; Failure to appoint arbitrator; Existence of arbitration agreement; Panel of three arbitrators; Agreed procedure; Failure of parties to constitute tribunal; Request for appointment of sole arbitrator; Reduction of cost of arbitration; Proposed name of arbitrator; Application allowed

Case Arising From

ORIGINAL JURISDICTION: (Civil Misc. Arbitration Application No. - 19 of 2025)

From the Judgment and Order passed by the Superintending Engineer, Hamirpur Circle, Public Works Department, Hamirpur

Appearances for Parties

Adv. for the Applicant:
Vipul Rai

Adv. for the Opposite Party:
C.S.C

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

1. Heard Shri Abhishek Dwivedi, Advocate holding brief of Shri Vipul Rai, the learned counsel for the applicant and Shri S.K. Khare, the learned Standing Counsel for the State.

2. By means of the instant application filed under Section 11(6) of the Arbitration and Conciliation Act, the applicant is seeking appointment of an arbitrator for adjudication of the disputes between the parties arising out of a contract dated 06.11.2015.

3. Clause 25.1.3 of the agreement contains an arbitration clause. The applicant had requested the opposite parties for appointment of arbitrator as per the aforesaid arbitration clause.

4. On 06.12.2024, the Executive Engineer, Construction Division-II, Public Works Department wrote a letter to the Superintending Engineer, Hamirpur Circle, Public Works Department, Hamirpur recommended appointment of an arbitrator as per the Clause 25.1.3 but when arbitrator was not appointed in spite of this recommendation, the applicant has filed this application.

5. The opposite parties have filed objections against the application which principally contains pleas of the opposite parties disputing the correctness of the claims of the applicant. However, while deciding an application under Section 11(6) of the Arbitration and Conciliation Act, this Court is not required to examine correctness of the claims of the applicant and that has to be done by the arbitrator.

6. The State has not disputed the existence of arbitration agreement and it has not disputed that through the aforesaid letter dated 06.12.2024, the Executive Engineer had himself requested the Superintending Engineer to appoint an arbitrator.

7. As arbitrator has not been appointed by the opposite parties, occasion has arose for this Court to appoint an arbitrator.

8. The learned counsel for the applicant has stated that although the arbitration clause contains a provision for arbitration by a panel of three arbitrators, the opposite party has not appointed the arbitrators in terms of the aforesaid clause. Now, that the Court has to appoint the arbitrator, the applicant requests that to reduce the cost of arbitration, a single arbitrator be appointed in place of a Tribunal consisting of three arbitrators.

9. In **Union of India v. Singh Builders Syndicate**: (2009) 4 SCC 523, the appellant had challenged an order of the Delhi High Court appointing a retired Judge of the High Court as sole arbitrator to decide the disputes arising in respect of a construction contract between the Northern Railways and the respondent, whereas arbitration clause in the contract between the parties required two serving gazetted railway officers of equal status being appointed as arbitrators, one by the contractor from a panel made available by the General Manager of the Northern Railways and the other by the Northern Railways, and the two arbitrators so appointed, in turn appointing an umpire. The High Court was of the view that the matter was pending since 1999 and that the cumbersome process of constituting an Arbitral Tribunal in terms of the arbitration agreement and the delays on the part of the Railways in complying with the provisions of the arbitration agreement, led to the arbitration becoming virtually a non-starter and no useful purpose would be served by reconstituting a three-Member Arbitral Tribunal. Therefore, the High Court allowed the petition and appointed a retired Judge of the Delhi High Court as the arbitrator. The said order was challenged by filing an appeal before the Hon'ble Supreme Court The question that arises for consideration by the Hon'ble Supreme Court was whether the appointment of a retired Judge of the High Court as sole arbitrator should be set aside and an Arbitral Tribunal should again be

constituted in the manner provided in the arbitration agreement. Upholding the order of the High Court and dismissing the appeal, the Hon'ble Supreme Court held that:-

"13. The position after the new Act came into force, is different, as explained by this Court in Northern Railway Admn., Ministry of Railway v. Patel Engg. Co. Ltd. [(2008) 10 SCC 240] This Court held that the appointment of arbitrator(s) named in the arbitration agreement is not mandatory or a must, but the emphasis should be on the terms of the arbitration agreement being adhered to and/or given effect, as closely as possible.

14. It was further held in Northern Railway case [(2008) 10 SCC 240] that the Chief Justice or his designate should first ensure that the remedies provided under the arbitration agreement are exhausted, but at the same time also ensure that the twin requirements of sub-section (8) of Section 11 of the Act are kept in view. This would mean that invariably the court should first appoint the arbitrators in the manner provided for in the arbitration agreement. But where the independence and impartiality of the arbitrator(s) appointed/nominated in terms of the arbitration agreement is in doubt, or where the Arbitral Tribunal appointed in the manner provided in the arbitration agreement has not functioned and it becomes necessary to make fresh appointment, the Chief Justice or his designate is not powerless to make appropriate alternative arrangements to give effect to the provision for arbitration."

10. The aforesaid judgment has been followed by the Delhi High Court in the case of **24 Secure Services Pvt. Ltd. v. Competent Automobile Ltd.**; 2024 SCC OnLine Delhi 4358, as per the Arbitration Clause, there had to be a panel of three Arbitrators but the parties could not appoint one arbitrator each and, therefore, an application was filed under Section 11(6) of the Act. The Delhi High Court held that: -

"22. In Union of India (UOI) v. Singh Builders Syndicate, (2009) 4 SCC 523 the High Court rejected the contention on behalf of the Government that the Court was not vested with any powers to appoint a Sole Arbitrator in distinction to the Arbitration Agreement which provided for the Tribunal of three members. The Apex Court upheld the order of this Court appointing a Sole Arbitrator by observing that the appointment of the Sole Arbitrator was valid. 23. In view of the submissions made as well as Clause 7 of the Services Agreement dated 16.08.2021 which provides for arbitration and the petitioner has raised the arbitrable disputes and without prejudice to the rights and contentions of the parties, the present petition is allowed. Mr. Sidharth Sharma Adv. Mobile No. 7400111111, is hereby appointed as the Arbitrator to adjudicate the disputes between the parties."

11. This decision has been followed by Delhi High Court in the case of **Jhajharia Nirman Ltd. v. South Western Railways through Dy. Chief Engineer/IV Construction** reported in 2024 SCC OnLine Del 7133 wherein also, the arbitration clause contained a stipulation of appointment of an Arbitral Tribunal consisting of three arbitrators but the parties had failed to constitute the Tribunal by consent.

12. I find myself in agreement with the aforesaid decision taken by the Delhi High court in the aforesaid cases and I am also of the view that although the arbitration agreement contained provision for constituting a panel of three arbitrators ? one arbitrator to be appointed by each of the

parties and the third arbitrator or the umpire being appointed by the two arbitrators, the parties fail to appoint their arbitrators, an application under Section 11(6) of the Act is filed and a party requests that it is not willing to bear the high cost of arbitration to be conducted by a panel of three arbitrators and in order to reduce the costs, it requests appointment of a sole arbitrator, this Court can accede to the request.

13. Accordingly, I propose the name of **Hon'ble Mr. Justice V. K. Mathur (Retd.)**, a former Judge of this Court, resident of Flat No.- 203, Samiah Melrose Square, Vrindawan Colony, Sector 6C, Near C.N.G. Pump, Lucknow (U.P.) / 304, Radium Apartments, New Hyderabad, Lucknow, U.P., Mobile Nos. 8004928876, 9717779924 to act as an arbitrator for adjudication of the disputes between the parties.

14. Office is directed to communicate this order to Hon'ble Mr. Justice V. K. Mathur for obtaining his consent.

15. List after receipt of service.

(2026) 2 ILRA 207
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Arbitration And Conciliation Appl. U/S11(4) No. 33 of 2024

M S Kalicharan Pandey & Company ...Appellant
Versus
Union of India & Ors. ...Opposite Parties

Issue for Consideration

Issue pertains to whether, in exercise of powers u/s 11(6) of Arbitration and Conciliation Act, 1996, the High Court is required to appoint a sole Arbitrator upon prima facie satisfaction of the existence of a valid arbitration agreement between the parties and the failure of the parties to mutually agree upon such appointment, without delving into the merits of the underlying dispute.

Headnotes

Arbitration and Conciliation Act, 1996 - s. 11(6) - Appointment of Arbitrator - Arbitration Agreement - Arbitration Clause - Appointing Authority - Scope of - The applicant, invoked the arbitration clause contained in the agreement between the parties by issuing a notice dated 11.08.2023 to the respondents, namely the Union of India and others, seeking resolution of disputes through arbitration - The respondents, however, vide reply dated 10.10.2023, denied the invocation of arbitration - In view of existence of disputes between the parties and the failure to arrive at a consensual appointment of an arbitrator in terms of agreed procedure, the applicant instituted the instant application u/s 11(6) of Arbitration and Conciliation Act, 1996 before the High Court for appointment of a sole arbitrator.

Held: In the facts of the present case, on prima facie basis, it has to be accepted that there exists an arbitration clause, between the parties - Also, it is clear that the parties have not been able to appoint consented arbitrator and therefore, the appointing authority has to be assumed by Court upon the instant application - At the same time, no final conclusion is being drawn as may affect the merits of the claim - That matter would remain to be considered by the appropriate forum at the appropriate stage, upon claim, objection, challenge or appeal being filed - Thus, amongst others it would remain open to the opposite party to raise all objections as the Act permits - With the consent of parties, the Court appoints Arbitrator for resolving the disputes between the parties - **Accordingly, application allowed.** [Paras 8, 9, 11] (E-13)

Case Law Cited

M/S Mayavati Trading Pvt. Ltd. v. Pradyuat Deb Burman, **Civil Appeal No. 7023 of 2019, decided on 05.09.2019;** *Duro Felguera, S.A. v. Gangavaram Port Ltd.*, **(2017) 9 SCC 729;** *GOQII Technologies Pvt. Ltd. v. Sokrati Technologies Pvt. Ltd.,* **(2025) 2 SCC 192 - referred to**

List of Acts

Arbitration and Conciliation Act, 1996

List of Keywords

Restoration application; Recall of order; Sufficient cause; Arbitration application; s. 11(6) of Arbitration and Conciliation Act, 1996; Appointment of sole arbitrator; Arbitration clause; Existence of dispute; Arbitration agreement; Consent of parties; Failure to appoint arbitrator; Scope of proceedings; Prima facie satisfaction; Appointing authority; Appropriate forum; Fees and expenses (Fourth Schedule); Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Arbitration and Conciliation Application u/s 11(4) No. - 33 of 2024

Appearances for Parties

Advs. for the Applicant:
Bipin Kumar Jaiswal, Prateek Sinha

Advs. for the Opposite Party:
A.S.G.I., Manu Vardhana

(Delivered by Hon'ble Piyush Agrawal, J.)

Restoration Application No. 4 of 2026.

Heard learned counsel for the applicant. Cause shown is sufficient. The order dated 15.12.2025 is recalled. The case is restored to its original number. The application is allowed.

Heard learned counsel for the applicants and learned counsel for the opposite parties.

1. Heard the learned counsel for the parties.

2. The instant application has been preferred under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of a sole Arbitrator.

3. Learned counsel for the applicant submits that a notice/letter was issued to the respondent on 11.8.2023 invoking the arbitration clause to which he replied on 10.10.2023 denying the same. Hence, this application.

4. Learned counsel for the opposite party does not dispute the fact about the existence of dispute between the parties.

5. Having heard learned counsel for the parties, the scope of the present proceedings under Section 11 of the Act does not require any elaboration in view of that position in law having been made crystal clear by a recent three judge decision of the Supreme Court in the case of **M/S Mayavati Trading Pvt. Ltd. Vs. Pradyuat Deb Burman**, Civil Appeal No. 7023 of 2019, decided on 05.09.2019 in which it has been held as below:

"This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra) -- see paras 48 & 59."

6. While laying down that law, the Supreme Court had itself referred to paragraph nos. 48 & 59 of its earlier decision in the case of **Duro Felguera, S.A. Vs. Gangavaram Port Ltd.,** (2017) 9 SCC 729.

7. That position in law has been reiterated in a recent decision of the Supreme Court in **GOQII Technologies Pvt. Ltd. Vs. Sokrati Technologies Pvt. Ltd.**, (2025) 2 SCC 192.

8. In the facts of the present case, on prima facie basis, it has to be accepted that there exists an arbitration clause, between the parties. Also, it is clear that the parties have not been able to appoint consented arbitrator and therefore, the appointing authority has to be assumed by this Court upon the present application.

9. At the same time, no final conclusion is being drawn as may affect the merits of the claim. That matter would remain to be considered by the appropriate forum at the appropriate stage, upon claim, objection, challenge or appeal being filed. Thus, amongst others it would remain open to the opposite party to raise all objections as the Act permits.

10. Leaving that course completely open to the respective parties, at present, only a forum is being provided for adjudication of a claim proposed to be raised and resisted, in accordance with the law.

11. With the consent of the parties, this Court appoints Mr. Bibhuti Narain Singh, Adovcate (AOR No. A/B 0181/2012) (e-mail advsinghbibhutinarayan@gmail.com) (Mb. No. 9450591217/ 9792947895) resident of H.No. CKN-C-189, Chak Niratul (Jagma Hata) infront of Pani Ki Tanki)

Prayagraj who is present in the Court and has given his consent, to act as an Arbitrator for resolving the disputes between the parties. 12. The Arbitrator shall be entitled to his fees and expenses in accordance with the fourth Schedule to the Arbitration & Conciliation Act, 1996.

13. In view of the above, the present arbitration application stands **allowed.**

14. Office to intimate this order to the Arbitrator.

(2026) 2 ILRA 210
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.02.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Civil Misc. Review Application No. 264 of 2025

Greater NOIDA ...Applicant
Versus
M/S Elevator Properties Pvt. Ltd. ...Opposite Party

Issue for Consideration

Whether various aspect of the matter were not taken into consideration while allowing the writ petition.

Head Notes

The Code of Civil Procedure, 1908- Order XLVII Rule 1- That review-petitioner/respondent in the writ petition seeking review of the judgement delivered by this Court merely for the purpose of rehearing and fresh decision of the case. Normally the principal is that a judgement pronounced by Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so- The scope of review is limited and under the guise of review, the parties cannot be permitted to re-agitate and reargue the questions which have already been addressed and decided.

Held- Review petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court as well as Hon'ble Supreme Court in various decisions for reviewing the impugned judgment- Review petition dismissed.

(Para 13, 15 & 16)

Case Law Cited

Shanti Conductors (P) Ltd. Assam SEBI reported in (2020) 2 SCC 677; Parsion Devi v. Sumitri Devi (1997) 8 SCC 715; Sanjay Kumar Agrawal Vs. State Tax Officer (1) and another connected with other review petitions reported in (2024) 2 SCC 362.

List of Acts

The Code of Civil Procedure, 1908

List of Keywords

Order XLVII Rule 1 C.P.C; under the guise of review; parties cannot re-agitate , reargue the questions already been decided

Case Arising From

Present review application has been filed with the prayer to review the judgment and order dated 09.06.2025 passed in Writ C No.10075 of 2024.

Appearances for Parties

Counsel for Applicant(s) : Vineet Pandey
Counsel for Opposite Party(s) : C.S.C., Uma Nath Pandey

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

1. Heard Sri M.C. Chaturvedi, learned Senior Counsel assisted by Sri Vineet Pandey, learned counsel for the applicant for review/respondent and Sri Uma Nath Pandey, learned counsel for the opposite party/writ petitioner and perused the record.

2. The present review application has been filed with the prayer to review the judgement and order dated 09.06.2025 passed in Writ C No.10075 of 2024.

3. Sri M.C. Chaturvedi, learned Senior Counsel placed reliance upon the ground Nos.7, 11 & 25 of the review application which reads as follows:-

7. Because in the impugned order dated 23.11.2023, on the basis of the record, a categorical finding has been returned that the entire sector in which the demised land is situated is a completely developed sector with all the world class infrastructure facilities. The petitioner has concealed material facts in the writ petition and therefore the petition deserved to outrightly rejected on this ground alone.

11. Because the amendment, 2022 is in addition to the conditions stipulated in the lease deed dated 16.08.2010, which does not contemplate any service of notice of cancellation on account of non-development of the land. The contractual obligations are totally binding upon the petitioner, hence it cannot absolve from its liabilities for non-performance by taking support of a government order/amendment, which is not applicable in the present case.

25. Because the government order dated 30.07.2021 provides for service of notice only to the allottees who could not utilize the land for the purpose it was allotted within five (5) years from the date of possession. Hence, the interpretation to the service of notice has been clearly spelled out by the respondent no.1 with respect to such notice and the petitioner unquestionably does not qualify for being served any notice and the automatic cancellation of allotment is applicable in the present case.

4. In support of the aforesaid grounds, he placed reliance upon following portion of the order dated 30.06.2023 passed by the State Government :-

(2) आन्तरिक विकास कार्य (एप्रोच रोड, विद्युत आपूर्ति, जलापूर्ति, इत्यादि कार्य) पूर्ण की माँग

याची कम्पनी द्वारा आवंटित भूखण्ड पर आवंटन के लगभग 10 वर्षों के उपरान्त भूखण्ड पर एप्रोच रोड, विद्युत आपूर्ति, जलापूर्ति, इत्यादि कार्य पूर्ण न होने का आधार मात्र अपील को बल देने के उद्देश्य से किया जा रहा है। याची द्वारा वर्तमान तक प्राधिकरण में कभी भी भूखण्ड पर एप्रोच रोड, विद्युत आपूर्ति, जलापूर्ति, इत्यादि कार्य पूर्ण न हाने के संबंध में कोई साक्ष्य उपलब्ध नहीं कराया गया है और न ही उक्त अपील के साथ कोई साक्ष्य सलग्न किया गया है। अवगत कराना है कि याची कम्पनी को जिस सैक्टर के अन्तर्गत भूखण्ड आवंटित किया गया है उस सैक्टर में आई०टी० एवं संस्थागत के अन्य भूखण्ड भी आवंटित हैं, जिसमें से कतिपय आवटनो में आवंटियों द्वारा उन्हें आवंटित भूखण्डों पर परियोजना निर्मित कर क्रियाशील किया जा चुका है तथा कतिपय भूखण्डों पर निर्माण कार्य तीव्र गति से प्रगति पर है। उदाहरण स्वरुप संस्थागत योजनान्तर्गत आवंटित मैसर्स बेनेट इन्सटिट्यूट ऑफ हायर एजुकेशन, भूखण्ड संख्या-8,9,10,11 वर्तमान में क्रियाशील है इसके अतिरिक्त उक्त सेक्टर में ही आवंटी कम्पनी के सनिकट आई०टी०/आई०टी०ई०एस० प्रयोगार्थ हेतु मैसर्स समरागी इन्फोटेक प्रा० लि० को आवंटित भूखण्ड संख्या-टीजेड-04, पर तीव्र गति से निर्माण कार्य चल रहा है।"

5. It is argued by learned Senior Counsel that various aspect of the matter were not taken into consideration while allowing the writ petition. It is argued that in the impugned order dated 23.11.2023, cogent finding has been returned that the entire sector in which the demised land is situated is a completely developed sector with all the world class infrastructure facilities which fact has concealed by the petitioner, therefore, the writ petition deserved to be rejected. It is further argued that the amendment made by the State Government by U.P. Act, No.5 of 2022 in addition to the condition stipulated in the Lease Deed dated 16.08.2010 which does not contemplate any service of notice of cancellation on account of non-development of land. It is further argued that Government Order dated 30.07.2021 provides for service of notice only to the allottees who could not utilized the land for the purpose for which it was allotted within five years from the date of possession.

6. On the other hand, it is argued by Sri Uma Nath Pandey, learned counsel for the opposite party/writ petitioner that all aspects of the matter has already been dealt with by the Writ Court in its judgement & order dated 09.06.2025. It is further argued that no notice had been issued to the petitioner prior to three months, i.e., on 31.12.2022 which is condition precedent as per proviso of Section 7 as amended by Act No.5 of 2022. It is further argued that there is no provision in the proviso to issue any notice after 31st December, 2022, hence the order of cancellation as well as order passed in the Revision by the State Government which were based upon proviso (d) & (e) of Section 7 of the Act, is without jurisdiction. Sri Uma Nath Pandey, learned counsel placed reliance upon the law laid down by Hon?ble Supreme Court in review petition of **Sanjay Kumar Agrawal Vs. State Tax Officer (1) and another connected with other review petitions reported in (2024) 2 SCC 362.**

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

8. From perusal of the record specially the judgement dated 09.06.2025 passed in Writ C No.10075 of 2024, it transpires that after noting down the entire argument made by learned counsel for the parties, order of cancellation as well as order passed by the State Government were set aside on the ground that no notice has been issued to the writ petitioner prior to three months of 31st December, 2022. In this view of the matter, findings recorded by the writ Court that both the orders are without jurisdiction. Relevant paragraphs of the judgment & order dated 09.06.2025 reads as follows:-

18. Thus, the aforesaid provisions make it mandatory to the development authority to issue notice of three months prior to 31.12.2022, i.e. upto 30.9.2022 to complete the construction by 31.12.2022. There is no provision in amending the Act empowering the authority to issue notice after 31.12.2022. The intention of legislature is clear that the development authority has to issue notice to all the allottee as contemplated under proviso (d) and the allotment shall stand automatically cancelled by 31.12.2022.

19. In the present case, no notice has been issued to the petitioner prior to 3 months of 31.12.2022. Under the provisions, the said notice is alleged to have been issued under proviso to section 7 (as amended by Act No. 5 of 2022), whereas, there is no provision in proviso to issue any notice after 31.12.2022. Thus, the impugned orders of cancellation which are based on proviso (d) & (e) of section 7 of the Act is without jurisdiction and the development authority has no authority or jurisdiction to issue such notice and passed consequential order after 31.12.2022.

20. Since the impugned orders are wholly without jurisdiction, as such, hereby quashed. The findings recorded by the Revisional Authority that the notice was issued more than 3 months prior to passing of the order of cancellation is wholly perverse. No notice could be issued after 30.09.2022 as provided under proviso (d) of Section 7 of the Act.

21. In view of the aforesaid, the impugned order dated 30.6.2023 passed by the respondent no.2-Greater Noida Industrial Development Authority and consequential order dated 23.11.2023 passed by the respondent no.1-Principal Secretary, Industrial Development, Civil Secretariate, U.P., Lucknow are hereby quashed. The petitioner is entitled for all the consequential benefits.

9. The relevant findings recorded in the judgement & order dated 09.06.2025 which is quoted above has not been denied by learned counsel for applicant for review either in the grounds of review or during course of arguments.

10. In paragraph 9 & 10 of the judgement of **Sanjay Kumar Agrawal (supra)**, scope of review has been dealt with in great detail which reads as follows:-

9. In the words of Krishna Iyer J., (as his Lordship then was) "a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. A review in the counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace."

10. It is also well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that

principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

11. After quoting down the aforesaid principles, certain principles/guidelines were laid down by the Hon?ble Supreme Court in paragraph 16 of the judgment of Sanjay Kumar Agrawal (supra) which reads as follows:-

16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record e justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order XLVII Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review.

12. After noting down the aforesaid principles, it was held by the Hon?ble Supreme Court that review petition should be examined in the ambit of Order XLVII Rule 1 C.P.C.

13. From perusal of the record as well as arguments as has been raised by learned counsel for the parties, it is clear that review-petitioner/respondent in the writ petition seeking review of the judgement delivered by this Court merely for the purpose of rehearing and fresh decision of the case. Normally the principal is that a judgement pronounced by Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

14. In **Parsion Devi v. Sumitri Devi (1997) 8 SCC 715** it was held by the Hon'ble Supreme Court that a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. Paragraph 9 of the aforesaid judgement reads as follows:

"9. Under Order XLVII Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order XLVII Rule 1 CPC. In exercise of the jurisdiction under Order XLVII Rule | CPC it is not permissible for an erroneous decision to be "reheard and corrected A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"." (emphasis supplied)

15. In the case of **Shanti Conductors (P) Ltd. Assam SEBI reported in (2020) 2 SCC 677** a three-Judge Bench of the Hon'ble Apex Court following the judgement of **Parsion Devi (supra)** dismissed the review petitions holding that the scope of review is limited and under the guise of review, the parties cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16. In this view of the matter and above stated possession, Court is of the opinion that judgement in question does not fall within the scope and abmit of review. The learned counsel for the review petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court as well as Hon?ble Supreme Court in various decisions for reviewing the impugned judgment.

17. In that view of the matter, the review petition is dismissed. No order as to costs.

(2026) 2 ILRA 215
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 255 of 2005

Shankar & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the learned trial Court has examined the evidence and material on record appropriately in a case of alleged mass murder of five persons by multiple accused persons and whether conviction based primarily on testimonies of related eye-witnesses is sustainable in law.

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 148, 452, 307/149, 302/149, and 404 - Code of Criminal Procedure, 1973 - S. 374(2) - Conviction for murder and rioting - Appreciation of evidence.

Criminal Trial-Appreciation of Evidence-Case based on testimony of P.W.1, P.W.2 and P.W.3-Requirement of careful scrutiny in case involving "5 persons have been killed allegedly by 18 persons". (Para 33)

F.I.R. – Credibility - Where "the report has been written very articulately giving not only the names of accused persons but their parentage in seriatim"- creates doubt about spontaneity and authorship by complainant under trauma. (Para 37)

Eye-witness - Presence Doubtful-Contradictions regarding place of hiding, conduct, and sequence of events - "his evidence is not consistent and there is contradiction in examination-in-chief and cross-examination". (Para 39)

Identification of accused-Improbability - "as to how a person could count 23-24 persons and also identified at least fifteen persons"- casts doubt on reliability. (Para 41)

Appreciation of Evidence - Material contradictions and improvements - Where testimony is inconsistent with F.I.R., site plan and medical evidence - credibility of prosecution case is affected. (Para 40–41)

Criminal Jurisprudence - Burden of Proof - Trial Court's reasoning that omissions should not benefit accused held erroneous as "in the criminal trial the question of any punishment to the deceased and injured does not arise". (Para 41)

Held: The whole case is to be considered on the basis of evidence of P.W.1, P.W.2 and P.W.3 and such evidence requires deep scrutiny in view of seriousness of allegation -The F.I.R. appears doubtful as it is written very articulately which creates doubt to have been got written solely by complainant - Testimony of complainant suffers from contradictions: "his evidence is not consistent and there is contradiction in examination-in-chief and cross-examination - Identification of large number of accused is improbable - this Court failed to comprehend that as to how a person could count 23-24 persons and also identified at least fifteen persons-Presence and capacity to witness entire घटना doubtful - it cannot be said that he could have seen all the accused persons from the place, where he was hiding himself -Trial Court's reasoning flawed: finding that omissions should not benefit accused is "not tenable. (Paras 33,37,39,41) (E-7)

Case Law Cited

Md. Jabbar Ali and others Vs. State of Assam; **2022 SCC OnLine SC 1440***; Digamber Vaishnav and another Vs. State of Chhatisgarh; Criminal Appeal Nos.* **428-430 of 2019***; Nanje Gowda Vs. State of Karnataka;* **2017 CRI.L.J. 2830***; Periyasamy Vs. State;* **2024 SCC OnLine SC 314***; Ram Singh Vs. State of Uttar Pradesh;* **(2024) 4 SCC 208** *; Tahsildar Singh Vs. State of U.P.;* **AIR 1959 SC 1012** *; State of U.P. Vs. Naresh;* **(2011) 4 SCC 324***; Baban Shankar Daphal Vs. State of Maharashtra;* **AIR 2025 SC 599***; Pruthiviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala;* (2022) 18 SCC 683*; Gangabhavani Vs. Rayapati Venkat Reddy;* (2013) 15 SCC 298 *; Sucha Singh Vs. State of Punjab;* (2003) 7 SCC 643 *; Dalip Singh Vs. State of Punjab;* AIR 1953 SC 364*; Ravasaheb Vs. State of Karnataka;* (2023) 5 SCC 391*; Om Pal Vs. State of U.P.;* MANU/SC/1457/2025*; Haribhau Vs. State of Maharashtra;* MANU/SC/1463/2025*; Lalji Vs. State of U.P.;* (1989) 1 SCC 437 *; Masalti Vs. State of U.P.;* 1964 SCC OnLine SC 30

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Arms Act, 1959

List of Keywords

F.I.R.; eye-witness; related and interested witness; contradiction; identification; common object; recovery of weapon; family enmity; massacre; dacoity; post-mortem; site plan; injured witness; improbable; false implication.

Case Arising From

APPELLATE JURISDICTION: Arising out of common judgment and order dated 18.12.2004 passed by the learned Additional Sessions Judge/Special Judge (E.C. Act), Unnao in Sessions Trial No. 228 of 2001 (State Vs. Rampal and others) arising out of Case Crime No. 41 of 2001, Police Station Makhi, District Unnao.

Appearances for Parties

Advs. for the Appellant:
Shri Adarsh Mehrotra, Amicus Curiae; Shri Amar Nath Dubey, Amicus Curiae; Shri Shreesh Kumar Mishra Atal, Amicus Curiae; Shri Chandra Shekhar Pandey, Amicus Curiae.
Advs. for the Respondents:
Shri Pawan Kumar Misra, learned A.G.A. for the State.

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

(1) Heard Shri Adarsh Mehrotra, learned Amicus Curiae for the appellants in Criminal Appeal No. 255 of 2005, Shri Amar Nath Dubey, learned Amicus Curiae for the appellant in Criminal Appeal No. 254 of 2005, Shri Shreesh Kumar Mishra Atal, learned Amicus Curiae for the appellants in Criminal Appeal No. 43 of 2005, Shri Chandra Shekhar Pandey, learned Amicus Curiae for the appellant in Criminal Appeal No. 231 of 2005 and Shri Pawan Kumar Misra, learned A.G.A. for the State.

(2) All the aforesaid criminal appeals under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as Cr.P.C.) emanate from common judgment and order dated 18.12.2004 passed by learned Additional Sessions Judge/Special Judge (Essential Commodities Act), Unnao, in Sessions Trial No. 228 of 2001; State Versus Rampal and 14 others, arising out of Case Crime No.41 of 2001, under Sections 148, 404, 452, 307/149 and 302/149 of the Indian Penal Code, 1860 (here-in-after referred to as I.P.C.), Police Station Makhi, District Unnao.

(3) Since the above-captioned criminal appeals emanate from a common factual matrix/incident, F.I.R. and impugned judgment and order 18.12.2004, therefore, the same are clubbed together and we proceed to decide the same by a common judgment.

(4) The prosecution case, in short, is that on 12.02.2001, the complainant Guddu had submitted a written report (Ext. Ka.1) at police station Makhi, district Unnao, alleging therein that he is a resident of village Meharavan Khera, a hamlet of Methitikur, police station Makhi, district Unnao. Gajju, Ram Kumar, Ram Kishan and brother-in-law of Raj Kumar, namely, Hari of his village had killed his uncle Kishan about 19 years ago, in which all four accused persons were sentenced to life imprisonment, among whom, Gajju and Ram Kishan have died. Sons of his uncle deceased Kishan, namely, Anil and Siddha Nath and sons of Chotta, namely, Subedar and Ram Bali, had killed Gajju in the year 1999. Due to this family enmity yesterday, on 11.02.2001, around 08:00-09:00 in the night, accused, (1) Ram Pal, (2) Shankar, (3) Shiv Nath, (4) Mishra, (5) Shiv Ram sons of Shiv Charan Das, (6) Desha, (7) Ram Singh, (8) Babbun, (9) Indrapal sons of Gajju, (10) Shiv Kumar, (11) Manoj sons of Shankar, (12) Ram Prakash (13) Ram Kumar, (14), Ram Vilas sons of Pritam and (15) Mewa Lal son of Hemraj, who all are of his village and belong to his community, came to his doorstep along with 7-8 outsider miscreants carrying a short barreled countrymade gun, countrymade pistol, axes etc. and shot his father Sarju, who was warming

himself by the fire, as a consequence of which, his father fell down and died. Then, his brother Chandrika came out of the house and ran. 6-7 miscreants shot him down on dung hill (?kwjs ij) in east-north side of his village. Some miscreants entered his house and killed his sister-in-law (HkkHkh) Smt. Satana, wife of Chandrika and when his brother Mangal shouted, then, they also shot him. Due to fear, he (complainant) hid inside the house and was watching the incident and saw that the miscreants were looking here and there inside the house with torches and they got his nephew Arvind aged 12 years son of Chandrika Prasad, they assaulted him also by butts of the guns and axe. Thereafter, all the miscreants came out from the house and killed his cousin Ram Khelawan son of Tekchand also. Thereafter, all the miscreants, while firing and threatening the villagers, came again into his house and snatched the gold chain from the neck and silver ornaments from the ears of his sister-in-law (HkkHkh) Satana, who was dead and they also picked four boxes, four wallets (cVqvk) of big pinked (cs/kk), four plates (Fkkfy;k), tharra, glass and lota and all the miscreants fired 25-30 round and created so much terror that no villager came out of house and all closed windows and doors due to fear. When miscreants went away, then, he came out and saw that his father, brother Mangal and sister-in-law Satana were dead and nephew Arvind was lying unconscious. When he saw on the east north side of village, he found that his brother Chandrika was lying dead on dung-hill. This collective massacre continued nearly for an hour, which was seen by him, his wife Puppi, his mother Kishana and wife of Ram Khelawan and several villagers had come hearing the sound of fire and they saw and recognized. Due to terror of miscreants, no one came near there. Ornaments, clothes and money were kept in the boxes, about which he does not have complete knowledge. They recognized 7-8 miscreants came from outside by their face and appearance. At the time of incident, lantern and lamp (nhid) were alight inside the house and fire was burning outside. He, his wife and his mother can recognize the things on seeing, which were taken away by the miscreants. Seeing dead bodies of his both brothers, sister-in-law, father and cousin brother, he became scared and fell unconscious. When he gained consciousness, it was already 12 O□clock in the night and there was no other person available to go along with him, therefore, he could not come to the police station. Three dead bodies are lying in the house and dead body of Chandrika outside of village on east-north and dead body of cousin brother Ram Khelawan is lying in his house. He has come to report. Report may be written and legal action be taken.

(5) On the basis of aforesaid written report, F.I.R., bearing Case Crime No. 41 of 2001, under Sections 147, 148, 149, 452, 302, 307, 404 I.P.C. was registered at police station Makhi, district Unnao on 12.02.2001 at 07:00 A.M. The investigation of the case was taken over himself by S.H.O. Shri Lajja Ram Yadav (P.W.8), Police Station Makhi, district Unnao.

(6) The Investigating Officer (P.W.8), after taking copy of chik F.I.R., copy of report, recording of statement of scriber of F.I.R., Constable Deena Nath Singh (P.W.9) and complainant Guddu (P.W.2), proceeded to the place of occurrence at village Meharvan and prepared inquest reports of deceased Ram Khelawan, Sarju, Mangal, Smt. Satana, Chandrika and necessary papers for the purpose of postmortem of their dead bodies as Ext. Ka.12 to Ext. Ka. 34 and handed over the dead bodies in a sealed condition to Constable Daddan Pandey (P.W.5) and Constable Rajesh Pandey (P.W.4). He also collected plain and blood stained soil from the place of occurrence and prepared memos as Ext. Ka. 35 to Ext. Ka.39. He recovered broken wood of butts of gun and gun arc from the place of occurrence under the recovery memo (Ext. Ka.40). He also recovered 13

empty cartridges 12 bore, one empty cartridge 315 bore and a bullet 315 bore under the recovery memo as Ext. Ka.41. On the pointing out of complainant, he inspected the place of occurrence and prepared the site plan as Ext. Ka.42. In the intervening night of 12/13.02.2001 at about 11:00 p.m., he arrested named accused Ram Kumar, Ram Vilas and Mewalal. He recovered one countrymade pistol 315 bore and two cartridges from the possession of accused Ram Kumar; one countrymade pistol 12 bore and two catridges 12 bore from the possession of accused Mewa Lal; and one blood stained axe from the possession of accused Ram Vilas, under a recovery memo as Ext. Ka. 43. On 14.02.2001, he arrested accused Shivram, Shiv Kumar and Shivnath and from the possession of accused Shivram, he recovered one countrymade pistol 12 bore and two catridges and on the pointing out of accused Shiv Kumar and Shiv Nath, he recovered axes. On 19.02.2001, he arrested accused Ram Singh and Babbun and on their pointing out, he recovered axe and lathi. On 20.02.2001, he recorded the statement of accused Shankar in jail, as, accused Shankar had surrendered in Court. On 21.02.2021, on getting information from informer, he arrested accused Deshraj, Indrapal and Mishri Lal and on the pointing out of accused Deshraj, he recovered one countrymade pistol, two cartridges 12 bore and on the pointing out of accused Indrapal, he recovered one countrymade pistol and two cartridges and on the pointing out of accused Mishrilal, one country-made pistol and one cartridge 12 bore, under the recovery memo. On 23.02.2001, he arrested accused Manoj and from his possession, he recovered one lathi with challa (a bamboo stick with a metal ring at the end). On 03.03.2001, he arrested accused Pappu and from his possession, he recovered one pistol and one cartridge 12 bore and from his left pocket of shirt, he recovered one pair of silver jhala jhumki (bell-shaped drop earring) under the recovery memo.

(7) The postmortem on the dead body of the deceased Ram Khelawan was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 08:10 P.M. The doctor found the age of the deceased about 45 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M.. The deceased was of average built and height. The eyes and mouth were closed and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Ram Khelawan:-

1. An incised wound size 3.5 cm x 1 cm bone deep on forehead on Lt. side 3 cm above Lt. eye brow. Skull bone Lacerated.

2. An incised wound 4 cm x 3 cm bone deep on Lt. parietal region 8 cm above Lt. ear. Skull bone Lacerated.

3. An incised wound size 8 cm x 2 cm on occipital Sic in middle 5 cm below occiput, brain matter coming out, wound is bone deep. Skull bone Lacerated.

On internal examination, Dr. Vinay Prakash found that the skull bones were fractured; the membrances of the brain were also torn; about 100 grams of blood was found inside the skull cavity; and the stomach contained about 150 grams of semi-digested food.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem head injuries. The ante-mortem injuries could be attributable by a sharp edged weapon like axe.

(8) The postmortem on the dead body of the deceased Sarju was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 08:25 P.M. The doctor found the age of the deceased Sarju about 60 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M.. The deceased was of average built and height. The eyes were closed and mouth was open and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Sarju:-

1. An incised wound size 8 cm x 1 cm on Lt. temporal regions, bone deep.

2. A firearm entry wound size 1.5 cm x 1.5 cm on Lt. side of chest 3 cm lateral to Lt. Nipple at 4 O'clock position, cavity deep, it goes posteriorly & medially. Margins inverted, blackening present and exit wound size 3 cm x 2.5 cm, on the back 3 cm lateral to spine at the level of inferior angle of scapula. Margins everted.

On internal examination, Dr. Vinay Prakash found that the left lung was ruptured; the membrances of the heart were torn; about 1.5 liters of blood was present inside the chest cavity; and the stomach contained approximately 100 grams of semi-digested food.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem injuries. The ante-mortem injury no.1 could be attributable by a sharp edged weapon like axe etc. and injury no.2 could be attributable by fire arm like pistol, countrymade gun.

(9) The postmortem on the dead body of the deceased Mangal was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 08:50 P.M. The doctor found the age of the deceased Mangal about 35 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M. The deceased was of average built and height. The eyes were open and mouth was closed and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Mangal:-

. A firearm entry wound size 3 cm x 2.5 cm surrounded by multiple pellets entry wound around one cm, cavity deep on the Lt. side of sic 9 cm lateral to Lt. Nipple at 4 O□clock position. Direction of wound is medial and towards Rt. side traversing Lt. lung, heart and Rt. lung.

2. An incised wound 2 cm x 1 cm on occipital region 13 cm above Lt. ear, bone deep.

On internal examination, Dr. Vinay Prakash found that the left lung was ruptured; the membrances of the heart were torn; about 1.5 liters of blood was present in the chest cavity; and the stomach contained approximately 100 grams of partially semi-digested food.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem firearm injuries. The ante-mortem injury no.1 could be attributable by a firearm like country made gun or pistol and injury no.2 could be attributable by sharp edged weapon like axe etc.

(10) The postmortem on the dead body of the deceased Smt. Satana was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 09:15 P.M. The doctor found the age of the deceased Smt. Satana about 35 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M. The deceased was of average built and height. The mouth and eyes were open and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Smt. Satana:-

1. A firearm entry wound size 5 cm x 3 cm on the neck joints lateral to trachea on Lt. side, Blackening & tattoing present. Margins are inverted, direction of wound is downwards and Rt. side and chest cavity deep, medial end of Lt. & Rt. clavicle fractured neck vessels damaged.

2. A firearm entry wound size 6 cm x 4 cm on Lt. Umber regions on lateral aspects 3 cm above iliac crest. Blackening & tattoing present, margins are inverted cavity deep, goes medially & right side. Small intestine is coming out from wound.

3. An abrasion size 8 cm x 7 cm on the Lt. knee joints.(cap)

On internal examination, Dr. Vinay Prakash found that the right lung was ruptured; about 750 milliliters of blood was present inside the chest cavity along with one wadding piece and ten small pellets; and the stomach contained approximately 150 grams of blood along with two wadding piece and 12 small pellets and 100 grams of digested food; the right side of the large intestine was full; and the spleen and the left kidney were ruptured.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem fire arm injuries. The ante-mortem injuries no.1 and 2 could be attributable by a fire arm like country made gun or pistol and injury no.3 could have resulted from a fall.

(11) The postmortem on the dead body of the deceased Chandrika was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 09:45 P.M. The doctor found the age of the deceased Chandrika about 40 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M. The deceased was of average built and height. The mouth was half open and eyes were closed and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Chandrika:-

1. An incised wound size .15 cm x 1.5 cm on Rt. parietal region of scalp, obliquely placed behind ear, skull bones cut & badly Lacerated brain matter coming out 5 cm behind the Rt. ear.

2. An incised wound size 7 cm x 1 cm on Lt. sic region 5 cm posterior to Lt. ear, skull bone badly lacerated and brain matter coming out.

3. An abrasion 2 cm x 1 cm on Lt. side of chest 3 cm below Lt. nipple.

On internal examination, Dr. Vinay Prakash found that the skull bones were fractured; the brain membrances and brain were completely lacerated and 150 grams of digested food was found in the stomach.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem head injuries. The ante-mortem injuries no.1 and 2 could be attributable by a sharp edged weapon like axe and injury no.3 could have resulted from a fall.

(12) The injuries of injured Arvind were examined by Dr. Satya Prakash (P.W.16) at District Hospital, Unnao on 12.02.2021 at 09:00 A.M. The doctor found the age of the injured about 13 years and probable time of injures was about half day old. He found the following injuries on the body of injured Arvind :-

1. Lacerated wound multiple on back of skull & back of Left ear of various size X bone deep.

2. Incised wound 7 cm x 1 cm on top of skull at middle.

3. Lacerated wound 2 cm x cm x muscle deep on left side of face.

4. Multiple contusion on Rt. side of face.

As per Dr. Satya Prakash (P.W.16), injuries no. 1, 2 and 4 were kept under observation and advised for x-ray. Injury no.2 could be caused by sharp edged weapon and other injuries could be caused by blunt object. In examination-in-chief, he stated that injuries no. 1, 3 and 4 could be attributable by butts of gun and injury no.2 could be attributable by axe and these injuries could be caused on 11.02.2001 between 8:00-09:00 p.m. In cross-examination, P.W.16 has stated that injuries no. 1, 3 and 4 could be caused by lathi and danda and injury no.2 could be caused by sharp edged weapon.

(13) On 14.04.2001, the Investigating Officer Lajja Ram Yadav (P.W.8) was transferred and, thereafter, SO Kumari Mamta Vidyarthi (P.W.10) took over further investigation of the case, who, after completing the necessary formalities including recording of statements of the witnesses, sent the recovered weapons of assault from the accused for examination at Forensic Science Laboratory on 08.05.2001. On 09.05.2001, after completing investigation, she submitted charge sheet (Ext. Ka.66) against accused (1) Ram Pal, (2) Shankar, (3) Shiv Nath, (4) Mishra alias Mishri Lal, (5) Shiv Ram, (6) Desha alias Deshraj, (7) Ram Singh, (8) Babbun, (9) Indrapal, (10) Shiv Kumar, (11) Manoj, (12) Ram Prakash, (13) Ram Kumar, (14) Ram Vilas, (15) Mewa Lal, (16) Pappu, (17) Kunju, (18) Mansaram and (19) Chota Raidas under Sections 147, 148, 149, 452, 302, 307, 404, 411 I.P.C. out of which accused no.(7) Ram Singh, (8) Babbun, (9) Indrapal and (11) Manoj were declared juvenile, therefore, their cases were forwarded to the Juvenile Justice Board. In the order dated 21.06.2002, learned Chief Judicial Magistrate, Unnao noted that accused Mansaram appeared in Court, but accused Chota Raidas was absconding, therefore, case lodged against accused Chota Raidas was separated.

(14) Learned Chief Judicial Magistrate took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions by means of the order dated 21.06.2002 against accused Ram Pal, Shankar, Shivnath, Mishri Lal, Shiv Ram, Desh Raj, Ram Singh, Babbun, Indrapal, Shiv Kumar, Manoj, Ram Prakash, Ramkumar, Ram Vilas, Mewa Lal, Pappu, Kunji, where the case was registered as Sessions Trial No. 228 of 2001 : State Vs. Ram Pal and others.

(15) The learned Sessions Judge, Unnao, by means of the order dated 28.08.2001, framed charges against fifteen accused persons, however, subsequently, by means of order dated 05.10.2001, the learned Sessions Judge referred the case of accused Ram Singh to the Juvenile Justice Board. Accordingly, fourteen accused persons, namely, Ram Pal, Shiv Nath, Shanker, Misra alias Mishri Lal, Shiv Ram, Desha alias Desh Raj, Shiv Kumar, Ram Prakash, Ram Kumar, Ram Vilas, Mewa Lal, Pappu, Kunji and Mansha Ram, have been tried by the learned Sessions Judge in Sessions Trial No.228 of 2001. All aforesaid fourteen accused persons denied their charges and claimed to be tried.

(16) Apart from the aforesaid case, the cases under Section 25 of the Arms Act were also registered and clubbed with the aforesaid case and tried together against the aforesaid accused persons.

(17) In order to prove its case, the prosecution examined sixteen witnesses, which are as under :-

P.W.1-Smt. Agana	Wife of deceased Ram Khelawan
P.W.2-Guddu	Son of deceased Sarju/complainant
P.W.3-Arvind	Injured
P.W.4-Constable Rajesh Pandey P.W.5-Daddan Pandey	Brought sealed dead bodies of the deceased persons for post-mortem
P.W.6-Constable Bhagwan Deen	Prepared the chik F.I.R. on the basis of recovery memo prepared by Investigating Officer Lajjaram Yadav
P.W.7-Dr. Vinjay Prakash	conducted the post-mortem of the dead bodies of the deceased
P.W.8 Lajja Ram Yadav	1st Investigating Officer
P.W.9-Constable Deenanath Singh	Prepared the chik F.I.R. on the basis of written report of complainant
P.W.10- S.O. Kumari Mamta Vidyarthi	2nd Investigating Officer, who filed charge-sheet against accused persons
P.W.11-R.D. Singh	Conducted the Investigation of Case Crime No. 68 of 2001 (Sessions Trial No. 234 of 2001) under Section 25 of the Arms Act against accused Ram Prakash

P.W.12-Constable Ram Singh	prepared the chik report No. k4/1 on the basis of recovery memo of Investigating Officer Lajjaram Yadav
P.W.13-Constable Deenanath Singh	registered Case Crime No. 48, 49 and 50 of 2001 under Section 25 of the Arms Act on the basis of recovery memo of Investigating Officer Lajjaram Yadav
P.W.14-S.I. Sonelal	Investigating Officer of Case Crime No. 42 and 43 of 2001 under Section 25 of the Arms Act
P.W.15-S.I. Janardan Prasad Dubey	registered Case Crime No. 58 of 2001 under Section 25 of the Arms Act against accused Pappu
P.W.16-Dr. Satya Prakash	examined the injuries of injured Arvind

(18) Apart from aforesaid witnesses, relevant documents have also been placed on record and proved by the prosecution, which are as under :-

Ext. Ka. 1	Written Report
Ext. Ka.2	Chik F.I.R. of Case Crime No. 42 of 2001
Ext. Ka.3	Carbon copy of G.D.
Ext. Ka.4	Chik F.I.R. of Case Crime No. 44 of 2001
Ext. Ka.5	Post-mortem report of deceased Ram Khelawan
Ext. Ka.6	Post-mortem report of deceased Sarju
Ext. Ka.7	Post-mortem report of deceased Mangal
Ext. Ka.8	Post-mortem report of deceased Smt. Satana
Ext. Ka.9	Post-mortem report of deceased Chandrika
Ext. Ka.10	Inquest report of deceased Ram Khelawan
Ext. Ka.11	Inquest report of deceased Sarju
Ext. Ka.12	Inquest report of deceased Mangal
Ext. Ka.13	Inquest report of deceased Satana
Ext. Ka.14	Inquest report of deceased Chandrika
Ext. Ka.15	Letter to Reserve Inspector Police Line, Unnao, seeking permission for post-mortem of the deceased persons
Ext. Ka.16	Letter to Chief Medical Officer, Unnao for conducting post-mortem of deceased Ram Khelawan
Ext. Ka.17	Police Form No.33
Ext. Ka.18	Photo lash of deceased Ram Khelawan
Ext. Ka.19	Letter to Chief Medical Officer for conducting post-mortem of deceased Sarju

Ext. Ka.20	Letter to Reserve Inspector, Police Line Unnao seeking permission for post-mortem
Ext. Ka.21	Photo lash of deceased Sarju
Ext. Ka.22	Police Form No. 33 of deceased Sarju
Ext. Ka.23	Letter to Reserve Inspector, Police Line, Unnao seeking permission for post-mortem of deceased Mangal
Ext. Ka.24	Letter to Chief Medical Officer, Unnao for post-mortem of deceased Mangal
Ext. Ka.25	Police Form No. 33 of deceased Mangal
Ext. Ka.26	Photo lash of deceased Mangal
Ext. Ka.27	Letter to Chief Medical Officer, Unnao for post-mortem of deceased Smt. Satana
Ext. Ka.28	Letter to Reserve Inspector, Police Line, Unnao seeking permission for post-mortem of deceased Smt. Satana
Ext. Ka.29	Photo lash of deceased Smt. Satana
Ext. Ka.30	Police Form No. 33
Ext. Ka.31	Letter to Chief Medical Officer, Unnao for post-mortem of deceased Chandrika
Ext. Ka.32	Letter to Reserve Inspector seeking permission for post-mortem of deceased Chandrika
Ext. Ka.33	Police Form No. 33 of deceased Chandrika
Ext. Ka.34	Photo lash of deceased Chandrika
Ext. Ka.35 Ext. Ka.36 Ext. Ka.37 Ext. Ka.38 Ext. Ka.39	recovery memos of blood stained soil and plain soil collected from the place where dead body of the deceased Ram Khelawan, Sarju, Chandrika, Smt. Satana, Mangal
Ext. Ka.40	recovery memo of broken wood of butts of gun
Ext. Ka.41	recovery memo of 13 empty cartridges 12 bore, one empty cartridge 315 bore and one bullet 315 bore
Ext. Ka.42	Site Plan
Ext. Ka.43	recovery memo of weapon of assault i.e. two countrymade pistol, cartridge and axe from the accused persons
Ext. Ka.44	recovery memo of blood stained axe
Ext. Ka.45	recovery memo of one countrymade pistol
Ext. Ka.46	recovery memo of one country made pistol 12 bore, two cartridges 12 bore and arrest memo of the accused persons
Ext. Ka.47	recovery memo of one countrymade pistol and catridges

Ext. Ka.48	recovery memo of one countrymade gun 315 bore and catridges and arrest memo of the accused persons
Ext. Ka.49	recovery memo of one countrymade pistol 12 bore and catridges
Ext. Ka.50	site plan of recovery of weapon of assault
Ext. Ka.51	F.I.R., Case Crime No. 41 of 2001
Ext. Ka.52	carbon copy of G.D.
Ext. Ka.53	copy of raport No.10
Ext. Ka.54 to Ext. Ka.65	Form sending for chemical examination
Ext. Ka.66 Ext. Ka.67	charge-sheet in Case Crime No. 41 of 2001
Ext. Ka.68	site plan of arrest of accused in Case Crime No. 68 of 2001
Ext. Ka.69	sanction by the District Magistrate, Unnao for initiation of proceedings against accused under Section 3/25 of the Arms Act in Case Crime No. 68 of 2001
Ext. Ka.70	charge-sheet in Case Crime No. 68 of 2001
Ext. Ka.71	chik F.I.R. in Case Crime No. 81 of 2001
Ext. Ka.72	Carbon copy of G.D.
Ext. Ka.73	site plan of arrest of accused in Case Crime No. 81 of 2001
Ext. Ka.74	charge-sheet in Case Crime No. 81 of 2001
Ext. Ka.75	chik F.I.R. in Case Crime No. 59 of 2001
Ext. Ka.76	carbon copy of G.D. in Case Crime No. 59 of 2001
Ext. Ka.77	site plan of arrest of accused in Case Crime No. 59 of 2001
Ext. Ka.78	Charge-sheet in Case Crime No. 59 of 2001
Ext. Ka.79	chik F.I.R., Case Crime No. 48 of 2001
Ext. Ka.80	carbon copy of G.D.
Ext. Ka.81	charge-sheet in case crime No. 48 of 2001
Ext. Ka.82, 83, 84	site plan of arrest of accused in Case Crime No. 48 of 2001
Ext. Ka.85	charge-sheet in Case Crime No. 42 of 2001
Ext. Ka.86	charge-sheet in Case Crime No. 43 of 2001
Ext. Ka.87 Ext. Ka.88	order of the District Magistrate Unnao for initiation proceedings against the accused of Case Crime Nos. 42 of 2001, 43 of 2001 under Section 3/25 of the Arms Act

Ext. Ka.89	chik F.I.R. Case Crime No. 38 of 2001
Ext. Ka.90	carbon copy of G.D. in Case Crime No. 38 of 2001
Ext. Ka.91	chik F.I.R. in Case Crime No. 45 of 2001
Ext. Ka.92	carbon copy of G.D.
Ext. Ka.93	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 59 of 2001 under Section 3/25 of the Arms Act
Ext. Ka.94	charge-sheet in Case Crime No. 44 of 2001
Ext. Ka.95	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 44 of 2001 under Section 25 of the Arms Act
Ext. Ka.96	carbon copy of G.D.
Ext. Ka.97	site plan in Case Crime No. 44 of 2001
Ext. Ka.98	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 81 of 2001 under Section 3/25 of the Arms Act
Ext. Ka.99	charge-sheet in Case Crime No. 50 of 2001
Ext. Ka.100	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 50 of 2001 under Section 3/24 of the Arms Act
Ext. Ka.101	site plan of arrest of the accused in Case Crime No. 51 of 2001
Ext. Ka.102	charge-sheet in Case Crime No. 48 of 2001
Ext. Ka.103	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 48 of 2001 under Section 3/25 of the Arms Act
Ext. Ka.104	site plan in Case Case Crime No. 48 of 2001
Ext. Ka.106	injuries of injured Arvind
Paper no. 133ka/1 to 133ka/5	F.S.L. Report as paper no.133ka/1 to 133 ka/5

(19) After completion of the evidence of the prosecution, the statement of the accused persons was recorded under Section 313 of Cr.P.C., wherein they denied the occurrence and shown ignorance to many things placed from evidence and stated that police has lodged the false case against them and the evidence has been given on the basis of enmity. They stated that false recovery of weapon on their pointing out has been shown by the police and they have been arrested from home.

(20) In defence, no evidence either oral or documentary has been led by the accused persons/appellants.

(21) After hearing the Public Prosecutor and learned Counsel appearing on behalf of the defence and considering the evidence and material on record, the learned Sessions Court, Unnao,

acquitted the accused Pappu, Kunji, Munshi Ram from the charges under Section 148, 302/149, 307/149, 452, 404 I.P.C. and acquitted the accused Ram Kumar and Mewa Lal from the charges under Section 25 of the Arms Act in Sessions Trial No. 229 of 2001, accused Shiv Ram from the charges under Section 25 of the Arms Act in Sessions Trial No. 230 of 2001, accused Pappu from the charges under Section 25 of the Arms Act in Sessions Trial No. 231 of 2001; accused Desha alias Deshraj and Mishra alias Mishri Lal from the charges under Section 25 of the Arms Act in Sessions Trial No. 232 of 2001, accused Shankar from the charges under Section 25 of the Arms Act in Sessions Trial No. 233 of 2001, accused Ram Prakash from the charges under Section 25 of the Arms Act in Sessions Trial No. 234 of 2001 and accused Rampal from the charges under Section 25 of the Arms Act in Sessions Trial No. 235 of 2001 and convicted and sentenced the accused Ram Pal, Shanker, Shiv Nath, Mishra alias Mishri Lal, Shiv Ram, Desha alias Deshraj, Shiv Kumar, Ram Prakash, Ram Kumar, Ram Vilas and Mewa Lal in Sessions Trial No. 228 of 2001 arising out of Case Crime No. 41 of 2001 by means of a common judgment and order dated 18.12.2004 as stated here-in-below :-

i. Under section 148 I.P.C. to undergo 3 years R.I.;

ii. Under section 302 read with section 149 I.P.C. to undergo life imprisonment;

iii. Under Section 307 read with section 149 I.P.C. to undergo 12 years R.I.;

iv. Under Section 452 I.P.C. to undergo 6 years R.I.;

v. Under Section 404 I.P.C. to undergo 6 years R.I.

It has further been directed by the learned trial Court that all the aforesaid sentences shall run concurrently.

(22) Feeling aggrieved by the judgment and order dated 18.12.2004, convicts/appellants Shankar, Desha alias Deshraj, Shiv Ram, Shiv Nath, Mishra alias Mishri Lal and Ram Pal have preferred Criminal Appeal No. 255 of 2005, convict/appellant Shiv Kumar preferred Criminal Appeal No. 254 of 2005, convicts/appellants Ram Prakash, Ram Kumar and Ram Vilas preferred Criminal Appeal No. 43 of 2005 and convict/appellant Mewa Lal preferred Criminal Appeal No. 231 of 2005.

(23) Learned A.G.A. has informed that no appeal, against the acquittal of other accused persons by means of order dated 18.12.2004, has been preferred either on behalf of the State or complainant.

(24) It is pertinent to mention that in Criminal Appeal No. 43 of 2005, appellant no.2-Ram Kumar has died, therefore, Criminal Appeal No. 43 of 2005 filed on behalf of appellant no.2-Ram Kumar was abated by means of order dated 04.04.2025. Now, Criminal Appeal No. 43 of 2005 survives only on behalf of appellant no.1-Ram Prakash and appellant no.3-Ram Vilas.

(25) Shri Shreesh Kumar Mishra Atal, learned Amicus Curiae for the appellants in Criminal Appeal No. 43 of 2005 submitted that the impugned judgment and order of the conviction and sentence has been passed by the trial Court without considering and appreciating the evidence and material on record appropriately. He submitted that a large number of assailants have been shown but the injuries are two or three only to the injured and the deceased. No specific role has been assigned to any assailant. He further submitted that recovery of weapons could not be proved, therefore, appellants have been acquitted under Section 3/25 of the Arms Act and once recovery could not be proved, the trial Court has committed material irregularity in convicting the appellants. He further submitted that learned trial Court has failed to consider that there was no source of light at the place of incident and the light shown was not sufficient to recognize the assailants. He further submitted that the alleged incident shown is of 08:00-09:00 in the night of 11.02.2001, but no food has been found in the stomach of the deceased persons, whereas in villages, people normally take food by that time. Thus, the impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and appellants are liable to be acquitted.

(26) Shri Chandra Shekhar Pandey, learned Amicus Curiae for the appellant in Criminal Appeal No. 231 of 2005 submitted that the F.I.R. is not only belated but ante-time also for the reason that the presence of the complainant (P.W.2-Guddu) at the place of incident is doubtful and from his testimony, it comes out that he was in his in-laws house at the time of the alleged incident and he has not suffered any injury along with his wife and mother, which is not possible in the kind of massacre by the appellants alleged by him. It has also been submitted that the scribe of the F.I.R. has not been produced. He further submitted that the testimony of P.W.1-Smt. Agana is not reliable, as, all the accused persons could not have come in a small room as shown by her. P.W.1-Smt. Agana has also admitted that she had child but no child has been shown. He further submitted that P.W.1-Smt. Agana is a related and interested witness and has made improvement after post-mortem. He further submitted that P.W.2-Guddu is the son of brother-in-law of the deceased and his presence at the spot is also doubtful. P.W.3-Arvind is related and interested witness. He further submitted that though P.W.3-Arvind is a injured witness but his testimony is not reliable, as, there was no evidence of sending him hospital by the police and his statement under Section 161 Cr.P.C. was recorded by the Investigating Officer after eighteen days, in which, the Investigating Officer Lajjaram Yadav (P.W.8) has also not disclosed his injuries. It has also been submitted that there is no independent witness and also no evidence of fire of warming by the deceased has been found. Thus, submission is that evidence adduced by the prosecution is only of related and interested witnesses, which was to be considered with care and caution, but the trial Court has failed to consider accordingly. He further submitted that the motive attributed in the F.I.R. as well as by the prosecution is not against the appellants and the mention of old incident in the F.I.R. shows that the F.I.R. was lodged in consultation and after thinking over it, only to implicate the appellants after dacoity and murder by unknown persons. He also submitted that timing of post-mortem of five deceased persons and the gap between them is very short, therefore, it has also not been done appropriately. He also submitted that P.W.2-Guddu has admitted that Mewalal and Ram Vilas were arrested from his house and if they would have been involved in the alleged massacre by the appellants and were resident of the same village, they would not have stayed at home, particularly, when they were seen by the injured Arvind, compalainant and others. He further submitted that it was a case of dacoity with murder of the deceased persons by unknown persons and on account of the enmity, appellants have falsely been implicated in the case. He also

submitted that about twenty-five persons have been shown in the F.I.R., who all have been entered into in a small room and killed the deceased Ram Khelawan, which is not possible. He also submitted that it is very strange that no effort was made to provide any medical aid to the injured child. The incident is of the evening between 08:00-09:00 and the injured witness (P.W.3-Arvind) has stated that he went for medical treatment in the morning around 08:00-08:30 a.m., where he was admitted for about eighteen days and his statement was recorded after his relieving from the hospital, whereas there is neither any proof of his admission in the hospital for such a long period nor his injuries show that it was required. Thus, the evidence of injured witness P.W.3-Arvind is also not reliable and his presence is also doubtful. Hence, he submitted that impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and the appellants are liable to be acquitted.

(27) Shri Adarsh Mehrotra, learned Amicus Curiae for the appellants in Criminal Appeal No. 255 of 2005 submitted that the contents of the F.I.R. appears to be false. He also submitted that no independent witness has been produced by the prosecution to prove its case. There are numerous inconsistencies in the evidence of the prosecution witnesses. The prosecution has also failed to prove the recovery of weapons. He further submitted that acquittal under Section 3/25 of the Arms Act by the trial Court, itself demolishes the case alleged in the F.I.R, but the trial Court without considering the evidence and material on record appropriately and recording findings on the basis of presumption and assumption, has convicted the appellants. He further submitted that motive shown by the prosecution is not proved as no enmity with Gajju and Ram Kishore has been proved. He also submitted that F.I.R. was lodged against certain persons along with eight unknown persons but their identity has neither been disclosed nor proved by the prosecution. He further submitted that enmity could have been with Rajesh, who vowed that he will kill the family of Sarju, which has also not been proved by the prosecution witnesses. He also submitted that it is very strange that in such a massacre, complainant Guddu (P.W.2) has not suffered any injury while he admitted that he had seen the accused persons and became unconscious and remained as such for about two hours. He also submitted that evidence of P.W.1-Smt. Agana is not reliable for the reason that on the one hand, she states that she had gone to meet her parents after the massacre in the morning and on the other hand, she says that they had died, therefore, it appears that either she was not present on the spot or lying. P.W.1-Smt. Agana also states that she had gone to mortuary after three days when she came to know the names of the assailants. He further submitted that it is very strange that a married woman, whose husband has been killed in front of her eyes, would go to her parents house and stay there for three days and thereafter she would go to the mortuary and could find her family members there, whereas the post-mortem was done on the next day. He further submitted that story of dacoity (yqV) and return of assailants after about half an hour after killing Ram Khelawan for the said purpose are also very improbable, as, only one earring (>qedk) has been recovered from Pappu, who has been acquitted. He also submitted that as per the evidence, the accused persons had covered their faces with towel (अंगोछा), therefore, the question of their recognition by the witnesses does not arise and on this count also, their evidence is not trustworthy. Thus, he submitted that the impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and the appellants are liable to be acquitted.

(28) In support of his submissions, Shri Adarsh Mehrotra relied on Md. Jabbar Ali and others Vs. State of Assam; 2022 SCC OnLine SC 1440, Digamber Vaishnav and another Vs. State of

Chhatisgarh; Criminal Appeal Nos. 428-430 of 2019, decided on 05.03.2019, Nanje Gowda Vs. State of Karnataka by Arkalgud Police; 2017 CRI.L.J. 2830, Periyasamy Vs. The State Rep. By the Inspector of Police; 2024 SCC OnLine SC 314, and Ram Singh Vs. State of Uttar Pradesh; (2024) 4 SCC 208.

(29) Shri Amar Nath Dubey, learned Amicus Curiae for the appellant in Criminal Appeal No. 254 of 2005 has also raised similar arguments and submitted that prosecution story of massacre and dacoity (लूट) are highly improbable and the evidence of prosecution witnesses is not sustainable in view of contradictions in their evidence. He also submitted that a small room in which P.W.1-Smt. Agana was lying along with her husband is only 5-6 hands long and of similar width, in which it is not possible that all assailants could have entered and killed her husband. Thus, he submitted that the impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and the appellants are liable to be acquitted.

(30) Learned Additional Government Advocate vehemently opposed the submissions of the learned Amicus Curiae for the appellants in all the four appeals and submitted that in the murder of Ram Kishan, accused Pappu, Kunji and Mansa Ram have been acquitted. He further submitted that merely because motive has been shown in the F.I.R., it cannot be said that the F.I.R. is concocted. There was source of light of lantern and diyas (a small cup-shaped oil lamp made of baked clay). He further submitted that there is eye-witness account of the incident and P.W.1-Smt. Agana, P.W.2-Guddu and P.W.3-Arvind, the injrued witness, are eye-witnesses, who have proved the incident and when the eye-witnesses are intact, the motive looses relevance. He also submitted that P.W.1-Smt. Agana is a rustic woman of village and the chronology of the events given by her as well as P.W.2-Guddu is natural and merely because there are certain contradictions in their evidence, they cannot be said to be not reliable and their evidence cannot be discarded. He also submitted that certain contradictions are possible due to passage of time and also it differs person to person on account of their capacity to recollect. He also submitted that the plea of dacoity (लूट) and murder of the deceased by unknown persons is misconceived and is not tenable, as, no defence witness has been produced to prove it. He further submitted that enmity has been proved. Thus, the impugned judgment and order of conviction has been passed rightly in accordance with law by the learned trial Court after considering the evidence and material on record and appreciating it appropriately by reasoned and speaking order. There is no illegality or error in the impugned judgment and order passed by the trial Court, which may call for any interference by his Court. All the appeals are misconceived and lacks merit, therefore, liable to be dismissed.

(31) In support of his submissions, learned A.G.A. relied on Tahsildar Singh and others Vs. The State of Uttar Pradesh; AIR 1959 SC 1012, State of U.P. Vs. Naresh and others; (2011) 4 SCC 324, Baban Shankar Daphal and others Vs. The State of Maharashtra; AIR 2025 SC 599, Pruthiviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala and others; (2022) 18 SCC 683, Gangabhavani Vs. Rayapati Venkat Reddy and others; (2013) 15 SCC 298, Sucha Singh and others Vs. State of Punjab; (2003) 7 SCC 643, Dalip Singh and others Vs. State of Punjab; AIR 1953 SC 364, Ravasaheb and Others Vs. State of Karnataka; (2023) 5 SCC 391, Om Pal and others Vs. State of U.P. (Now State of Uttarakhand); MANU/SC/1457/2025, Haribhau and others Vs. The State of Maharashtra; MANU/SC/1463/2025, Lalji and others Vs. State of U.P.; (1989) 1 SCC 437, and Masalti and others Vs. State of Uttar Pradesh; 1964 SCC OnLine SC 30.

(32) We have heard learned Counsel for the parties and perused the records.

(33) The learned trial Court, after hearing learned Counsels for the parties, recorded that to consider the case in hand, in which 5 persons have been killed allegedly by 18 persons, the whole case is to be considered on the basis of evidence of P.W.1, P.W.2 and P.W.3. It is a very serious matter, therefore, as argued by learned Counsels for the parties, the evidence is required to be examined deeply. Thus, it is evident that the learned trial Court proceeded to examine the evidence on record, keeping in mind 5 murders in the incident and alleged involvement of 18 persons. The seriousness of the incident cannot be disputed. However, since the judgment passed by learned trial Court has been assailed, therefore, this Court has to see as to whether the learned trial Court has examined the evidence and material on record appropriately or not.

(34) The F.I.R. of the incident was lodged by P.W.2-Guddu, which starts from a murder of his uncle Ram Kishan about 19 years ago and a murder of Gajju, an accused in murder of his uncle, about two years ago to show the motive of the crime in the incident in the present case. It has been alleged that Gajju, Ram Kumar, Ram Kishan and brother-in-law of Raj Kumar, namely, Hari had killed his uncle Kishan about 19 years back, in which all these accused persons were convicted and sentenced to life imprisonment. Gajju and Ram Kishan have died. Anil and Siddha Nath, sons of his uncle Kishan (deceased) and Subedar and Ram Bali, sons of Chotta had killed Gajju in the year 1999. On account of the said family enmity, incident has been committed on 11.02.2001, at around 08:00-09:00 in the night, by 15 named accused persons along with 7-8 other unknown accused persons, as stated in the F.I.R. and killed five persons of family and injured one child in the manner stated in it.

(35) P.W.2-Guddu stated that the incident is of about eight months ago. It was around 08:00-09:00 in the night when he was going out of the house for warming from fire. He saw that Ram Pal, Shankar, Mishra, Shiv Ram, Shiv Nath, Desha, Indrapal, Badduan, Ram Singh, Shiv Kumar, Manoj, Ram Kumar, Ram Vilas, Ram Prakash, Mewa Lal and 7-8 other persons came. They were armed with अद्धी (a short barreled countrymade gun), axe, gun, and lathi. His father was warming from fire under thatch and lantern was alight under the door. The said accused persons fired on his father Sarju, who fell down and died. His brother Chandrika, upon hearing the noise of fire, came out, then, 7-8 accused persons chased and killed him near dung hill (घूरे) out of the village. Some persons entered into his house and killed his brother Mangal by assaulting him with axe and by firing from gun. His sister-in-law Satana was also killed by the accused persons by firearm shots in the kitchen. His nephew Arvind was feeding the buffalo under the thatch. When he started shouting to save his sister-in-law, the accused assaulted him with the butt of gun, butt of pistol and axe, thereby causing him injuries. Thereafter, the accused persons said, Let us go to kill Ram Khelawan. Ram Khelawan was his cousin brother. Accused also killed him. After that, the accused persons returned to his house again and then they snatched away the gold chain and earrings from his deceased sister-in-law Satana. Accused persons also took away four purses (बटुआ) kept for the wedding, big plates (थाल), four boxes containing jewellery etc. and while firing shots, the accused ran out of the village.

(36) P.W.2-Guddu (complainant) further stated that thereafter he and others came out and he fell unconscious, seeing the deceased persons. He regained consciousness at about 12 o'clock in the night. At 4:00 in the morning, he went to Methitikur and from there, he went to Belsi. His in-laws house is in Belsi. When he informed his relatives, they came to his house. He got the report written from Ram Khelawan in Belsi. Ram Khelawan read over the report to him and then he put his thumb impression on the report. Paper No. Ka 4/3 was read over to him, upon which he stated that this was the same report which he had got written by Ram Khelawan. He further stated that whatever he had told was written by Ram Khelawan and read over to him and thereafter he put his thumb impression on the same. The report is Ext. Ka. 1. Thereafter, he went to police station and handed over the report to Munshi (Constable/Clerk), on the basis of which, F.I.R. was lodged, a copy of which was given to him after taking his thumb impression on the register. He also stated that Radha was his real sister, whose marriage was solemnized with Rakesh of Jamal Nagar. Rakesh had killed his sister Radha by giving poison. He also stated that his statement was recorded by the Inspector in the police station. Thereafter, the Inspector came with him to village, from where the police personnel took his nephew Arvind to the hospital by Jeep.

(37) In cross-examination, P.W.2-Guddu stated that his father-in-law and brother-in-law are residing in Belsi. He had gone alone to Methitikur, where father of his brother-in-law Pohkar is residing. He informed him and thereafter with him, he went to Belsi. Pohkar stayed in his in-laws house. He also stated that his earlier statement, that relatives of Methitikur had come to his house, is wrong and the relatives of Belsi came to his house but they had not come with him to his village because he had gone to police station. In his further cross-examination, he stated that Police Station Makhi is in Belsi village, which is two kilometers from his in-laws house. He reached Belsi at 05:00 in the morning. He stayed ten minutes in in-laws house. It took about twenty minutes in reaching the police station from his in-laws house. He went to the house of Ram Khelawan from his in-laws house. He did not know Ram Khelawan prior to it. His father-in-law told the name of Ram Khelawan. He had not gone to the police station with Ram Khelawan. The F.I.R. of the incident was lodged on 12.02.2001 at 07:00 A.M., therefore, there is time gap between the time stated by P.W.2-Guddu in reaching the police station and lodging of the F.I.R. and also contradiction in his testimony because firstly he says that from his in-laws house, it took 20 minutes to reach police station, thereafter, he says that he went to Ram Khelawan from his in-laws house, about whom his father-in-law had told. The scriber of the F.I.R. Ram Khelawan has not been produced, though his name has been mentioned in the written report as scriber. The report has been written very articulately giving not only the names of accused persons but their parentage in seriatim, which creates doubt to have been got written solely by complainant, who would have been in trauma for the whole night due to alleged massacre in which his five family members were killed and one was injured. A normal person would not have over come such a trauma in such a short period to get written an F.I.R. so articulately. Though P.W.2-Guddu stated about the accused of the said murders but in his cross-examination he states that he was quite young at the time of murder of his uncle Kishan, therefore, he cannot tell that Santu Yadav was also murdered by using an axe. He also cannot tell as to whether Santu Yadav had given evidence or not and he also does not know as to whether the accused persons were convicted on the evidence of Santu Yadav. Thus, on the one hand, he got the F.I.R. written connecting the incident of the instant case with the said incident of about 19 years back to show the motive and naming the accused of that case and their relations but he does not recollect as to whether Santu Yadav was an accused or witness or not. Even otherwise,

his age at the time of his evidence in the trial Court was 30 years, therefore, at the time of aforesaid incident, he must have been around 11 years of age, which also creates doubt that he would have got report written himself.

(38) P.W.2 has also stated that he had got written in the report that lantern was alight outside the house, if it has not been written by Ram Khelawan in the report as stated above, then, he cannot tell the reason for the same, whereas earlier he had stated in the evidence that after the report was written by Ram Khelawan as told by him, the same was read over to him and thereafter he had put his thumb impression. During the evidence also, the said written report was read over to him and thereafter he stated that it was the same report, which was written as told by him. In view of these contradictions and the time lapse in reaching the police station from his in-laws house as stated above, it appears that the report was not written as told by him and also that the report was got written by some one else and in any case, the F.I.R. cannot be said to have been got written by the complainant himself, that too without any consultation and assistance and it may not be an afterthought, but the same was submitted by the complainant before the police station for lodging the F.I.R.

(39) An argument was also raised that Guddu (P.W.2) was not present at the time of alleged incident and he was in his in-laws house from where he went to lodge the F.I.R. The complainant Guddu stated in his examination-in-chief that on the date of incident at about 08:00-09:00 in the night, he was coming out from the house for warming from fire, when the accused persons, Rampal, Shankar, Mishra, Shivram, Shivnath, Desha, Indrapal, Badduan. Ram Singh, Shiv Kumar, Manoj, Ram Kumar, Ram Vilas, Ram Prakash, Mewa Lal and 7-8 persons came, who were armed with अद्धी (a short barreled countrymade gun), axe, guns and lathies. At that time, his father Sarju was warming from fire under thatch outside the house. Lantern was alight under the door. The said accused persons fired shot upon his father, who fell down. His brother Chandrika, on hearing the noise of fire, came out of the house, then, 7-8 persons chased him and killed him on dung hill outside the village. Thereafter, he stated as to how other persons were killed, which has been disclosed above. He also stated that after killing his cousin brother Ram Khelawan, they came back and snatched the gold chain and earrings of his sister-in-law Satana and after taking the purses etc. went away. In cross-examination, he stated that after his father was shot, he hid himself near the door. He did not hide outside beside the door, rather he hided himself inside the room beside the door. He further stated that a room is adjacent to the thatch on the back side, under which his father Sarju was warming himself from fire. He remained hid there until the accused persons went away and kept on seeing the incident from there. Thus, his evidence is not consistent and there is contradiction in examination-in-chief and cross-examination. His place of hiding is also contradictory in comparison to site-plan, which has been prepared on his pointing out.

(40) P.W.2-Guddu further stated that he had shown the place of incident to the Inspector. He had not told him that he was hiding in the room in the east side of the house and he could not tell the reason as to how it has been shown by the Inspector. He also stated that he had not told to the Inspector that he was coming out for warming from fire. He further stated that only one shot was fired at his father and remaining shots were fired in the air and thereafter his father was assaulted with axe and in cross-examination, he also stated that when his father was shot, he hid himself, whereas in the F.I.R. and examination-in-chief, he has stated only about a fire and death on account

thereof. It shows that there is contradiction in evidence and in view of post-mortem report, he has made improvement. He further stated that he was hiding and the accused persons were searching him. On account of fear, he could not tell anything to his brother Chandrika. When he was outside, his brother Chandrika came out and ran away. He further stated that when accused persons attacked on his father Sarju, he had identified the accused persons. However, he further stated that he could not tell the names of the accused persons who had chased his brother. He could not say whether all the accused persons entered the house or how many of them entered the house. He also could not say how many accused persons were searching for him. All the accused persons were lighting torches and searching all inside the house, therefore, he assumed that they were also searching for him. The other accused persons had killed Mangal and his sister-in-law. He further stated that his nephew Arvind was not sleeping at the time of the incident, rather he was feeding fodder to the buffalo. Outside the house towards the north, there is a thatched shed. A buffalo was tied there and his nephew was feeding it. Arvind was beaten under the thatch in the east side. He further stated that at the time of incident, Arvind was sleeping. He had not shown to the Inspector that Arvind was sleeping on the south inside the house, where he was beaten. He could not tell the reason as to how the Inspector shown in the site plan that his nephew was sleeping and beaten on the South inside the house. He further stated that at the time of incident, four lamps (दिया) were alight inside and one lantern was alight outside. He further stated that one lamp (दिया) was alight in the courtyard (चौके), one in the varandah, one in the room and one under the thatch. He further stated that when Arvind ran from outside towards inside, he had thrown डलिया The accused persons had taken 10-15 minutes in inflcting injuries to his sister-in-law, Mangal and Arvind. He has further stated that when the accused persons came back again after killing Ram Khelawn and committed looting, he was hiding inside the house at the same place. He was hiding on account of fear. The door of his house was not closed. The accused persons had not told for coming back. The accused persons were searching him in the light of torch but he was hiding behind the gunny bags, therefore, they could not see him. He further stated that he had not told the description of any of the accused persons to the Inspector nor disclosed in report. He had not made any conversation with his mother and nephew after accused persons left from the place of the incident. He has further stated that the names of the accused persons, for the first time, got written by him in the report from Ram Khelawan.

(41) In view of above, according to the complainant P.W.2-Guddu, he had seen all the accused persons while he was coming out of the house and he has named 15 persons and stated about 7-8 unknown persons. He also stated that while he was coming out from inside the house, accused persons had killed his father, upon which he hided himself. This Court failed to comprehend that as to how a person could count 23-24 persons in that period, which may have been very short and also identified at least fifteen persons. It is also very unobvious that a person, who hide himself inside a room on the back of gunny bags, could have seen all the incident, whereas the different persons have been killed at different places of house and one person in other house at a distant place i.e. his cousin brother that too in the kind of light shown by him and as to how he came to know that accused persons came back after killing him and till then, he would hid himself. It is not believable that a person, who is hiding himself, would have seen such a number of accused persons snatching the jewellery of his sister-in-law, who was lying somewhere else and going with lot of articles, which appears were kept for some marriage, which has come out of the evidence of witnesses. He

has disclosed the relationship of the accused persons with Gajju, who were accused in the murder of his uncle Kishan. Though he stated that Mewalal was accomplice but admitted that there is no enmity with Mewalal and Pritam and his sons. There is contradiction in the place of beating of Arvind in comparison to the statement recorded by the Investigating Officer under Section 161 Cr.P.C. and site plan, which was prepared on his pointing out. Thus, the presence of the complainant P.W.2 at the place of the incident is doubtful. Even if he was present at the place of incident, it cannot be said that he could have seen all the accused persons from the place, where he was hiding himself in a room behind the gunny bags. Thus, the evidence and conduct of the complainant P.W.2-Guddu creates doubt on the prosecution case and truthfulness of his evidence. However, argument in regard to doubt of presence of the complainant at the place of incident has been discarded by learned trial Court on the ground that it is based on imagination, which is not tenable. The learned trial Court also recorded finding that his evidence is consistent and natural on the ground that if on perusing the whole evidence, the truth is inferred, then, on account of any omission in evidence, the deceased persons and injured cannot be punished and the accused would not be benefitted in any manner, whereas in the criminal trial the question of any punishment to the deceased and injured does not arise.

(42) P.W.1-Smt. Agana, wife of Ram Khelawan, has stated that about eight months back, around 8:00-09:00 in the night, she was sleeping inside the house in room and lantern was alight inside the room. When the door of her house was forcefully knocked and noise of firing were heard, she woke up. When accused persons started breaking the door of her house, her husband Ram Khelawan went and sat on the wooden beam (टाड) of the room. When the door was being broken, firing was taking place outside. Shankar, Rampal, Mishri Lal, Shiv Ram, Shiv Nath, Shiv Kumar, Manoj, Desha, Indrapal, Ram Singh, Badduan, Ram Kumar, Ram Vilas, Ram Prakash, Mewa Lal, Mansha Ram, son of Mansha Ram, Kunji and Pappu armed with अद्धी (a short barreled countrymade gun), countrymade pistol, axe, lathi, danda, entered into her house. These persons pushed down her husband from the beam and then they started assaulting her husband with axes, lathi and danda. Her husband died. She recognized the accused persons present in trial Court. From there, accused persons went towards the house of Guddu. In this incident, Satana wife of Chandrika, Chandrika, her father-in-law Sarju and Mangal died. Accused persons went shouting and firing.

(43) The evidence of P.W.1-Smt. Agana raises serious doubt about her presence and evidence because she states that the aforesaid 18 persons entered into her room, which, according to her, was about 5 to 6 hands long and 5 to 6 hands wide. This Court fails to comprehend that eighteen persons can come in such a small room and a young lady like P.W.1-Smt. Agana can recognize all of them with their names, particularly when according to her, all eighteen persons had covered their faces with towel, even if they were known to her, which although has not been stated by her. She has also stated that after her husband was killed, she had not gone out to see as to what happened because she was having her problem but she went to his parents house in the next morning to inform about the incident, where she met to her brother as her parents had already died and she stayed there for two days and on the 3rd day, she directly went to mortuary along with her brother, where she came to know that names of the aforesaid persons have been written in the F.I.R.. Thus, P.W.1-Smt. Agana, for the first time, came to know the names of persons, who were alleged to have been involved in the incident on the 3rd day of the incident in mortuary. The incident is of the

intervening night of 11/12.02.2021. Hence, according to her, she went to parents house in the morning of 12.02.2021 and would have gone to mortuary on 14.02.2021, whereas the post-mortem of the deceased persons were performed in the evening of 12.02.2021, therefore, the question of dead bodies of the deceased persons lying at mortuary on 3rd day of the incident and presence of relatives, there would not arise and it cannot be believed also because once the post-mortem was conducted, the dead bodies must have been received by the family members for cremation and the cremation must have been done on the same day or next day. It is highly improbable that a young lady, whose husband has been killed in such a massacre would leave the dead body of her husband and go to the parents house and stay there for two days, leaving dead body of her husband.

(44) P.W.2-Smt. Agana also stated that food was prepared at 07:00-08:00 in the evening on the date of the incident. The food, which was prepared in the noon, was eaten at 04:00-05:00 in the evening. The food, which was prepared in the evening, was eaten by the children and they had not taken the food. In this regard, the contention was raised by learned Amicus Curiae for the appellants that it has deliberately been stated in the evidence after knowing the post-mortem report. Looking to the conduct and kind of evidence of P.W.2-Smt. Agana, the possibility of it cannot be ruled out.

(45) In regard to the source of light in the examination-in-chief, P.W.1-Smt. Agana stated that lantern was alight inside the room, whereas in the cross-examination, she stated that lantern was hanging on hook (खूंटी) outside the room and its beam just above the door, on which her husband was sitting. Therefore, there is contradiction in her statement in regard to the source of light in her room, as, if the lantern was outside the room, it cannot be accepted that she would have recognized the persons who entered into her room because while they entered in her room, light must have been on their back and as per her evidence, all the persons had got their faces covered with towel (अंगोछा) and only their mouth and eyes were blinking. She also stated that to save her husband, she had fallen on him, on account of which, her bangles in the hands were broken, therefore, she had suffered injuries and blood had oozed out. When she had fallen on her husband, the accused persons had beaten her with lathies on her back, on account of which, she had suffered injuries and blood had also come on her clothes, but neither broken bangles nor the blood stained clothes of P.W.1-Smt. Agana have been recovered, whereas she had stated that she had given it to the Inspector and he had taken away the same, whereas earlier she stated that in the morning, she had gone to parents house to inform and stayed there, therefore, she would not have present at least at the time, when the Inspector had come in morning.

(46) On perusal of record, it transpires that there is no medical examination report of P.W.1-Smt. Agana. If the bangles of P.W.1 were broken and if she was beaten by lathies on her back by such large number of persons, she should have suffered serious injuries. She had also stated that after husband was murdered, she had not gone out to see other deceased persons, which is not conduct of a normal person, because normally such a lady would have gone out shouting for help. The injuries of Ram Khelawan were also not commensurate to her evidence because she stated that her husband was beaten by axes, lathi and danda but there was no injury of lathi and danda. The aforesaid evidence of P.W.1 shows that this witness is not telling the truth. There are material contradictions in her evidence and her evidence is neither consistent nor believable. Thus, either she was not present at the place of incident or she is telling lie and hiding the truth. The learned

trial Court even after considering contradictions in her evidence, records a finding that her evidence is consistent, completely natural and believable in totality of evidence without any basis and merely on the ground that the Counsels have not followed the rules of cross-examination and law, which is not sustainable in the eyes of law because the effect of contradictions have not been considered, which we have considered.

(47) P.W.3-Arvind stated that it was about eight months back around 08:00-09:00 in the night when he was feeding fodder to the buffalo. Rampal, Shankar, Mishra alias Mishri Lal, Shiv Ram, Shiv Nath, Desha, Indrapal, Ram Singh, Babbuan, Shiv Kumar, Manoj, Ram Kumar, Ram Vilas, Ram Prakash, Pappu, Mewa Lal, Mansha Ram and son of Mansha Ram Kunji, who were present in Court, came. They all were armed with अद्धी (a short barreled countrymade gun), lathi, axe and gun. His grandfather Sarju was warming from fire under thatch. Rampal fired a shot at his grandfather Sarju, then, his father Chandrika, on account of fear, ran shouting outside the house. 7-8 persons chased him and some of the accused persons entered into his house. His father was killed on dung hill at some distance from the village. The accused persons, who had entered into his house, killed his mother Satana and his uncle Mangal. Thereafter, accused persons started searching here and there in the light of torch. He was hiding inside the house on the southern side, however, accused searched him and assaulted him with the butt of अद्धी (a short barreled countrymade gun) and axe. He sustained injury. After assaulting him, the accused persons said Let us go to kill Ram Khelawan and by saying this, they went towards the house of Ram Khelawan. He further stated that lantern was alight in front of his house under the thatched roof and inside the house also, चिराग (lamp) was alight. Subsequently, he came to know that accused persons have killed Ram Khelawan. Thereafter, the accused persons returned and took away his mother□s gold chain, silver earrings and four purses, four boxes etc. He further stated that his injuries were not seen by doctor. Thereafter, he stated that he had come to Uma Shankar Government Hospital, Unnao, where his injuries were examined and he remained admitted in that hospital for twenty days. His statement was recorded after returning from hospital by the police officer.

(48) The evidence of P.W.3-Arvind shows that he was also chased by 7-8 accused persons, who had beaten him, in which he suffered serious injuries and fell unconscious. It is very strange that a child of the family was beaten by the accused persons, but no effort was made by any body for providing first aid to him throughout the night. It is also very strange that the said accused persons, who had killed five persons of the family, left P.W.3 only after beating and he also had not suffered injuries commensurate to the beating by 7-8 persons shown by him. The medical examination of P.W.3 was conducted on 12.02.2021 at 09:00 A.M. P.W.2 stated that when after lodging the F.I.R., he reached back along with Inspector to the spot, then, P.W.3-Arvind was sent for medical examination by the police by Jeep, however, no letter in this regard for medical examination of P.W.3 is on record. However, the medical examination of P.W.3 indicates that he was brought by Constable for medical examination. P.W.3 also stated in his evidence that he was admitted in hospital for 20 days and after discharge from hospital, his statement was recorded by the Investigating Officer, whereas there is no report in regard to his admission in hospital, which may indicate that he was admitted for twenty days in Hospital after the aforesaid incident. Thus, it appears that P.W.3 has also not told the truth. This Court fails to comprehend that P.W.3-Arvind, who was a child of about 11 years at the time to incident, would have been left alive by persons, who committed such a massacre, in which they killed five persons of a family, but he has not

suffered injuries commensurate to it. The learned trial Court recorded similar finding, as in regard to P.W.1 and P.W.2, in regard to this witness also for accepting his evidence without considering aforesaid aspect, even after recording, therefore, the same is not sustainable.

(49) An argument was also raised on behalf of the appellants that it is very strange that around eighteen named accused persons and 7-8 unknown accused persons were seen by these three prosecution witnesses and they recognized them in the dark of the night, when there was no source of light. The unknown persons could also not been traced and booked.

(50) The aforesaid testimony of P.W.2 and P.W.3 indicates that there was a lantern at the door of the house and there were lamps (दिया) in the house at different places, which does not seem to be sufficient for recognizing such large number of assailants by them from the places, they were hiding. There is contradiction in the evidence of P.W.1 in regard to source or light at the door or inside her room, where she had seen such large number of persons and her husband was killed by the accused persons.

(51) In view of above, the evidence of all the three witnesses of fact raises serious doubts about their evidence and presence and prosecution case. The other witnesses are formal witnesses and the case hinges on the ocular evidence of three witnesses of fact i.e. P.W.1, P.W.2 and P.W.3. Therefore even if there may be any laxity in the investigation, post-mortem, preparation of site plan etc, the prosecution case would have no adverse effect, if the ocular evidence is consistent and intact in support of prosecution, but if the presence of eye-witnesses at the place of incident becomes doubtful or even not trustworthy on the ground that they could not have seen the incident in the manner as described by them, the conviction on that basis cannot sustain. They are also family members and no independent witness has been produced and the evidence of aforesaid witnesses does not inspire confidence.

(52) Upon considering the evidence and material on record, it is apparent that eye-witnesses have stated that on account of fear and terror created by accused persons, no body came out, whereas as per F.I.R., the villagers had come and recognized the accused persons, but none has been produced. It is true that family members would not implicate the innocent persons and leave the actual culprits, but in the present case, the implication is on the ground of enmity due to earlier murders, as discussed above, otherwise, the same would not have shown in the F.I.R. and evidence of the prosecution witnesses, therefore, the said enmity should have been proved with cogent evidence, which the prosecution has failed to do. P.W.2, complainant laid great emphasis on it. He also disclosed the relationship of the accused persons accordingly but failed to show that the said enmity still persisted and on account of the said incident of 19 years back, accused persons could have committed such a massacre, whereas he had admitted that there was no enmity with the accused Mewalal and Preetam and his sons, but they have also been implicated. It is also very strange that if Mewalal was an accomplice of the accused persons without any enmity, even then he and one of the accused Ram Vilas would stay at home in the vicinity in the village because according to P.W.2, the police had arrested them on the very next day after lodging of the F.I.R. by the Inspector, when he had come with him, whereas, according to Investigating Officer, they were arrested from somewhere else, when they were about to flee but no money was recovered from them. Thus, there is major contradiction in arrest of at least two accused persons. The prosecution

has also failed to prove the recovery and connect the cartridges etc. with the crime. No evidence of fire has been found at the place, where Sarju was killed, from which he would have been warming.

(53) The Hon'ble Supreme Court, in the case of Haribhau and others Vs. the State of Maharashtra (supra), has considered the scope of Section 149 of the Indian Penal Code and observed that it is not necessary for each member of the unlawful assembly to have committed a specific overt act. Once participation and sharing of the common object are proved, every member becomes vicariously liable for offences committed in prosecution of that object Similar view was taken by the Hon'ble Supreme Court in the cases of Lalji and others Vs. State of U.P. (supra) and Masalti and others Vs. State of Uttar Pradesh (supra).

(54) The Hon'ble Supreme Court, in the case of State of U.P. Vs. Naresh and others (supra), has held that the evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted and evidence of injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. The relevant paragraphs 23 and 25 are extracted here-in-below :-

23. The High Court has disbelieved Balak Ram (PW.5), who had suffered the gun shot injuries. His evidence could not have been brushed aside by the High Court without assigning cogent reasons. Mere contradictions on trivial matters could not render his deposition untrustworthy.

The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].

25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence."Exaggerations per se do not render the evidence brittle. But it can be one of

the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility."

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide: State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT 2010 (12) SC 287].

(55) The Hon'ble Supreme Court has considered about the ocular evidence account and testimony of injured witness in the case of Om Pal and others vs. State of U.P. (Now State of Uttarakhand) (supra). The relevant paragraphs 33 and 35 are extracted here-in-below :-

33. The present case before us is not the one based on circumstantial evidence, but is based on ocular evidence. Time and again this Court has held that ocular evidence is the best evidence unless there are reasons to doubt it. This Court in Shahaja alias Shahajan Ismail Mohd. Shaikh(supra) held thus:

30. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, 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.

31. There is nothing palpable or glaring in the evidence of the two eyewitnesses on the basis of which we can take the view that they are not true or reliable eyewitnesses. Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eyewitnesses.

(Emphasis supplied)

35. It is settled that the testimony of an injured eyewitness is accorded a special status in law. As being a stamped witness, his presence cannot be doubted. The testimony of an injured eyewitness has its own relevancy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the

testimony of the injured eyewitness should be generally given due importance unless there are glaring contradictions.

(56) In the aforesaid case, it has also been held that merely non-recovery of weapon of assault is not fatal to the case of the prosecution as has been in the instant case, where recovery of weapon of assault has been found illegal, in which the accused persons have been acquitted for the offence under Section 3/25 of the Arms Act and the same has not been challenged either by the State or the complainant.

(57) The Hon'ble Supreme Court, in the case of Dalip Singh and others Vs. State of Punjab (supra), has dealt about the veracity of the evidence of closed relatives. Paragraph-26 is extracted here-in-below :-

26. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this court endeavoured to dispel in Rameshwar v. The State of Rajasthan: [1952] S.C.R. 377 at 390. We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

(58) The Hon□ble Supreme Court, in the case of Baban Shankar Daphal and others Vs. The State of Maharashtra (Supra), also dealt with the interested or related witnesses. The relevant paragraphs-28 and 29 are extracted here-in-below :-

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.

29. The distinction between interested and related witnesses has been clarified in Dalip Singh v. State of Punjab; 1954 SCR 14, where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

i. Md. Rojali Ali v. The State of Assam Ministry of Home Affairs through secretary; (2019) 19 SCC 567

ii. Ganapathi v State of T.N.; (2018) 5 SCC 549

iii. Jayabalan v Union Territory of Pondicherry; (2010) 1 SCC 199

(59) The Hon'ble Supreme Court, in the case of Nanje Gowda Vs. State of Karnataka by Arkalgud Police (supra), has held that there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eye-witnesses is found to be incredible and not trustworthy. The relevant paragraphs 25 and 25-A are extracted herein-in-below :-

25. It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad day light. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of eyewitnesses will not tilt the benefit of doubt in favor of the accused but when the contradictions in the evidence of prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases accused gets the benefit of doubt.

25A. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Benthem, witnesses are the eyes and ears of justice. In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and Page□21 21 improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused.

(60) Similar view was taken in regard to interested witnesses in the case of Gangabhavani Vs. Rayapati Venkat Reddy and others (supra), Md. Jabbar Ali and others Vs. State of Assam (supra), Periyasamy Vs. The State Rep. By the Inspector of Police (supra) and Sucha Singh and others Vs. State of Punjab (supra), in which it has also been held that □exaggerated devotion to the rule of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law.

(61) The Hon□ble Supreme Court, in the case of Ram Singh Versus State of Uttar Pradesh (supra), has held that □When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non- examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.

(62) The Hon'ble Supreme Court, in the case of Pruthiviraj Jayantibhai Vanoi Vs. Dinesh Dayabhai Vala and others (Supra), has held that Ocular evidence is considered the best evidence unless there are reasons to doubt it and it is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

(63) The Hon'ble Supreme Court, in the case of Digamber Vaishnav and another Vs. State of Chhattisgarh (supra), has held that It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. The relevant paragraphs 15 and 19 are extracted here-in-below :-

15. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculpate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [See Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808].

(64) The Hon'ble Supreme Court, in the case of Ravasaheb and others Vs. State of Karnataka (supra), has observed that It is stated that it is the quality and not the quantity of the witnesses that matters. Hon'ble Supreme Court has further enumerated the principles essential for consideration of criminal cases. In regard to Testimony of a close relative, Hon'ble Supreme Court in paragraph-17.4 has observed that A witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even partisan or interested witness may lead to failure of justice. The principle of falsus in uno, falsus in omnibus is not one of general application. In regard to Preponderance of probabilities, Hon'ble Supreme Court has held that to entitle a person to the benefit of a doubt arising from a duality of views, the possible view in favour of the accused must be as nearly reasonable probable as that against him

(65) The Hon'ble Supreme Court, in the case of Tahsildar Singh and Others Vs. The State of Uttar Pradesh (Supra), has considered about the cross-examination, which is not much relevant in the present case under the facts and circumstances of the case.

(66) Adverting to the facts of the present case and the judgment passed by learned trial Court, we find that learned trial Court, after recording the facts and arguments in regard to the false implication, has recorded a finding that there is no force in the arguments of learned Counsel for the accused that the occurrence were committed by any other persons. This finding has been recorded without any reason or independent finding in support thereof. Thus, it is apparent that learned trial Court proceeded thereafter on the basis of assumption that the incident has been committed by the appellants only. Once the Court proceeds on this assumption, after recording categorical finding in this regard, then, it would certainly ignore or reject the contentions regarding innocence for one or other reasons, as the Court would have to justify its finding of involvement of accused persons in the incident recorded by it in the beginning without examining the evidence. In such circumstances, the impugned judgment and order vitiates on this ground alone.

(67) We also find that findings have been recorded by the learned trial Court on the basis of presumption and assumption. In regard to the source of light, learned trial Court has recorded that the incident is of between 08:00-09:00 in the night and it would be ludicrous to presume that if the light of lantern, chirag, diya or dibri would not be in the homes, then, there would be no source of light. It has further been recorded that lantern was alight in the house. It is not unnatural from any angle and besides it witnesses knew and recognize the accused persons since prior to the incident, therefore, it cannot be said that there would be any mistake in naming the accused persons but learned trial Court has failed to consider that the source of light and manner in which the witnesses have said to have recognized the accused persons as discussed above is not sufficient to record a finding that accused persons/appellants could have been recognized by the witnesses and there is no evidence that they knew them from earlier. Even if they knew them from earlier, this Court is of the view that they could not have been recognized in such light and source of light from where it was coming, when they had covered their faces also and P.W.2 and P.W.3, who were hiding, could also not have seen the incident committed at different places and at different houses from the place of their hiding. P.W.1 has given contrary statement in regard to the source of light, in which recognition of the accused persons is doubtful. Even otherwise, if the finding of learned trial Court is taken to be correct and accused persons were known to the witnesses from earlier, the case of false implication in the facts and circumstances of the case cannot be ruled out. Thus, this Court is of the view that the learned trial Court failed to consider and appreciate the evidence appropriately and recorded the findings to convict the appellants only because it was a case of five murders and the appellants were named.

(68) It is also noticed that three accused persons, Mansa Ram, Pappu and Kunji Ram, were not named in the F.I.R. but the charge-sheet was filed against them, but, learned trial Court acquitted them on the ground that since they were not named in the F.I.R. but the charge-sheet was filed against them, they cannot be convicted even if witnesses have given evidence against them because even if the involvement of such accused persons may be imagined in a concealed manner, it would not be safe to convict them and they are entitled to benefit of doubt. If this finding of learned trial Court is taken to be correct, then merely because the appellants, who were named in the F.I.R., could also not have been convicted and would be entitled to benefit of doubt, because if, on same set of evidence, certain persons can be acquitted merely because they were not named, the named accused persons cannot be convicted. However, on account of tainted investigation and laxity on the part of investigating agency, the actual culprits could not be booked.

(69) In view of above and considering the overall facts and circumstances of the case, this Court is of the view that the findings recorded by learned trial Court are not tenable in the eyes of law and the appellants are also entitled for benefit of doubt and the impugned judgment and order passed by the trial Court is liable to be set-aside and the appellants are liable to be acquitted.

(70) The appeals succeed and are allowed. The impugned judgment and order of conviction and sentence dated 18th December, 2004, passed by the learned trial Court, is hereby set aside. The appellants are acquitted. They shall be released forthwith, unless they are required to be detained in connection with any other matter.

(71) Let a copy of this order as well as trial Court's record be transmitted to the Court concerned forthwith and in any case within ten days from today for information and compliance.

(2026) 2 ILRA 246
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:LUCKNOW 13.02.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 492 of 1982

Ram Narain & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a criminal appeal against a conviction where the accused reportedly surrounded and assaulted the deceased Ram Shankar in a field near village Patkhauli, resulting in his death.

Headnotes

A. Criminal law-Indian Penal Code,1860-Sections 302, 34, 147, 148, 149-Criminal Procedure Code,1973-Section 374(2)- Murder-common intention –Appellant along with deceased co-accused assaulted victim with lathis and farsa due to prior enmity-Eye-witness testimony of injured witness and others found consistent and reliable-Medical evidence showing multiple fractures and incised wounds corroborating use of alleged weapons-Non-recovery of weapons held not fatal to prosecution case where ocular evidence is cogent-Statements of accused recorded on old proforma is a procedural irregularity-mere use of incorrect proforma does not vitiate trial unless "failure of justice" or "prejudice" is proved-Non-compliance with technicalities of section 313 CrPC is a curable irregularity-Relationship of witnesses to deceased is not ground for discarding testimony if the testimony is found natural and consistent-Injuries including fractures and incised looking wounds on tense body structures, were consistent with the brutal assault described by eye-witnesses-Conviction of surviving appellants under section 302/34 affirmed.(Para 29 to 58)

Held

The court ruled that where ocular evidence is cogent and provides a clear account of assault, minor discrepancies between the weapon used and the nature of injury do not undermine the prosecution's case.

furthermore, the non-recovery of the weapon of offence is not fatal when the eye-witness accounts are found to be reliable and are corroborated by the post-mortem findings. The court found no illegality or infirmity in the findings of the Trial court, the conviction and life imprisonment sentence are upheld. (E-6)

Case law Cited

Anil Phukan Vs State of Assam; AIR 1993 SC 1462, State of Karnataka Vs Babu & Ors; AIR 1994 SC 31, Suresh Rai & Ors Vs State of Bihar; AIR 2000 SC 2207 , Surendra Koli Vs The State of U.P. & Anr.; Curative Petition (Cri.) No..... of 2025 @ Diary No 49297 of 2025 in R.P. Crl.) No 395/2014 in Crl. A. No 2227 of 2010, Indrakunwar Vs The State of Chhattisgarh; 2023 LiveLaw (SC) 932, Kalicharan & Ors. Vs State of U.P.; 2022 LiveLaw (SC) 1027 & Reena Hazarika Vs State of Assam (2019) 13 SCC 289, Indrakunwar Vs The State of Chhattisgarh , Kalicharan & Ors. Vs State of U.P , State of U.P. Vs Sudhir Kumar Singh & Ors; (2021) 19 SCC 706,Ramesh Singh @ Photti Vs State of A.P; AIR 2004 (SC) 4545, Anil Phukan Vs State of Assam, State of Karnataka Vs Babu & Ors, Surendra Koli Vs The State of U.P. & Anr , Suresh Rai & Ors Vs State of Bihar- referred to.

List of Acts

Indian Penal Code, 1860
Criminal Procedure Code, 1973

List of Keywords

Murder, Common intention, Unlawful Assembly, Examination of accuse, Procedural irregularity, Prejudice, Repealed code, Failure of justice, Interested witness, Eye witness, Credibility, Scrutiny, Enmity, Post-mortem report, Lacerated wound, Incised wound, Transfer of case, Presiding officer, Validity of Trial, Non-recovery of weapon.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No.- 492 OF 1982
Ram Narain & Ors Vs. State of U.P.
From the judgment and order dated 13.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s) :-
R.S Shukla, Brij, Mohan Sahai, Raj Priya Srivastava, Rajendra Prasad Mishra
Adv. for Respondent(s):-
G.A.,

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

(1) Heard Sri Rajendra Prasad Mishra, learned counsel for the appellants and Sri Arunendra, learned A.G.A. for the State.

(2) The instant Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (here-in-after referred as Cr.P.C.) has been filed against the judgment and order dated 18.06.1982 passed by learned IInd-Additional Sessions Judge, Gonda in Sessions Trial No.209 of 1979, arising out of F.I.R./Crime No.71 of 1979, under Sections 147, 148, 149, 302 of the Indian Penal Code, 1860 (here-in-after referred as I.P.C.), Police Station Kotwali Dehat, District Gonda, whereby the appellants have been convicted and sentenced under Section 302/34 I.P.C. for life imprisonment.

(3) The case of the prosecution, in short, as disclosed in the F.I.R. (Ex. Ka-2), is that one Devi Prasad son of Samai Deen got registered a case of murder in December, 1978 against complainant of the present case, namely Rajendra Prasad and his deceased uncle Ram Shanker at Police Station Kotwali City, District Gonda, wherein both i.e. the complainant Rajendra Prasad and his uncle Ram Shanker were bailed out. It is alleged that on account of the said case, Ram Narain son of Samai Deen was keeping much enmity with them. It has further been stated that on 08.03.1979 at 08:00 AM, the complainant Rajendra Prasad and his uncle Ram Shanker headed for Village Khamariha, where his uncle Ram Shanker has his cultivation. At 10:30 AM they reached in Village Khamariha and after seeing the work of cultivation, they proceeded at about 02:00 PM from Village Khamariha to Village Madadeva and when they reached Village Salpur (Sajpur) at about 03:00 PM, Gur Charan Kori of his village met them. The complainant Rajendra Prasad, his uncle Ram Shanker and Gur Charan Kori were coming on foot. At about 04:00 PM, on the road in front of Village Patkhauli, the accused Ram Narain son of Samai Deen, Janendri son of Lalta Prasad, Ram Phere son of Lalta Prasad, Resident of Village Mahadeva, Police Station Kotwali Dehat, District Gonda, Naiyer son of Ram Anuj R/o Village Gaura, Police Station Mankapur, District Gonda, who is son-in-law of Samai Deen and Ram Uggar son of Mata Prasad R/o Village Pathkauli, Police Station Kotwali Dehat, District Gonda, armed with lathi, ballam and farsa, came out from field of Arhar crop, located at west side of the road, and chased them with intention to assault. Ram Uggar shouted to kill them. In the meantime, five accused persons surrounded Ram Shanker at about 100 gaj on the eastern side of the road and started assaulting him, therefore, the complainant, Rajendra Prasad raised alarm, on which Laxmi Prasad son of Amrica Prasad R/o Village Pipri and Bhikham Datt R/o Village Dhanauli, who were passing from the road, came running and scolded, on which the accused fled away towards the east. It has also been stated in the report that the complainant alongwith Gur Charan Kori went towards Ram Shanker and found that Ram Shanker had died on account of injuries sustained by him and, thereafter, leaving Gur Charan and others near the dead body, he has come for information, therefore, report may be written and appropriate action may be taken. Accordingly, on the basis of written report (Ex. Ka-2), the F.I.R. was lodged at Police Station Kotwali (Dehat), District Gonda at 18:45 hours on 08.03.1979 vide Chik F.I.R. (Ex. Ka-5), under Sections 147, 148, 302/149 I.P.C. and the same was registered in G.D. at Serial No.32 (Ex. Ka-6).

(4) Investigation of the case was entrusted to Sub Inspector B.N. Singh (P.W.-6). He recorded the statement of complainant at the Police Station itself and then went to the place of occurrence at 10:30 PM. However, inquest proceedings could not be held for want of source of light in the night and, accordingly, it was held in the following morning. The Investigating Officer also prepared diagram of the dead body, challan of the dead body and letter to C.M.O. He also recovered blood-stained and plain soil from the place of occurrence and prepared memo of the dead body. The dead body was sealed in a cloth and sent for post mortem. He then prepared the site plan. He searched for the accused with no result. Further investigation of the case was taken up by the S.O.

(5) Dr. Y. N. Pathak; P.W.-1 conducted the post mortem of the dead body of the deceased and prepared post mortem report on 09.03.1979. The Investigating Officer, after recording the statements and completion of the investigation, submitted charge sheet. The case was committed to sessions on 07.08.1979. The Sessions Court framed charges under Sections 147 and 302/149 I.P.C. on 28.01.1980. The accused persons pleaded not guilty to the charges and claimed to be tried.

(6) In order to prove its case, the prosecution produced Dr. Y. N. Pathak as P.W.-1, Complainant Rajendra Prasad as P.W.-2, Gur Charan as P.W.-3, Bhikam Dutt as P.W.-4, Mohd. Umar as P.W.-5 and I.O. Brij Narain Singh as P.W.-6 and Government Finger Print Expert Shiv Mangal Pandey was examined as C.W.-1 and Nanhu as C.W.-2.

(7) The prosecution also produced and proved the post mortem report as Ex. Ka-1, written F.I.R. as Ex. Ka-2, receipt and counter foil regarding purchase of cattle as Ex. Ka-3 & Ex. Ka-4, chik F.I.R. as Ex. Ka-5, G.D. of registration of case as Ex. Ka-6, inquest report as Ex. Ka-7, diagram of dead body as Ex. Ka-8, challan as Ex. Ka-9, letter to C.M.O. as Ex. Ka.10, memorandum of blood stained and plain soil as Ex. Ka-11, site plan as Ex. Ka-12, extract of Khatauni of deceased Ram Shanker as Ex. Ka-13 and receipt as Ex. Ka-14 in documentary evidences. The prosecution also produced sweater etc. of the deceased as Material Ex. 1 to 8 and blood stained and plain soil of earth as Material Ex. 9 & 10. C.W.-1 has also proved his expert report and cognate papers as Ex. C-1 to C-8.

(8) The defence produced extract of statement of P.W.-1 as Ex. Kha-1, affidavit of Rajendra Prasad etc. as Ex. Kha-1(A) to Kha-4 and expert's reports etc. as Ex. Kha-5 to Kha-9, copy of charge sheet as Ex. Kha-10, copy of statement of Ram Shanker as Ex. Kha-11 and police report under Sections 107/116 Cr.P.C. as Ex. Kha-12.

(9) The trial Court, after affording opportunity of hearing to the learned Government Counsel as well as learned counsel for the defence, passed the impugned judgment and order of conviction and sentence. Hence, this appeal has been filed on behalf of the appellant No.1; Ram Narain, appellant No.2; Gyanendri (Janendri), appellant No.3; Ram Pher and appellant No.4; Ram Uggar alias Ram Ugra.

(10) During pendency of this appeal, the appellant No.2; Gyanendri (Janendri) and the appellant No.3; Ram Pher died, therefore, the appeal on their behalf abated. Hence this appeal survives only on behalf of the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra.

(11) Learned counsel for the appellants submitted that the appellants have been convicted and sentenced by the impugned judgment and order without considering the evidence and material on record appropriately. He further submitted that there are contradictions in the evidence of the prosecution witnesses, presence of the P.W.-2 and P.W.-4 i.e. complainant on the spot is doubtful, there is material contradiction in the testimony of P.W.-2, P.W.-3 and C.W.-1. He further submitted that the P.W.-2, P.W.-3 and C.W.-1 are of one village and they are interested witness. He further submitted that injuries does not tally with the alleged weapon used in the crime and the post mortem report also does not support the prosecution case. He further submitted that the signatures on the receipt of purchase of Ox are not tallied either in the report of the hand writing expert submitted by the appellants or in the report of the Government Hand Writing Expert, who appeared as court witness. He further submitted that as per prosecution story, Ram Pher and Gyanendri were armed with farsa, Ram Uggar and Naiyer with lathi and Ram Narain with bhala in their hands. The learned trial Court has acquitted the Naiyer giving benefit of doubt, therefore, Ram Uggar is also entitled to be acquitted on the benefit of doubt but the learned trial Court failed to consider it and

convicted him also. He also submitted that the aunt/chachi of the deceased Ram Shanker, who was material witness, has not been examined. He further submitted that the trial vitiated on account of non application of mind because the statement of the accused persons under Section 313 Cr.P.C. has been recorded under the old Cr.P.C. i.e. under Section 364 of the Code of Criminal Procedure, 1898. He further submitted that the evidence was closed in the trial Court on 03.05.1981 and since the judgment was not pronounced by the Presiding Officer, who has passed the impugned judgment and order, even after fixing several dates for judgment, therefore, an application was moved before this Court i.e. High Court for transfer of the case and the case was transferred by means of the order dated 05.10.1981 to the Court of Second Additional District and Session Judge and in the meantime, the said Presiding Officer had assumed the charge of Second Additional District and Session Judge and he passed the impugned judgment and order, whereas when the case was transferred by this Court from his Court on a transfer application, he could not have decided it, therefore, the impugned judgment and order is not sustainable in the eyes of law.

(12) On the basis of above, learned counsel for the appellants submitted that the impugned judgment and order is liable to be set aside and the appellants are liable to be acquitted. He relied on **Anil Phukan Vs. State of Assam; AIR 1993 SC 1462, State of Karnataka Vs. Babu and Others; AIR 1994 SC 31, Suresh Rai and Others Vs. State of Bihar; AIR 2000 SC 2207, Surendra Koli Vs. The State of Uttar Pradesh & Another; Curative Petition (Crl.) No..... of 2025 @ Diary No.49297 of 2025 in R.P. (Crl.) No.395/2014 in Crl. A. No.2227 of 2010, Indrakunwar Vs. The State of Chhattisgarh; 2023 LiveLaw (SC) 932, Kalicharan & Ors. Vs. State of Uttar Pradesh; 2022 LiveLaw (SC) 1027 and Reena Hazarika Vs. State of Assam; (2019) 13 SCC 289.**

(13) Per contra, learned A.G.A. submitted that the impugned judgment and order of conviction and sentence has rightly been passed by the learned trial Court in accordance with law. He further submitted that the F.I.R. was lodged promptly and merely because there are minor contradictions in the evidence of the prosecution witnesses and the Court witnesses, it cannot be said that their testimony is not reliable. He further submitted that the post mortem report corroborates the prosecution case and there was strong motive. He further submitted that the fact of sale of Ox was raised by the defence and in this regard an affidavit was also filed, which was sealed immediately. He further submitted that recording of statement of the appellants under Section 313 Cr.P.C. on the proforma of old Act can be an irregularity but not an illegality, on account of which, the trial may be said to have vitiated.

(14) On the basis of above, learned A.G.A. submitted that the appellants have rightly been convicted and sentenced by the impugned judgment and order, which has been passed by a reasoned and speaking order. It has also been submitted that the arguments advanced by learned counsel for the appellants that even after transfer of the case to the Court of Second Additional District and Session Judge from the Court of the Presiding Officer, who has passed the impugned order, he could not have passed the order and the impugned judgment and order is liable to be set aside, is misconceived and not tenable for the reason, firstly, no such order has been produced and the same was considered by the trial Court and after passing an order, trial was decided, which was not challenged. Secondly, learned counsel for the appellants also failed to show any prejudice caused to the appellants on account of it. Thus, learned A.G.A. submitted that the appeal has been

filed on misconceived and baseless grounds and none of the contentions of learned counsel for the appellants are sustainable. The appeal is liable to be dismissed.

(15) We have considered the submissions of learned counsel for the parties and perused the records.

(16) One of the grounds of challenge to the impugned judgment and order is that even after closure of evidence on 03.05.1981, since the judgment was not pronounced by the Presiding Officer of the concerned Court, which was being held by the Officer, who has passed the impugned judgment and order at that time, therefore, an application was moved before this Court for transfer of the case and the case was transferred by means of the order dated 05.10.1981 by this Court to the Court of Second Additional District and Session Judge and in the meantime, the said Presiding Officer had assumed the charge of Second Additional District and Session Judge, therefore, in view of the order passed by this Court, he could not have decided the case. However, the order passed by this Court is neither available in the Trial Court's record nor the same has been produced by learned counsel for the appellants.

(17) On perusal of the Trial Court's record, it is found that on 13.05.1981, the evidence of C.W.-1 was recorded and the case was fixed for arguments on 28.05.1981. Thereafter some dates were fixed for arguments. On 08.07.1981, the case was adjourned on account of transfer of the Presiding Officer and on 14.07.1981, certain documents were placed on record by learned counsel for the accused. By means of the order dated 05.10.1981, the case was transferred to the Court of Second Additional Session Judge as per order of the High Court. However, neither the date of order of the High Court is mentioned nor the case number of the High Court is mentioned. It could also not be produced and shown by learned counsel for the appellants. The C.W.-2 was examined on 03.05.1982. Thereafter statement under Section 313 Cr.P.C. of accused were recorded and the case was fixed for arguments. On 24.05.1984, it was fixed for 29.05.1982. On the said date, after hearing arguments, the case was fixed on 31.05.1982 for judgment. However, on an application moved by the accused subsequently, the date was changed to 07.06.1982.

(18) The learned trial Court passed an order on 07.06.1982 on the point of transfer of the case, in view of ensuing shift in order of Session Judge after hearing learned counsel for the parties. It is mentioned in the order that the case was transferred to the said Court by order passed by the High Court on 28.09.1981. It was not a case transferred to the said Court under the transfer order passed by him as In-charge Sessions Judge in July, 1981 but one made by the High Court on 28.09.1981. It has been observed that this fact was never brought to his notice earlier and the order was filed in the Court of Third Additional Session Judge, Gonda and since this case found mention in the list of cases directed to be transferred under Section 409 Cr.P.C., it was taken to have landed in the said Court in compliance of that order. He further recorded that he had gone through the Hon′ble High Court′s order and it appears from the perusal of that order that it was transferred to his Court by name, therefore, the case was to be disposed of by him alone under the existing position. Lastly, it has been recorded that the accused also said that he should dispose of the case. The said order was not challenged.

(19) In view of above, since the order passed by this Court has not been placed before this Court and is also not in the Trial Court′s record, the position, as emerged from the aforesaid order, could not be doubted in any manner. The consent of the appellants for disposal of the case by the said Presiding Officer and the Court is also recorded in the said order. Thus, this Court does not find any illegality or error in disposal of the case by the said Presiding Officer. Even otherwise, learned counsel for the appellants has failed to show any prejudice caused to the appellants on account of passing of the impugned order by the said Presiding Officer. This Court also does not find any prejudice to have been caused to the appellants on account of the aforesaid facts. Thus, the contention raised by learned counsel for the appellants is misconceived and not tenable, hence rejected.

(20) The other ground raised by learned counsel for the appellants is that the learned Trial Court recorded the statements of the appellants under Section 364 of the Code of Criminal Procedure, 1898 on the proforma prescribed for the same, whereas the said Act was not in existence because the said Act was repealed by Section 484 of the Code of Criminal Procedure, 1973, which came into force w.e.f. 01.04.1974, therefore, the entire proceedings are vitiated and liable to be quashed. The Code of Criminal Procedure, 1898 was repealed by Section 484 but, by means of the Section 484(2)(b) Cr.P.C., 1973, all forms prescribed alongwith others, which were enforced immediately before commencement of the said Code, have been deemed respectively to have been published, issued, conferred, prescribed defined, passed or made under the corresponding provisions of this Code, which is extracted here-in-below:-

"all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(21) Section 8 of The General Clauses Act, 1897 provides Construction of references to repealed enactments. It provides that where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. In view of above, the object of the provision is that where any act is repealed and re-enacted, references in any other enactment or instrument to provisions of the repealed former enactment must be read and construed as references to the corrosponding provision of re-enacted new provision, unless a different intention appears. Thus, the reference to the provision in the format, on which the statement under Section 364 Cr.P.C., 1898 was recorded, would be referable to Section 313 Cr.P.C., 1973.

(22) In view of above, the forms prescribed under the old Act have been deemed to have been prescribed under the corresponding provisions of Code of Criminal Procedure, 1973. Perusal of the records indicates that though the statement under Section 313 Cr.P.C. of the accused/appellants were recorded, but it started on the proforma prescribed for statement under Section 364 of the

Criminal Procedure Code, 1898 on 10.05.1982, whereas in the order sheet of the said date, it has been mentioned that the statement of accused persons were recorded under Section 313 Cr.P.C.

(23) Learned counsel for the appellants failed to point out any discrepancy, illegality or error in the statements of the appellants under Section 313 Cr.P.C. except above. This Court is of the view that it may be an irregularity and cannot be said to an illegality affecting the trial or merit of case in itself, on account of which the whole trial may be said to have vitiated. Even otherwise, learned counsel for the appellants has failed to point out any discrepancy or illegality in the statements of the appellants recorded under Section 313 Cr.P.C., as referred in the order sheet of the said date, in any manner or it may have caused any prejudice to the appellants in any manner. It is also settled in law that merely by mentioning of wrong provision, the order or any proceeding etc. cannot be said to be vitiated and set aside. Even otherwise, it may have been a procedural violation only, therefore, the appellants have to show that on account of it, they could not get proper opportunity to defend them and it prejudiced them in any manner, but they failed to do so. Thus, the contention in this regard is wholly misconceived and not tenable and liable to be repelled, repelled accordingly.

(24) The Hon'ble Supreme Court, in the case of **Indrakunwar Vs. The State of Chhattisgarh (Supra)**, has held that under Section 313 Cr.P.C., the Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered. Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision. However, this statement does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872. However, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

(25) Similar view has been expressed by the Hon'ble Supreme Court in the cases of **Kalicharan & Ors. Vs. State of Uttar Pradesh (Supra) and Reena Hazarika Vs. State of Assam (Supra).** The relevant paragraph No.19 of the judgment rendered in the case of **Reena Hazarika Vs. State of Assam (Supra)** is extracted herein below:-

"19. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast

on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing."

(26) The Hon'ble Supreme Court, in the case of **State of Uttar Pradesh Vs. Sudhir Kumar Singh and Others; (2021) 19 SCC 706**, held that breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed.

(27) Adverting to the facts of the present case, the incident had occurred on 08.03.1979 at about 04:00 PM. The F.I.R. of the incident was lodged on the same date at about 06:45 PM at Police Station Kotwali Dehat, District Gonda. The distance of the Police Station and the place of occurrence is about 6.5 miles. The F.I.R. (Ex. Ka-5) was lodged on the basis of written complaint (Ex. Ka-2) of P.W.-2; Rajendra Prasad. The G.D. entry of the same was made, which was proved as Ex. Ka-6 by the Investigating Officer; Brij Narain Singh. The Investigating Officer also proved the F.I.R., the time of lodging of the F.I.R. and start of investigation. Thus, the F.I.R. was lodged promptly and there was no delay in lodging the F.I.R. The learned Trial Court also, after considering the evidence and material on record, found that there was no delay in lodging the F.I.R. and it has not been lodged in consultation with anybody.

(28) So far as the motive for perpetration of the crime is concerned, the learned Trial Court has recorded a finding that there is proximate and perpetuated motive for the crime by the accused. The learned Trial Court found that the motive is locative in the nomination of the complainant and the deceased in the roll call of murders of Samai Deen father of Ram Narain, who was murdered in December, 1978. The P.W.-2; Rajendra Prasad has deposed in his examination-in-chief about the motive and stated that he and the deceased Ram Shanker, who was his uncle, were accused in the aforesaid murder of Samai Deen. They were released on bail, barely 22 days ago of the incident. This fact has also been mentioned in the F.I.R. He also stated that his father′s cousin, accused Ram Pher and Gyanendri wanted to cultivate his land and infact they cultivated for two fasli years. The accused Naiyar, son-in-law of the aforesaid Samai Deen, also stated that his uncle Ram Pher had assaulted accused Ram Ugra about three years ago and a criminal case under Section 325 I.P.C., emanating therefrom, was pending, when his murder took place. In the cross-examination, he has not deviated from his statement in examination-in-chief, which may create any doubt about his statement. Though the defence tried to show that the complainant, Rajendra Prasad had some illicit nexus with the widow of his uncle Ram Shanker and he was murdered in the night by somebody else but they have falsely been implicated. However, it failed to prove it or extract anything from the complainant, which may infer in any manner about the illicit nexus between the complainant and the widow of the deceased.

(29) This is a case of direct evidence and eye witness account. In the case of direct evidence, motive is insignificant if the ocular evidence is strong enough to record the finding of guilt and in such circumstances, motive can only have a corroborative role and not more than that. Thus, this case is to be tested on the basis of ocular evidence adduced by the prosecution and the material placed on record.

(30) The complainant Rajendra Prasad appeared as P.W.-2. He stated that about 18 months back, he was going alongwith his uncle Ram Shanker from his home to Khamaria, where his uncle had five and half bighas of land, which was being ploughed. They had gone to see it. They reached Khamaria at 10:00 AM and after seeing the field, which was half ploughed by Sattar, they, as per their commitment, went towards Sajpur market at 10:30 AM for purchasing bull for Gurcharan Kori of his village. Gurcharan Kori met them in Sajpur market then they went to Dhanepur by taxi and there in the Vardahi market, they purchased the bull from Nanhu of their village. The doctor had passed the bull and a receipt of which was given. After purchasing the bull, all the three persons came back to Sajpur by tempo. They had asked the owner of the bull, Nanhu, to handover the bull in the village. From there, he and his uncle went to Khamaria and Gurcharan went to Sajpur market to see bull for his maternal uncle, as his maternal uncle had asked him to see a bull of a man in Sajpur and if it is good, he would purchase it. He and his uncle Ram Shanker went to Khamaria on foot asking Gurcharan that they will meet him after returning in Sajpur and then they will go together. He and his uncle Ram Shanker returned from Sajpur at 02:00 PM, where Gurcharan met.

(31) He further stated that they took tea and then they started for their village on foot, which is about 1.5 - 1.75 miles. They were coming from Utraula Dhanepur Road and reached near village Patkhauli at about 04:00 PM, where the accused Ram Narain, Ram Pher, Janendri, Ram Ugra and Naiyar were sitting in the field of Arhar in the West of the road and when they reached near to it, all the five accused came out and chased them. Ram Narain was having a gun in his hand, Ram Pher and Janendri were having farsa in their hands and Naiyar and Ram Ugra were having lathi in their hands. He further stated that accused Ram Ugra came ahead and exhorted to kill and with this exhortation, he gave a blow of lathi on the knee of Ram Shanker. His uncle crying ran towards the east, he and Gurcharan ran towards the north. They suddenly dragged Ram Shanker about 100 yards towards the east in the field of gram and canola (राई) having canola (राई) harvested and gram standing. Ram Shanker fell there and the accused persons kept on beating with the aforesaid arms. He and Gurcharan started shouting from the road, on which the witnesses Bhikham Datt and Laxmi Prasad came. Laxmi was having lathi, who was going towards south and Bhikham was going by cycle towards the north. The witnesses scolded but the accused ran away, but only after killing Ram Shanker. Thereafter, they went near the deceased and found him dead. Thereafter, leaving Gurcharan near the dead body, he went to his house. The witnesses also remained there.

(32) He also stated in his evidence that he knows the accused Ram Narain, Ram Pher, Janendri, Ram Ugra and Naiyar. Father of the Ram Narain was murdered and he and his uncle i.e. the deceased Ram Shanker were accused in the said case and they were released on bail, barely 22 days ago from the date of incident. Ram Pher and Janendri are his co-tenure holders. Their father and his Aaja were real brothers. After death of his father, he started living with the deceased Ram Shanker. The accused Ram Pher and Janendri wanted to plough his field but on account of his company with Ram Shanker, they could not do it, therefore, they were keeping enmity with Ram Shanker and after the death of Ram Shanker, for two half years, they ploughed the field. Naiyar is son-in-law of Samai Deen. Samai Deen was father of accused Ram Narain, in whose murder he and his uncle were accused. His uncle Ram Shanker had beaten the accused Ram Ugra about three years ago, on account of which, a case under Section 325 I.P.C. was instituted and on account of the aforesaid enmity, the accused have committed crime.

(33) He further stated that after reaching his house, he wrote a report on a paper and after seeing the report, he stated that it is the same report, which was written by him and it was marked as Ex. Ka-2. From the house he went to Kotwali and gave the report to Munshi and the Munshi gave him chik. He further stated that the Inspector had recorded his statement at the Police Station. Thereafter, the Inspector came with him to his house and after consoling his aunt etc. they went to the place of incident. In the meantime, night stood advanced, therefore, the Investigating Officer sent for a cot from his house and he stayed at the place of occurrence. The inquest was prepared in the morning. He was also witness to the inquest and proved his signatures on the inquest report. Thereafter, the Investigating Officer prepared the site plan on his pointing out. Seeing the site plan, he stated that the site plan was rightly prepared. Thereafter, a sealed bundle containing blood stained and earth stained yellow sweater of the deceased was opened, which he proved of his and and marked as Ex. 1 to 8. He stated that no cut or gap in the sweater was visible. There was, however, a blood stained and earth stained cut on the lower portion and another on the collar of the coat, shown by the witness. In the cut on the coat, brown threads stood turn, while yellow ones were intact. The witness also showed the dried up under clothing of the coat resulting from blood. He also showed the cut mark above the bloody spot on the shirt with warp intact. He also maintains that on the inner side too, there were locative bigger bloody spots emitting bloody odour. He then showed bloody patches on the Dhoti with a cut on the lower part. The Dhoti was in shambles. The witness did placing of those pieces to make Dhoti one piece on the floor. He also showed a bloody mark on the Dhoti in the middle, which became a bloody train of desperate pieces. He also showed two holes lengthwise near the border of the Dhoti. The underwear was shown to be tattered. He then showed some reddish matter agglutinated to the underwear and maintained that it smelt of faecal matter.

(34) In the cross-examination, Rajendra Prasad had maintained his evidence given in examination-in-chief. He also stated that receipt of bullock sale is bearing his signature and those of others and he and Ram Shanker were the witnesses of that receipt prepared in the cattle fair and removal of receipt by the accused from the pocket of deceased Ram Shanker. He stated that loan for purchase of bullock could be taken from co-operative society through veterinary doctor only. He also stated that the doctor gave a sum of Rs.2,112/- that day for purchase of two bulls, from which, the said two bulls were purchased. The receipt was kept by the Ram Shanker in his pocket, which was snatched by the accused. However, he could not tell what other things were robbed by the accused. He further stated in the cross-examination that on account of anguish at that time, he omitted to explain his visit to Dhanepur in the company of Ram Shanker and Gurcharan in F.I.R. and in his statement to the Investigating Officer and the affidavit (Ex. Kha-1A) sworn at the time of bail. However, the fact of going for purchasing of bulls has been mentioned in the F.I.R. The meeting of Gurcharan with the complainant and the deceased at Sajpur at 03:00 PM is also mentioned in the F.I.R. In fact, as born out from the record and the finding recorded by the learned Trial Court, the defence has produced the receipt and the doctor's certificate and the counter foil receipt was summoned and sealed in Sessions Court at the time of bail. Those receipts are Ex. Ka-3 and Ex. Ka-4 in the prosecution evidence and Ex. Kha-3 and Ex. Kha-4 in the defence evidence, wherein Gurcharan figures as vendee and Nanhu as vendor of the two bulls. Thus, it can not be contended that the F.I.R. does not contain anything regarding his visit to Dhanepur cattle fair with the deceased.

(35) In his cross-examination, he has also deposed that he, Gurcharan, Nanhu and Ram Shanker reached to the doctor at 12:00 noon, who had obtained his and his deceased uncle's signatures and thumb impression of the Gurcharan and Nanhu. Thereafter, the veterinary doctor had given money to Gurcharan, who handed over to Nanhu. He also disclosed the distance of the doctor's office i.e. about 1.5 - 2 furlongs from the cattle fair. He has denied the suggestion given by the defence that they had not gone to the cattle fair and forged thumb marks were obtained on the receipt. Even otherwise, the learned Trial Court has rightly recorded that once the plea was taken in the bail application by the defence before the Trial Court in this regard, then they themselves cannot have put it to any doubt. In his further cross-examination, he had explained the omission of the details of his and Ram Shanker's going to Khamaria to supervise their field being ploughed by Sattar and his statement to the Investigating Officer on the plea of anguish and their visiting to Khamaria finds mention therein.

(36) The P.W.-2 has also added that Rajaram had two real brothers whereas Ram Shanker was their step brother and he maintained that Ram Shanker owns 25 bighas of land at Mahadeva. However, he could not tell as to how he got it. He had also asserted that Ram Shanker owned 5.5 bighas of land at Khamaria but failed to show its acquisition and denied the suggestion of the defence that the land at Khamaria is cultivated by Rajaram and he volunteered to produce papers showing Ram Shanker's tenure holdership of that land. Ex. Ka-13 and Ex. Ka-14 are the revenue papers filed by the witness and Ex. Kh-13 is the khatauni showing about 8 - 9 acres of land at Khamaria, whereas Ex. Ka-14 is a copy of receipt of land revenue of 3-45 issued to Ram Shanker on 10.09.1975. Thus, on the basis of the said evidence, the learned Trial Court has recorded that the witness has shown the up to date position in the revenue records and also his stand that the land revenue was paid up to 4 - 5 years ago stood proved. In contradiction to the same, the defence failed to produce any cogent evidence and substantiate its case that Ram Shanker had no right over the land in Khamaria, when the incident took place. Thus, the stand of the complainant that he and the deceased Ram Shanker had visited Khamaria to look after their cultivation stands proved and production of Rajaram by the defence to substantiate their case that Ram Shanker had left his right over the land in Khamaria when the incident took place could not be proved create any doubt about the prosecution case.

(37) The learned Trial Court, after considering the material and evidence on record, has recorded that the tillage etc. are matters of detail to be told in the witness box and could not render his testimonial credibility shrunken, therefore, the only missing link of visit of both for purchasing bulls to Dhanepur and their return to Khamaria via Sajpur stands explained. He has also demolished the suggestion given by the defence that the deceased Ram Shanker had no land at Khamaria.

(38) P.W.-2, Rajendra Prasad has deposed in his evidence that from Khamaria, he alongwith the deceased Ram Shanker had proceeded towards the home and in the way they stopped at Sajpur, where P.W.-3, Gurucharan joined them at 03:00 PM and all the three had taken tea and besan namkeen there at that time. Thereafter, they proceeded when the incident took place. P.W.-3, Gurucharan has supported the prosecution version and the evidence of P.W.-2 and there is no material contradiction in his evidence in examination-in-chief as given in comparison to P.W.-2, Rajendra Prasad. He has also maintained that loan transaction had taken place between him and

Amin Ram Pher before the actual sale. The learned Trial Court has recorded a finding, after considering the evidence of P.W.-2 and P.W.-3, that the slight dichotomy between their evidences show that their evidences are natural and they are not tutored witnesses. This Court is in agreement with the finding recorded by the learned Trial Court.

(39) He has also stated that bulls purchased by him were later sold to some Kurmi after six months of the said purchase. He has stated in his cross-examination that he and Nanhu had headed towards Dhanepur with the pair of bullocks from their Village Mahadeva and the distance was of nine miles, which was covered by 12:00 Noon. He met Rajendra and Ram Shanker at Dhanepur and after purchasing the bulls, he went towards home. He has also stated that about 6 - 7 days prior to the incident, he had gone to the veterinary doctor to contract the loan for purchase of bulls and the day before the incident, Amin Ram Pher asked him to go to the cattle fair and had the sale transaction reduced into writing. He has stated in his cross-examination that on that day he had gone only to purchase bulls and there was no other work to him. He had made reference of his visit to Village Dhanepur for purchasing of bulls in his statement under Section 161 Cr.P.C., however, he does not know as to why it has not been mentioned. He has also stated that he had told the Inspector that the accused had searched the pocked of Ram Shanker and took out a paper but he does not know as to why it is not in his statement recorded under Section 161 Cr.P.C. He had also told the Inspector about visiting Sajpur for purchase of bulls and for seeing the bulls for his maternal uncle. He has also stated that his statement was recorded by the Inspector near the dead body. He has also stated that he has filed an affidavit in this case after two months of the murder. He has further stated in his cross-examination that he had not seen the accused beating Ram Shanker by farsa and ballam in his back or stomach, however, he had seen them beating on head. He also stated that the farsa was blown on head only and the dhoti of the deceased was cut and no other cloth was cut. He also stated that the father of Laxmi had taken away the bullock cart and Laxmi and Bhikham Datt were at the spot till the Inspector had come. He also stated that the Inspector had not taken any statement in the night. He has denied the suggestion that Ram Shanker was alone and was killed in the dark and looted and he had not seen the incident.

(40) The P.W.-4, Bhikham Datt has stated that on the date of incident, he was going in his relationship in the north of his village from his house by cycle at about 04:00 PM in the evening. While he reached ahead of Mahadeva Village, he saw Gurcharan, Ram Shanker and Rajendra coming from north. When they reached near Patkhauli Village, they cried, then he heading his cycle rapidly, saw that Ram Narain, Ram Pher, Janendri, Naiyar and Ram Ugra came from the west and started beating Ram Shanker in front of Village Patkhauli. It was the field of canola (राई) and they hit in the said field. Ram Pher and Janendri had farsa in their hands, Ram Narain had bhala in his hands and Naiyar and Ram Ugra had lathi in their hands. Ram Shanker had some paper in his pocket, which was taken out by the accused, on which, he had also shouted. He further stated that the accused persons, after killing Ram Shanker, ran away towards the east. The incident was seen by Laxmi, Gurcharan, Rajendra etc. beside him. Rest of the persons were at distance. When he went near Ram Shanker, he found him dead. Rajendra Prasad went to the Police Station keeping him stay there. He remained there for some time and thereafter went in his relationship.

(41) He stated in his cross-examination that his statement was recorded by the Inspector after 8 - 10 days in Mahadeva. He had told the Inspector about his visit to Uttari Village. It was not told

as to where he had gone and the work for which he had gone. He has further stated that he had informed to the persons in Uttari about the murder, who asked him not to return being an eye witness. He has denied the suggestion that on account of relative of Ram Shanker, he is giving a false evidence. He has also stated in his cross-examination by the Court that he knows the wife of Ram Shanker, who is aunt of Rajendra and Rajendra alongwith his family lives there. His younger brother and aunt also live there. The age of Rajendra would be 20 - 25 years. He is Mota Brahmin (मोटा ब्राह्मण) and in Mota Brahmin, marriage takes places up to old age. He, in regard to the allegation of illicit relation of the wife of Ram Shanker with Rajendra, stated that it is made by the bad people and not by good people. His presence on the spot and the manner of assault told by him is in consonance with the evidence of P.W.-2 and P.W.-3, therefore, neither his presence on the spot can be doubted nor his testimony and nothing could also be shown to create any doubt about it.

(42) In view of above, P.W.-2, P.W.-3 and P.W.-4 are the eye witnesses, who have proved the incident and nothing material could be extracted from them, which may create any doubt about their testimony, except minor contradictions, which are natural. It is very obvious that two persons cannot tell about an incident or anything in one and the same language or same manner and it may vary on account of their memory and way of expression, which may differ from person to person. However, there is consistency in their ocular evidence in regard to the incident, according to which when the complainant and the deceased reached near Patkhauli on Uttaraula Dhanepur Road at about 04:00 PM, all the accused persons, who were sitting in the field of Arahar in the west of road, came out with gun, farsa and lathi in their hands and assaulted the deceased in the manner as stated above and ran away only after killing him. Thus, all the accused persons, who arrived with the weapons as disclosed above, were sitting in the field of Arahar near the place of incident with intention to kill the deceased and when the deceased alongwith the complainant reached near the place of incident, they suddenly appeared and on the exhortation and blow of lathi of one accused, all of them dragged, assaulted and killed him.

(43) Section 34 of I.P.C. provides that when a criminal act is done by several persons with a pre-meditated mind of committing crime, each of them is liable for the said criminal act in the same manner as if it was done by him alone. Section 34 I.P.C. is extracted here-in-below:-

"34. Acts done by several persons in furtherance of common intention. *- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."*

(44) The Hon'ble Supreme Court, in the case of **Ramesh Singh @ Photti Vs. State of A.P.; AIR 2004 (SC) 4545**, held that essence of the liability under Section 34 I.P.C. is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention and the inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. It has further been held in this regard that an illegal omission on the part of such accused can indicate the sharing of common intention. Thus, the totality of circumstances is to be taken into consideration in each case. The relevant paragraph 12 is extracted here-in-below:-

"12. To appreciate the arguments advanced on behalf of the appellants it is necessary to understand the object of incorporating Section 34 in the Indian Penal Code. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principles of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted."

(45) The testimony of P.W.-2, P.W.-3 and P.W.4 cannot be disbelieved merely because they are either relative or of the same village, on account of which they may be said to be interested witnesses, because their evidence is consistent and nothing could be extracted from them to create any doubt about their testimony, when considered whole and appropriately.

(46) The Hon'ble Supreme Court, in the case of **Anil Phukan Vs. State of Assam (Supra)**, has held that mere relationship with the deceased is no ground to discard his testimony if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant of his uncle and implicate a false person. However, the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and therefore, as a matter of prudence, we shall look for some independent corroboration of his testimony, to decide about the involvement of the appellant in the crime.

(47) The Hon'ble Supreme Court, in the case of **State of Karnataka Vs. Babu and Others (Supra)**, considering the facts of the case and observing that conduct of the children and the wife of the deceased was unnatural for the reason that in the first instance both the children could not have left their father alone after he had been beaten mercilessly and in any case after knowing from her children about the occurrence; instinctively the wife should have rushed to the place of occurrence immediately, dismissed the appeal on the ground that in spite of the eye witnesses evidence of two children of the deceased, the Court is not able to take the case against the respondents beyond doubt. It is not applicable on the facts and circumstances of the case in hand and distinguishable.

(48) Now, it is to be seen as to whether the post mortem report and the injures also support the prosecution case or not, though in the case of ocular evidence, it is not very material.

(49) The P.W.-1, Dr. Y.N. Pathak, who was posted as Medical Officer in the Sadar Hospital, Gonda and conducted the post mortem of the dead body of the deceased on 09.03.1979, has stated that the deceased had died about a day ago, Rigor Mortis was present on all four limbs and there was no decomposition. He proved the post mortem report, which was marked as Ex. Ka-1 and gave an opinion that the cause of death was due to coma, shock and hemorrhage due to cumulative result of ante-mortem injuries. He has proved the following injuries sustained by the deceased in the incident:-

Antimortem Injuries

1. Lacerated wound: 1.5 cm x .5 cm. x bone deep on the front left Leg, 12 cm below left knee joint.

2. Lacerated wound 1 cm x .5 cm x bone deep left 1eg, 8 cm below knee joint.

3. Lacerated wound 1.5 cm x .5 cm x bone deep and fracture of both bones leg joint below left knee.

4. Penetrating wound .5 cm x .5 cm x muscle deep on the front of left thigh, 12 cm above knee joint. Spindle shaped; Margins clean cut.

5. Contusion: 18 cm x 6 cm on the back of left thigh in the middle with fracture of bone underneath.

6. Contusion, 14 cm X 8 cm on the left.

7. Contusion, 18 cm x 2 cm on the left side abdomen vertically placed.

8. Contusion, 13 cm x 2 on the left side abdomen chest, transversely placed.

9. Contusion, 16 cm x 2 cm on the left side abdomen, just above injury no.8 at nipple.

10. Contusion, 4 cm x 2 cm on the back of wrist joint.

11. Multiple contusion, 46 cm x 22 cm on the right side on front of asilume in whole.

12. Abrasion, 2 cm x 1 cm on the right wrist joint outerside.

13. Contusion, 12 cm x 7 cm on the right thigh middle front fracture underneath.

14. Penetrating wound, .5 cm x .5 cm x muscle deep on the front of Rt. thigh, 14 cm above the joint. Spindle shaped. Magins are clean cut.

15. Lacerated wound, 13 cm x 1 cm (1.5 cm x 1 cm) on the right leg front 8 cm below knee joint.

16. Lacerated wound 2.5 cm x .5 cm x bone deep and fracture of right libia, 10 cm below the right knee joint.

17. Incised wound 1.5 cm x 1 cm x bone deep on the right side chin. Fracture of lower jaw, bone present.

18. Incised wound 2 cm x .5 cm x skin deep on the tip of chin.

19. Incised wound 2 cm x 1 cm x bone deep on the left side of chin.

20. Incised wound, 1 cm x .25 cm x lip cut with fracture of lower jaw and two teeth.

21. Incised wound, 1.5 cm x .5 cm x bone deep over left eye-brow.

22. Lacerated wound, 3 cm x 1 cm x scalp on right side head, 6 cm above left ear.

23. Incised wound 9 cm x 2 cm x bone deep on right side of head, 12 cm above right ear.

24. Lacerated wound, 1.5 cm x 1 cm x skin deep over back of head, 8 cm below right ear.

25. Contusion, 30 cm x 18 cm on left side back scapula.

(50) He further stated that right parietal, occipital and frontal bones were fractured and all the ribs from 1 to 9 on both sides were found fractured. Heart was full of blood and weighed 220 gms. Lower jaw bone was fractured. Stomach was empty. Small intestines were half full and large intestines were full of faecal matter. A dhoti, coat, sweater, kurta, underwear, taviz, janeoo and kardhan were recovered, which were sealed and handed over to the constable. He further stated that all the injuries could have come by lathi, farsa and ballam and the probable time of death was 04:00 PM on 08.03.1979. In regard to injury Nos.4 and 10, he stated that they were also of superficial depth and could have been caused by a light sharp pointed object. Ballam is a heavy weapon. On a query of the Court, he stated that the said injuries were possible from the tip of a ballam. Bone was not cut but fractured. Injuries No.21, 23, 17 and 20 were on tense structure. He has also stated that by a blow of lathi on the tense structure, the injury in the shape of an incised wound comes. Under the injury No.21, bone was neither fractured nor cut. Under the injury No.23, bone was not cut but fractured. Injury Nos.17, 20, 21 and 23 were possible by hard impact blunt objects. Thus, the injuries sustained by the deceased and proved by the doctor are in consonance with the weapons to have been used by the accused persons in the incident as proved by the P.W.-2, P.W.-3 and P.W.-4.

(51) The injuries proved by the doctor indicate that the assault by the convicts was highly brutal. The injuries are consistent with the ocular account of manner of assault given by the eye witnesses and weapons used as proved by them. Thus, the injuries suffered by the deceased and post mortem report also supports the prosecution case.

(52) The learned Trial Court, after considering the injuries and the evidence on record, has also recorded a finding that the injuries scribable to lathi stands explained by participation of lathi man Ram Ugra of Village Mahadeva itself and since the other accused Naiyar alias Rajkumar was of distant place and his presence was found doubtful, he has been acquitted. This Court does not find any illegality or error in it and the appellant, Ram Ugra is not entitled for any parity with the acquittal of co-accused, Naiyar alias Rajkumar as his participation in the crime has been proved and he was of the same village, of which, the other appellants belong. Even otherwise, an accused is not entitled for parity in acquittal with other accused, merely because both have been shown having used same weapon of assault, unless the complicity of the said accused is also not proved or found doubtful, therefore, the contention of learned counsel for the appellant in this regard is misconceived and not tenable, hence rejected.

(53) The PW.-6, Brij Narayan Singh, the Investigating Officer has proved the F.I.R. as Ex. Ka-5 and its entry in G.D. at Rapat No.32 at 18:45 hours as Ex. Ka-6. He further stated that he has recorded the statement of Kandhai; the complainant at the Police Station and thereafter he proceeded towards the spot where he reached about 10:30 PM in the night. There was no arrangement of light. He sent the constable for lantern, which was brought by him, however, its light was very dim, therefore, he remained there and in the morning, he firstly prepared the inquest report. He proved the inquest report, the photolash prepared by him and a letter to the CMO, which have been marked as Ex. Ka-8, Ex. Ka-9 and Ex. Ka-10. He had collected blood stained mud, which was near the dead body and plain mud in presence of the witnesses, which has been marked as Ex. Ka-11. Thereafter, he inspected the spot and prepared the site plan, which has been marked

as Ex. Ka-12. The investigation was taken up by the Inspector on 11th day. In his cross-examination, he stated that the F.I.R. was written at 18:45 hours and he started the investigation at 19:15 hours, when he started to reduce F.I.R. in case diary. He remained busy at Police Station up to 21:20 hours. He denied the suggestion regarding ante-dating of the F.I.R. by stopping the case diary at the Police Station. He has also stated that he had gone by cycle, not by jeep. He further stated that the Inspector had proceeded at 10:35 as per the case diary and he reached at the spot in some minutes. He also stated that as per case diary, the Inspector had returned, though he has not mentioned that he had come by a vehicle but as per his memory, he had come by a jeep. He has also denied the suggestion regarding lodging of forged report of Idrish under Section 498 I.P.C. to show the correct time of ante-time reporting. Thereafter extensive cross-examination has been made from him but nothing could be extracted, which may create any doubt about the veracity of his evidence or investigation. In the cross-examination, he has stated that he had not searched the houses of the accused persons because their houses were locked, which was mentioned in the case diary. However, no memo was prepared. He has further stated that witness Rajendra had told him that after seeing the agricultural work in Village Khamaria, they had proceeded from Khamaria to their Village Mahadeva at about 02:00 PM. He has also stated that witness Gurucharan had not told him that the accused persons had taken out a paper from the pocket of deceased Ram Shanker. He had told about the purchase of bull in Sajpur but he had not made any reference of his bulls and his maternal uncle's bulls. He has denied the suggestion that some unknown persons had lodged the F.I.R. of the dead body at the Police Station and he had prepared the aforesaid story. He has also denied the suggestion that after spot inspection with Rajendra in the village, the F.I.R. was lodged in the morning. The judgment of **Surendra Koli Vs. The State of Uttar Pradesh & Another (Supra)** relied by learned counsel for the appellant in this regard is not applicable on the facts and circumstances of this case.

(54) In view of above, the incident and the manner of assault and the arms, by which the assault was made and place of incident, have been proved by the aforesaid witnesses. The learned Trial Court has recorded the findings in accordance with law after considering the pleadings and evidence on record by reasoned and speaking order.

(55) One of the grounds of challenge is that the visit of the deceased and the complainant to the cattle market, Sajpur is not tenable on the ground that since the bulls of Nanhu were purchased, who was of the same village i.e. village of the complainant and the deceased, therefore, there was no question of going to the market as the said bulls could have been purchased in the village itself. The other ground has been raised on the ground that the receipts of purchase of bulls could not be proved as the thumb impressions were not proved either in both the experts opinion, out of which, one was conducted by the Court. So far as the plea on the ground of purchase of bulls of Nanhu of the same village from market is concerned, P.W.-2, the complainant Rajendra Prasad has stated that loan for purchase of bulls could have been taken from the co-operative society through veterinary doctor only, therefore, they had gone to the cattle market for doctor's certificate and received the receipt and the loan amount. So far as the proof of thumb impression on receipt is concerned, the learned Trial Court recorded that the experts have given opinion that two sets of thumb marks differ, however, the experts infact found interse similarity between thumb marks purporting to be those of Rajendra and Ram Shanker on the receipt in question. Even otherwise, it was merely an expert opinion and if the receipts could not have been proved in a case of ocular evidence, it cannot be a ground for suspecting the prosecution case and acquittal, when by the ocular evidence the complicity of the accused persons in crime has been proved.

(56) The Hon'ble Supreme Court, in the case of **Suresh Rai and Others Vs. State of Bihar (Supra)**, has held that Inquest Report cannot be treated as substantive evidence but may be utilised for contradicting the witness of inquest. It has also been held that Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also the possible cause of death. It is of no assistance to the appellants in the facts and circumstances of the instant case.

(57) In view of above and considering the over all facts and circumstances of the case, it has been proved beyond reasonable doubt by the prosecution that the accused/appellants with the common intention and in furtherance thereof assaulted the deceased with intention of causing death and left the place of incident only after killing despite the alarm by the witnesses. Thus, on the basis of evidence and material on record and the findings recorded by the learned Trial Court, this Court does not find any illegality or error in the impugned judgment and order, which has been passed by a reasoned and speaking order after considering the evidence and material on records and none of the grounds taken by the appellants are tenable in the eyes of law.

(58) The appeal is misconceived and is liable to be dismissed, which is accordingly **dismissed**, upholding the impugned judgment and order passed by the learned Trial Court. The conviction of the appellants for the offence punishable under Section 302/34 I.P.C. is upheld and the sentence awarded to them under Section 302/34 I.P.C. is confirmed.

(59) The appellant No.2; Gyanendri (Janendri) and the appellant No.3; Ram Pher had died during pendency of the appeal, whereas the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra are on bail, therefore, the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra are directed to surrender within two weeks from today before the Chief Judicial Magistrate concerned, who shall send them to jail to serve out the remaining sentence. In case the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra do not surrender within a period of two weeks from today, the Chief Judicial Magistrate concerned shall take appropriate steps for arrest of the appellant No.1; Ram Narain and the appellant No.4; Ram Uggar alias Ram Ugra.

(60) Let a copy of this judgment alongwith the Trial Court's record be transmitted to the Court concerned forthwith for information and compliance.

(2026) 2 ILRA 264
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:LUCKNOW 24.02.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 546 of 2012

Omkar Misra **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to "whether the prosecution has proved the involvement of the appellant in the murder of the deceased beyond reasonable doubt in light of contradictions in the ocular evidence and other attending circumstances" (Paras 41, 43, 45)

Headnotes

Indian Penal Code, 1860 - S.s 302/34, 498-A - Murder - Appreciation of evidence - *"there is material contradiction in the prosecution case, as set up in the F.I.R., and the prosecution witnesses and among themselves and the material on record"* - Prosecution case not proved beyond reasonable doubt. (Paras 43, 41)

Evidence - Ocular testimony - Reliability - *"P.W.-1 and P.W.-2 are not reliable as there are contradictions in their testimony"* - Presence of eye-witness doubtful. (Paras 23, 34)

Criminal Trial - Benefit of doubt - *"the appellant is entitled for benefit of doubt"* - Conviction cannot be sustained. (Para 41)

Dowry demand - Proof - *"the demand of dowry and harassment, on account thereof is not true"* - Motive not established. (Para 27)

Non-production of material witnesses - *"Non production of the parents of the deceased creates serious doubt on the prosecution story"* - Adverse inference. (Para 29)

Parity - Similar evidence against co-accused - *"Court cannot convict one accused and acquit the other when there is similar or identical evidence"* - Principle applicable. (Para 35)

Held: The prosecution story and the involvement of the appellant in the murder of the deceased, cannot be said to have been proved beyond reasonable doubt - there is serious doubt on the prosecution story - the prosecution has failed to prove its case beyond reasonable doubt - The appeal is, accordingly, allowed - The impugned judgment and order is hereby set aside - The appellant is acquitted." (Para 34,41,45,46) (E-7)

Case Law Cited

Ram Laxman Vs. State of Rajasthan; **(2016) 12 SCC 389***; Yogarani Vs. State by the Inspector of Police; Balaram Vs. State of Madhya Pradesh;* **(2023) SCC OnLine SC 1468***; The State of Uttar Pradesh Vs. Raghuvir Singh; Moniruddin Ahmed alias Lalu Dealer and Others Vs. State of West Bengal;* **(2010) 12 SCC 238.**

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dowry Prohibition Act, 1961; Indian Evidence Act, 1872.

List of Keywords

benefit of doubt; material contradiction; ocular evidence; dowry demand; plea of alibi; reliable witness; prosecution story; beyond reasonable doubt.

Case Arising From

APPELLATE JURISDICTION: Arising out of "judgment and order dated 27.03.2012 passed by learned Additional Sessions Judge, Court No.3, Sitapur, in Sessions Trial No. 649 of 2000; State Versus Omkar Mishra & others"

Appearances for Parties

Advs. for the Appellant:

Shri Aakash Srivastava, learned Counsel for the appellant

Advs. for the Respondents:

Shri R.S. Dwivedi, learned A.G.A. for the State

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

(1) This appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as "**Cr.P.C.**") emanates from the judgment and order dated 27.03.2012 passed by learned Additional Sessions Judge, Court No.3, Sitapur, in Sessions Trial No. 649 of 2000; State Versus Omkar Mishra & others, arising out of Case Crime No.139 of 2000, under Sections 498A, 302/34 of the Indian Penal Code, 1860 (here-in-after referred to as "**I.P.C.**") and Section 3/4 of Dowry Prohibition Act, 1961, Police Station Maholi, District Sitapur, whereby the appellant, Omkar Mishra, has been convicted under Section 302/34 I.P.C. for life imprisonment and a fine of Rs.5,000/- and in default of payment of fine, to undergo additional one month's imprisonment.

(2) The prosecution case, in short, is that on 20.05.2000, at 12:30 p.m., complainant, Navin Kumar Shukla (P.W.1), had lodged a written report at Police Station Maholi, District Sitapur, alleging that in the year 1994, marriage of his sister (hereinafter referred to as 'victim') was solemnized with Omkar Mishra (appellant herein) according to Hindu rites and customs, after giving dowry as per capacity. After marriage, Omkar Mishra, his brother Lallan son of Hari Shankar, Puttan son of Hari Shankar, Sachidanand son of Hari Shankar and their father Harishankar, his wife Bitti and wife of Sachidanand have started harassing his sister for not bringing a Suzuki Motorcycle in dowry. They tortured his sister for not giving a motorcycle in dowry in such manner that out of fear of her life, his sister had to leave her matrimonial home and come to live with him. Within two years of marriage, she was compelled to leave her in laws' house. Even after that many times, Omkar Mishra, Sachidanand and Harishankar came to his house demanding a motorcycle. When his sister was so terrified due to the continuous harassment for dowry, then, she had to seek protection from the Court and file a dowry harassment case in the Court at Sitapur, in which the statement of his sister and other witnesses had already been recorded. Thereafter, Omkar Nath and his father Harishankar Mishra came to his house and asked him to withdraw the case and give the motorcycle but due to lack of financial capacity, they could not give motorcycle to them.

It has further been alleged that on 19.05.2000, at 08:00 in the morning, Omkar Nath, Sachidanand, Harishankar Mishra and his wife Bitti came to his house and asked him that they have come last time to his home and if by tomorrow morning, motorcycle would not be send to their home and they do not come to Court to withdraw the case, then, they will cause them to face consequences. At that time, his family and sister pleaded a lot from them, but they did not agree.

It has further been alleged that on 20.05.2000, his sister was returning from Primary School, Kusaila after teaching, sitting on her Bsfy;k (Tricycle loader), upon which he (complainant) and his uncle Kamlesh Kumar Shukla were also coming to home. Bsfy;k (Tricycle loader) was being driven by Ganeshi. When Bsfy;k (Tricycle loader) reached near Tara Talab (pond) at about 11:35 p.m., then, Hari Shankar and his wife Bitti, who were already sitting aside the road, suddenly stood up and stopped the Bsfy;k (Tricycle loader) and Hari Shankar slapped Ganeshi, upon which he shouted and ran away. In the meantime, Omkar Nath and Sachidanand, waiving pistol in their hands, arrived and Omkar Nath fired with close range near eye of his sister, upon which he (complainant) and his uncle Kamlesh raised alarm, then, persons working in the fields, crasher and ponds, along with people coming on the road and children ran for saving. Then, Omkar while firing said that if anyone would come forward to save them, he would shoot them as well. At that moment, Sachidanand pulled down his sister from Bsfy;k and fired a second shot on her back and

overturned Bsfy;k on her. Thereafter, Omkar Nath, Sachidanand and Hari Shankar started firing indiscriminately, due to which persons working in the field, passerby and school children left their belongings and ran to save their lives. Both of us (complainant and his uncle) also ran to save their lives. Thereafter, accused persons waiving pistols in air, ran towards eastern side, consequently, there was complete silence on the spot and belongings of the passerby etc. are lying at the place, therefore, and police force should go immediately, otherwise, corpse of his sister could be disappeared.

(3) On the basis of the aforesaid written report (Ext. Ka-1), which has been scribed by Manoj Mishra as mentioned in the said report, whereas in the chik F.I.R. the name is mentioned as Pankaj Misra, bearing Case Crime No. 139 of 2000, under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961 was registered at police station Maholi, district Sitapur by Head Moharrir Iktidar Husain (P.W.4) and the investigation of the case was entrusted to C.O. Shishu Pal Singh (P.W.5).

(4) The investigating officer C.O. Shishu Pal Singh (P.W.5), on getting information about the lodging of the aforesaid F.I.R., reached the place of occurrence on the date of the incident. The Investigating Officer, after keeping carbon copy of chik F.I.R. in G.D., recorded the statement of the eye-witnesses and complainant Navin Kumar Shukla (P.W.1) under Section 161 Cr.P.C., inspected the place of occurrence, prepared the site plan (Ext. Ka.5), collected the blood stained and plain soil and prepared the recovery memo (Ext. Ka. 6). S.H.O. Parmanand (P.W.6) and other police personnel reached the place of occurrence for panchanama (inquest) of the dead body of the deceased. After some time, Tehsildar Harishchandra also reached at the place of occurrence and on his direction, inquest of the dead body of the deceased was conducted, a letter was prepared for Reserve Inspector, Police Line, Sitapur seeking permission for post-mortem of the dead body of the deceased and photo lash, letter to Chief Medical Officer and challan lash were also prepared.

(5) The post-mortem of the deceased was conducted by Dr. V.R. Saxena (P.W.3) at P.A.C. Hospital, Sitpaur on 21.05.2000 at 11:00 a.m. Dr. V.R. Saxena (P.W.3) found the age of the deceased about 27 years; probable time of death about one day before the time of postmortem; the deceased was of average built and height; rigor mortis was passed in upper and was passing in lower extremities; and PM staining was present on back. He found following ante-mortem injuries on the body of the deceased :-

1. Firearm wound of entry 7.5 cm x 5 cm x brain deep on forehead and face involving left eye ball just lateral to root of nose. Margins of wound are inverted and lacerated. Blackening, charring and tattooing present around wound. Direction front to back.

2. Fire arm wound of Entry 3 cm x 3 cm x chest cavity deep on the left side chest 2.5 cm below and medial to left inferior angle of scapula. Margins inverted and lacerated. Direction left to right."

In the opinion of doctor, the cause of death was due to shock and haemorrhage as a result of ante-mortem firearm injuries. The ante-mortem injuries no.1 and 2 could have come by firearm and the death of the deceased could be possible on 20.05.2000 at 11:35 a.m.

(6) The Investigating Officer, after completion of investigation, submitted the charge-sheet on 17.08.2000 under Sections 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act, 1961

against accused Omkar Mishra, Lallan, Puttan, Sachidanand, Hari Shankar, Smt. Bitti and Smt. Archana.

(7) Learned A.C.J.M.-II, Sitapur took cognizance on the aforesaid charge-sheet and by means of order dated 03.10.2000, committed the case to the Court of Sessions, where charges against the accused persons were framed under Sections 498-A, 147, 148, 302/149 I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961 on 08.07.2003. All the accused persons denied the charges and prayed for trial.

(8) In order to prove its case, the prosecution produced complainant Naveen Kumar Shukla as P.W.-1, Ganeshi as P.W.-2, Dr. V.R. Saxena, (who conducted the post-mortem of the deceased) as P.W.-3, Constable Iktidar Husain (who prepared the chik-F.I.R. on the basis of written report) as P.W.-4, C.O. Shishupal Singh (Retd.) (Investigating Officer) as P.W.-5 and S.I. Sri Parmanand, S.H.O., Police Station Baddupur, District Barabanki, (who conducted inquest) as P.W.-6.

(9) In order to prove its case, the prosecution also placed on record and proved written complaint given by the complainant as Ext. Ka.1, post-mortem of the deceased as Ext. Ka.2, chik F.I.R. as Ext. Ka.3, carbon copy of G.D. as Ext. Ka. 4, site plan of the place of occurrence as Ext. Ka. 5, recovery memo in regard to blood stained and plain soil as Ext. Ka. 6, charge-sheet as Ext. Ka. 7, inquest report as Ext. Ka.8, letter to Reserve Inspector as Ext. Ka. 9, sample seal as Ext. Ka.10, photo lash as Ext. Ka.11, letter to Chief Medical Officer as Ext. Ka. 12 and Police Form No.13 as Ext. Ka.13.

(10) The accused persons, in their defense, produced Vijay Kumar Singh as D.W.1, Satyaveer Tyagi as D.W.2, Ram Gopal Gupta as D.W.3 and Smt. Rampati as D.W.4. Accused persons have also produced four documentary evidence viz. (1) certificate issued by Parshad (corporator), Nagar Nigam Gaziabad certifying that accused Sachidanand is residing with his wife Archana on rent in House No. H.457, Mariyam Nagar, Nand Gram, Ghaziabad w.e.f. January, 1992 to June, 1998 as Ext. Kha.1; certificate issued by Ram Gopal Gupta, owner of the aforesaid house, certifying that accused Archana Mishra was residing with children in his house on rent w.e.f. July, 1998 to May, 2004 as Ext. Kha.2; certificate issued by Smt. Ramdhati, resident of Badagaon, Maholi, district Sitapur, certifying that accused Smt. Suman Bala was residing with family in her house w.e.f. 01.01.1992 to 31.12.1994 as Ext. Kha.3; and certified copy of the statement of victim recorded under Section 200 Cr.P.C. dated 05.01.2000 in re: Case No. 2350 of 1999 : Smt. Kusum Mishra, Vs. Omkar Mishra and others, under Sections 498A, 323, 504, 506 I.P.C. and Section $^{3/4}$ of the Dowry Prohibition Act, Police Station Maholi, district Sitapur as Ext. Kha.4.

(11) After completion of the evidence of the prosecution, the statement of the accused persons was recorded under Section 313 Cr.P.C., wherein they denied the occurrence and all of them have stated that the marriage of Omkar Mishra was solemnized with victim in the year 1992. Complainant and his family members have lodged false report on account of lust of property of the victim and feeling of revenge. They also stated that brother of P.W.2-Ganeshi was driving the Jeep of complainant, therefore, at the instance of complainant, he gave false evidence.

In addition to the aforesaid, accused Omkar has filed written statement, stating therein that his marriage was solemnized with victim prior to eight years of the incident and before his marriage, victim was doing teaching job in Sakaran Primary School, which was at a distance of 80 Kms. from his in-laws′ house and often she stayed there. He further stated that his one house was at Maholi. Before marriage, he was looking after the agricultural work while living separately from the family. He also stated that his wife wanted that he should live with her at Sakran, leaving the agricultural work, which he could not do, on account of which, disagreement between them persisted and his wife and her family members became annoyed with him and his family members. He further stated that after visiting in-laws house for some time, his wife lastly used to reside in Sakran. He tried to explain her, but due to instigation of his in-laws, she did not listen him. After three years of this incident, she was transferred to Primary School Kusaila and used to reside in his in-laws′ house. Kusaila was not far from in her in-laws′ house, therefore, on number of times, he tried to explain and also tried to get her back to his house, but on account of old rift, she did not come nor his in-laws helped him in sending back her in in-laws house. In November, 1999, he told that he would file a case for restitution under compulsion, upon which she and her family members got angry and lodged a false case against them. He also stated that he had a scooter prior to marriage. In May, 2000, unknown persons killed her wife and due to old malice and with intention to take revenge, he, his father, mother and brothers have falsely been implicated in the case.

Accused Devendra Kumar alias Lalla has stated in his statement under Section 313 Cr.P.C. that he is innocent. He lived in New Delhi along with family w.e.f. 10.06.1991 to 04.10.1995 and was working there in a firm, namely, Special Cables Pvt. Ltd. and thereafter, while working there, he along with family was staying in Unchagaon village, Ballabhgarh, Haryana for quite a long time after the incident. He also stated that Sachidanand was also living in Unchagaon along with him separately while working in Bhivadi w.e.f. June, 1998 till the date of the incident and wife of Sachidanand Archana and son Abhinav had returned to Sitapur.

Accused Surendra Nath Mishra alias Puttan has also filed a written statement, stating that before marriage, his wife Suman Bala Mishra was working on the post of B.H.W (Woman) in Primary Health Centre, Maholi and he used to reside in sub-station Semarawa (Parsehara Gram Sabha) of Primary Health Centre, Maholi with his wife and son Dipak in the house of Pradhan till 31.12.1994 and w.e.f. 04.01.1995 till after the incident, they resided in Government accommodation Housing Colony, P.H.C. (Woman). He has no concern with family of Omkar or Omkar. Being brother, he has falsely been implicated. He is innocent.

Accused Sachindanand has also filed written statement, stating therein that prior to marriage of Omkar, he was working as Tenning Engineer in Vishwakarma Industries Ltd., Mukund Nagar, Ghaziabad w.e.f. 25.06.1991. He got opportunity to work in Uttam Industries Engineering Pvt. Ltd., Rath Road, Ghaziabad in April, 1992, where he worked till 13.11.1995 and by that time, he used to reside with wife Archana and son Abhinav in Ghaziabad. In November, 1995, he switched the job and started working in Global Engineering Ltd., Rajendra Place, New Delhi but he used to reside in Ghaziabad and in June, 1997, he was transferred in Bhivadi unit of this company and w.e.f. June, 1998 till the incident, he alone resided with his brother Bhailal alias Devendra at Unchagaon, Ballabhgarh, Haryana. His wife Archana and son Abhinav resided in Ghaizabad till the end of academic session and thereafter his wife came back to Sitapur along with son Abhinav and while living therein, admitted his son in Secret Heart. On getting information about the incident, he reached Maholi on 21.05.2000 at 06:00 a.m., upon which complainant got him arrested from police

near tempo stand. He has no concern with Omakar and his family members prior to marriage and after the marriage.

Accused Hari Shankar has also filed written statement, stating therein that before marriage of Omkar with the victim, he was working in Secondary School, Aurangabad district panchayat, Lakhimpur. By means of the order of the Additional Secretary, Regional Office, Allahabad of Board of High School and Intermediate Education, U.P. Board dated 25.04.2000, he was appointed as Assistant Examiner for examining the answer papers of Social Science. His examiner number was 00102. He was directed to present at Examiner Centre, Rajkiya Inter College Lakhimpur on 11.05.2000 at 10:00 a.m. for examining the copy. He was doing the work of examiner w.e.f. 11.05.2000 to 22.05.2000 between 10:00 a.m. to 05:00 p.m. On 22.05.2000, at 05:00 p.m., he was relieved. He joined his District Panchayat School Higher Secondary School Aurangabad on 23.05.2000 at 07:00 p.m. Being father of Omkar, he and his wife have falsely been implicated in the case.

Accused Archana Mishra has also filed written statement, stating therein that his husband Sachidanand was working in Ghaziabad and she used to live with him there. When her husband was transferred to Bhivadi, then, on completion of academic session, he came to Sitapur along with her son Abhinav and admitted her son in Secred Heart and started living there. Her husband was working in Bhivadi and he resided there along with his brother Lallan alias Devendra in Ballabhgarh, Haryana. She further stated that she is innocent.

(12) The trial Court, after analyzing and appreciating the evidence on record, found the case of the prosecution against accused Omkar Mishra under Section 302/34 I.P.C. proved beyond reasonable doubt and convicted and sentenced him as disclosed in first paragraph of this judgment, however, acquitted other accused persons from charges framed against them, by means of the impugned judgment and order dated 27.03.2012. Hence the instant appeal has been filed against the same by Omkar Nath Mishra.

(13) Learned A.G.A. informed that no appeal either on behalf of the State or the complainant has been filed against the order of acquittal of other accused persons by means of the impugned judgment and order dated 27.03.2012.

(14) Heard Shri Aakash Srivastava, learned Counsel for the appellant and Shri R.S. Dwivedi, learned A.G.A. for the State.

(15) Learned counsel for the appellant submitted that the appellant has wrongly and illegally been convicted by means of the impugned judgment, whereas no crime has been committed by him. He further submitted that the appellant has wrongly and falsely been implicated in the case on account of matrimonial dispute between him and the deceased, in regard to which, a case was also filed by the deceased and on account of the said dispute, the complainant implicated the appellant and his family members to get the monetary and service benefits, as the deceased was in government service. He further submitted that the alleged eye witness i.e. uncle of the complainant, namely, Kamlesh has not been produced in evidence, which creates serious doubt about the prosecution story. He further submitted that the thelia, pellets and the weapon of crime have not been recovered and the learned Trial Court, even after finding that the complainant, who claims to be an eye witness is not reliable and there are contradictions in the evidence of P.W.-1 and P.W.-2

and the post-mortem also does not support the prosecution case, but relying on their evidence, convicted the appellant, which could not have been done. He also submitted that all the family members of the appellant were implicated in the case but, except the appellant, none have been convicted considering the plea of alibi as they have not been found present on the place of incident. Therefore, the prosecution story itself is false and not reliable. Thus, learned counsel for the appellant submitted that the impugned judgment and order is liable to be set aside and the appellant is liable to be acquitted.

(16) Learned counsel for the appellant relied on the judgment and order dated **23.01.2025 passed in Criminal Appeal No.1588 of 2015; The State of Uttar Pradesh Vs. Raghuvir Singh** and judgment and order dated **23.11.2024 passed in Criminal Appeal No.477 of 2017; Yogarani Vs. State by the Inspector of Police** by the Hon'ble Supreme Court and the judgments rendered in the case of **Ram Laxman Vs. State of Rajasthan; (2016) 12 SCC 389** and **Balaram Vs. State of Madhya Pradesh; (2023) SCC OnLine SC 1468.**

(17) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellant. He submitted that the appellant has rightly and in accordance with law been convicted by the impugned judgment by the Trial Court after considering the evidence and material on record. He further submitted that the prosecution case has been proved by the eye witnesses, which is corroborated by the injuries sustained by the deceased, therefore, there cannot be any doubt about the prosecution case. He further submitted that the deceased was wife of the appellant but he has not lodged any F.I.R., therefore, his conduct also creates doubt on him. He also submitted that merely because the co-accused persons have been acquitted considering their plea of alibi, the appellant is not entitled for any benefit of the same and parity is not applicable in the claim of alibi and the plea of alibi is to be specifically pleaded and proved. He further submitted that the case laws relied by learned counsel for the appellant are not applicable on the facts and circumstances of the case. This appeal has been filed on baseless and misconceived grounds, which is liable to be dismissed. He relied on **Moniruddin Ahmed alias Lalu Dealer and Others Vs. State of West Bengal; (2010) 12 SCC 238.**

(18) We have considered the submissions of learned Counsel for the parties and perused the records.

(19) The deceased was the wife of the appellant. Their marriage was solemnized in the year 1992, which has been shown as 1994 in the F.I.R., as found by learned Trial Court upon considering the evidence and material on record. On account of matrimonial dispute, the deceased was living separately. She was in a Government Job as a teacher. Undisputedly, on account of the matrimonial dispute, a case under Section 498-A, 323, 504, 506 I.P.C. and Section $^{3/4}$ of the Dowry Prohibition Act, Police Station Maholi, district Sitapur; *Smt. Kusum Mishra, Vs. Omkar Mishra and others*, filed by the deceased was pending at the time of the incident and on account of the said dispute, the deceased was residing with her brother i.e. the complainant.

(20) On the date of incident, while the deceased was returning from the school after it was over, the incident had happened. As per prosecution story, the school of the deceased was from 7:00 AM to 11:30 AM and after the school was over, she was returning home by the thelia, which

was being driven by P.W.-2, Ganeshi. The said thelia was purchased by the deceased. It has also been alleged that the complainant and his uncle; Kamlesh were also coming by the said thelia with the deceased.

(21) The complainant, who appeared as P.W.-1, stated that when they reached near Tara Talab, the accused Hari Shankar (father-in-law of the deceased) and his wife Bitti, who were sitting aside the road, stopped the thelia. Hari Shanker slapped Ganeshi, on account of which, he ran away raising voice. In the meantime, Omkar and Sachidanand, waiving country made pistol in their hands, came and Omkar put the pistol near the left eye of the deceased and fired, on account of which, the complainant and his uncle Kamlesh shouted. Then the persons working in the fields, crushers and pond came on the road and the passer-by and the children ran to save them. Omkar fired and said that if anybody would come forward to save, he will kill. In the meantime, Sachidanand pulled down the deceased from thelia and made second fire on her back and subverted the thelia on her. Thereafter, Omkar, Sachidanand and Hari Shanker started making repeated fires, on account of which, the persons working in the fields, passer-by and the children of school ran to save their lives. They both also ran. Thereafter, the accused persons waiving their country made pistols in their hands ran towards east, on account of which, it was complete silence and the complainant went to lodge the F.I.R.

(22) The Ganeshi appeared as P.W.-2. He, in his evidence, stated that he used to drive the thelia of Kusum Mishra, who was a teacher in Kusaila School, and used to take her to school and bring back daily, whereas the deceased, in her statement under Section 200 Cr.P.C. recorded in case by her i.e. Ex. Kha-4, had stated that Nandu was driving the thelia. He further stated that on the date of incident, he had gone to school to leave Kusum Mishra and while returning, her brother, Naveen and Munna alias Kamlesh were also coming on the thelia, who met him in Kusaila where they had gone for walking and when they reached near Tara Talab at about 11:30 AM, the accused persons, Omkar, Sachidanand, Hari Shanker and Bitti came and stopped the thelia. Thereafter he stated that Hari Shanker and Bitti stopped the thelia. He also stated that Hari Shanker slapped him and thereafter Omkar made fire in the eye of Kusum by a country made pistol and, thereafter, Hari Shanker fired in the back (कोख) of the deceased. He further stated that he ran away and hid himself in the pond and came back near the dead body only when the Inspector had come. He also stated that the Omkar said to the villagers that if anyone will come near, he would kill him. In cross-examination, he admitted that Nandu is his real brother, who is driver of jeep of Naveen Kumar. He also stated that he does not know anything about any accused, except their name and killing by them. He also admitted that he was brought by the complainant for evidence and he has also engaged an advocate who is standing near him.

(23) In view of above, there is contradiction in evidence of P.W.-1 and P.W.-2 in regard to the person, who made the second fire by the country made pistol on the deceased because the P.W.-1 stated that the second fire was made by the Sachidanand near the dead body, whereas the P.W.-2 stated that Hari Shanker made the second fire. According to P.W.-1, Hari Shanker stopped the thelia and slapped Ganeshi, on account of which he ran away, therefore, he cannot be said to be an eye witness. But Ganeshi, the P.W.-2 states that he ran away after the second fire was made by Hari Shanker and came back near the dead body only when the Inspector had come and P.W.-1, in his cross-examination, has stated that he had seen Ganeshi in evening after the incident. He also does

not know about the accused persons and knows only their names and that they have killed. He was also brought by the complainant for evidence. The complainant has failed to disclose as to how he and his uncle; Kamlesh reached Kusaila and were coming on thelia. Therefore, presence of P.W.-2 at the place of occurrence is doubtful. It appears that he has been tutored to show him an eye witness and gave evidence accordingly as he is brother of driver of the complainant.

(24) P.W.-1, complainant stated that his sister; the deceased was married to Omkar Mishra, the appellant about 7 to 8 years back. He had given the dowry as per his capacity in the marriage but the appellant and his family members were not happy with the same. They started making demand of Suzuki motorcycle immediately after marriage but he could not give the motorcycle on account of the financial condition, therefore, the appellant and his family members used to harass his sister, therefore, with the fear of murder, his sister left her in-laws' house and started living in his house. It has also been stated by him that even thereafter the appellant and his family members came to his house for demanding Suzuki motorcycle, on account of which his sister was so fearful that she filed a case of harassment, on account of dowry, in the court, which is pending.

(25) A statement of the deceased i.e. wife of the appellant was recorded under Section 200 Cr.P.C. before the learned Trial Court and the same has been placed on record by the defense as Ex. Kha-4. Perusal of the said statement indicates that the deceased has not stated in her statement, which was recorded on 05.01.2000, that there was any demand of dowry of Suzuki motorcycle. It belies the allegations of the complainant that there was any demand of dowry of Suzuki motorcycle. Even otherwise, the appellant and the co-accused have stated that the appellant had a scooter at the time of incident and since prior to that, therefore, there was neither any requirement nor any question arises for demand of motorcycle. Thus, the motive of the incident shown by the complainant also is not proved. However, in the case of ocular evidence account, the motive is not of much importance. The learned Trial Court also was of the view that in the case of ocular evidence, the motive looses its effect and will not have any effect on the prosecution case because the demand of dowry could only have a motive for the incident. However, the Trial Court, on the basis of documentary and oral evidence, found that the appellant had scooter.

(26) The P.W.-1, complainant, in his statement, has also stated that his parents were alive but now they have died. He further stated that the deceased was his eldest sister and she was B.A./B.T.C. and teacher in a Government School since prior to her marriage. He further stated that there is a brother about 10 years younger to the said sister and then a sister, who was married about 2.5 to 3 years prior to the incident. He also stated that the marriage of the deceased was got solemnized by his parents, but now they have died. Thus, learned Trial Court recorded a finding that the claim of the complainant that he had married his sister as per his capacity and gave the dowry, is not sustainable because the marriage of the deceased was solemnized by their parents.

(27) P.W.-2, Ganeshi stated in his cross-examination that the parents of the complainant, Naveen Kumar are alive and residing with him and he had seen them yesterday i.e. a day prior to the date on which his evidence was recorded, which was recorded after P.W.-1. He further stated that they are capable of movement and talking. Thus, it is apparent that the complainant was speaking lie that his parents have died. A copy of his family register was also placed on record by the defense in proof thereof. Considering it, the learned Trial Court also recorded a finding that it is

apparent from its perusal that the parents of the complainant are alive and this fact has deliberately been concealed by him. Thus, upon consideration of evidence of P.W.-1 and P.W.-2 and the material on record, the learned Trial Court recorded a finding that the demand of dowry and harassment, on account thereof, by the appellant and his family members, as alleged by the complainant, is not true. However, it is apparent from the statement of P.W.-1 that the deceased has been murdered and the question arises as to who killed her which would be decided after examining the evidence of other witnesses. Thereafter, the learned Trial Court proceeded to consider the statement of P.W.-2, Ganeshi, which we have dealt above and found that there is contradiction in the evidence of P.W.-1 and P.W.-2 with regard to the assault made by the accused persons and the two gun shot fires made because, according to P.W.-1, it was by Sachidanand, whereas the P.W.-2, Ganeshi has stated that second fire was made by Hari Shanker.

(28) The P.W.-1 has also stated that after second fire made by the Sachidanand, he subverted the thelia on the deceased and, thereafter, they left the place. The complainant has stated in his evidence that he has neither removed thelia from the dead body of the deceased nor tried to provide any medical assistance to her on the ground that as per him she was dead. It has also been stated by the P.W.-1 that his uncle Kamlesh never returned at the place of incident. He has also not been produced in evidence.

(29) Upon consideration of evidence of both the witnesses, it is apparent that there is contradiction in the evidence and conduct of the witnesses is also not natural. Non production of the parents of the deceased, in evidence to prove the demand of dowry and harassment of the deceased on account thereof, creates serious doubt on the prosecution story coupled with the fact that contradictions for demand of Suzuki motorcycle in the evidence of P.W.-1, which is not in the statement of the deceased before the learned Trial Court in other case by the deceased, a certified copy of which has been placed on record as Ex. Kha-4, which is considerable and has been considered by the learned Trial Court also.

(30) P.W.-1 has admitted in cross-examination that he had not seen as to which side, Ganeshi had gone and he had also not seen the thelia after the incident and blood on it. The non recovery of thelia from the place of incident and no crusher near the place of incident as admitted by the Investigating Officer also raises serious doubt on the prosecution story and testimony of the eye witnesses.

(31) The P.W.-3, Dr. V. R. Saxena has proved the post-mortem conducted by him and the injuries suffered by the deceased. The aforesaid two injuries were found and there are contradiction in the manner of assault, which is apparent from the ocular evidence of eye witnesses and the evidence given by the doctor. According to P.W.-1, the thelia was subverted on the deceased after second fire but no injuries on account of it has been found. However, the learned Trial Court recorded a finding that these minor contradictions would not have any adverse effect on the prosecution case. But it creates doubt on prosecution story.

(32) It has also been mentioned in the FIR that a day prior to the date of incident i.e. 19.05.2000 at about 08:00 AM, the appellant and his family members had come for demand of dowry and stated that they have come for the last time for it and in case it is not fulfilled by

tomorrow and the case is not withdrawn from the court, then they would have to face consequences, whereas it has not been stated by the complainant in his evidence before the learned Trial Court. Even otherwise it appears to be unobvious for the reason that the school of the deceased was w.e.f. 7:00 AM to 11:30 A.M., therefore, at that time she would not be at home. Even otherwise this Court failed to comprehend that the accused persons of a dowry case would make demand of dowry and for the said purpose, they would come to home of the complainant. The learned Trial Court, after considering the evidence and material on record and the proof of scooter with the appellant, recorded a finding that the case of the prosecution for demand of dowry and harassment of the deceased, on account thereof, has not been proved. This Court is in agreement with the finding recorded by the learned Trial Court.

(33) The Hon'ble Supreme Court, in the case of **Ram Laxman Vs. State of Rajasthan (Supra)**, has held that no doubt, it is an established principle of criminal law in India that only on account of detecting some falsehood in the statement of a witness, who is otherwise consistent and reliable, his entire testimony should not be discarded. It is equally settled law that if a witness is found un-dependable and un-reliable his evidence can not be split to grant benefit to some co-accused while maintaining conviction of another when in all respects he stands on same footing and deserves parity.

(34) In view of above, there is serious doubt on the prosecution story and P.W.-1 and P.W.-2 are not reliable as there are contradictions in their testimony and the case of demand of Suzuki motor cycle is not tenable. All other accused persons, except the appellant, have not been found present at the place of incident on the basis of evidence and material on record. It is seen that in the cases of matrimonial dispute, the whole family is implicated and it is a classical case in this regard and in this case neither the demand of dowry could be proved nor the involvement of the accused persons.

(35) The Hon'ble Supreme Court, in the case of **Yogarani Vs. State by the Inspector of Police (Supra)**, has held that Court Cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. The relevant paragraph 10 is extracted here-in-below:-

"10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of Javed Shaukat Ali Qureshi v State of Gujarat reported in 2023 INSC 829, this court has held that:

15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.

In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.

(36) The Hon'ble Supreme Court, in the case of **Balaram Vs. State of Madhya Pradesh (Supra)**, has held that it is well settled that there are three types of witnesses, which are (i) whole reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. It is further held that if the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based, again, there is no difficulty in the case of wholly unreliable witness in as much as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses, which is partly reliable and partly unreliable, that the Court faces the difficulty and the Court is required to separate the chaff from the grain to find out the true genesis of the incident. The relevant paragraphs 11 and 12 are extracted here-in-below:-

"11. It is well settled, as laid down in a locus classicus case of Vedivelu Thevar v. State of Madras1, there are three types of witnesses, which are

(i) wholly reliable,

(ii) wholly unreliable, and

(iii) neither wholly reliable nor wholly unereliable.

12. The law laid down in Vedivelu Thevar (supra) is consistently followed by this Court in a catena of judgments. It can thus be seen that, there are three types of witnesses. If the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses inasmuch as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the Court faces the difficulty. The Court is required to separate the chaff from the grain to find out the true genesis of the incident."

(37) The learned Trial Court found that the charge of murder against the Hari Shankar is not proved as he was a teacher in the government school and he was checking copies at a distant place from 10:00 AM till 05:00 PM w.e.f. 11.05.2000 to 22.05.2000. The charge against the accused, Sachidanand has also not been found proved as it has been proved by the evidence and material placed on record that he was living separately since prior to the marriage of the deceased, Kusum and he was also not present at the place of incident on the date and time of the incident. The learned Trial Court also found that on account of the contradictions in the evidence of P.W.-1 and P.W.-2, the involvement of these accused is not found. The Charges on Devendra Kumar Mishra @ Lallan and Surendra Nath Mishra alias Puttan have also not been found proved as they were living separately at different places, therefore, they were not present at the place of occurence. The charge on the accused Smt. Archana Mishra is not found proved as she was found to be living with her husband Sachidanand and separately from the deceased. The charge of demand of dowry and harassment has also not been found proved against them.

(38) A plea has also been taken by the defense that since the deceased was in a government job and on account of her death, the complainant, who is her brother, could have been benefited not only financially but could also have got the job in dying-in-harness, therefore, the appellant and his family members have been implicated in the case. Though it could not be proved but the evidence and material on records show serious doubt on the prosecution case.

(39) Perusal of the written report, on the basis of which F.I.R. has been lodged and chik F.I.R. was prepared, indicates that the same has been written by the same person, who has signed it i.e. the complainant Naveen Kumar but the signatures of the writer are of Manoj Mishra, which is in different handwriting and pen. The chik F.I.R. also discloses that the F.I.R. has been scribed by the Pankaj Mishra, which creates doubt and even the Manoj Mishra and Pankaj Mishra, the scriber of the F.I.R. have not been produced in the evidence, whereas the P.W.-1, complainant has stated in his evidence that the F.I.R. was scribed by the Manoj Mishra. Thus, it appears that the written complaint has been prepared by the complainant himself and got the signatures of Manoj Mishra subsequently.

(40) The Hon'ble Supreme Court, in the case of **The State of Uttar Pradesh Vs. Raghuvir Singh (Supra)**, held that a trial Judge owes a responsibility to weigh the probability of the prosecution evidence, which he has to do for arriving at the decision whether the prosecution allegations have been proved by the standard laid down in Section 3 of the Evidence Act and for the said purpose he has to consider all the probabilities. The relevant paragraphs 40 and 41 are extracted here-in-below:-

"40. The trial Judge owes a responsibility to weigh the probability of the prosecution evidence, which he has to do for arriving at the decision whether the prosecution allegations have been proved by the standard laid down in Section 3 of the Evidence Act. In so weighing the probability of the prosecution allegations, of necessity, other probabilities also appearing from the evidence brought before the Court have to be considered for comparative assessment which of the probabilities should be accepted as a fact proved. If, from the evidence, any probability consistent with the innocence of the accused is equally strong as the probability pointing to his guilt, then on the strength of the presumption of innocence in favour of the accused, it could be said that the prosecution has failed to prove its allegations. Even if the probability consistent with innocence is not equally strong with other probability of his guilt, yet the probability of innocence is such as would cast a doubt, then it may be a case of reasonable doubt, the benefit of which must go to the accused. That being so, it is incumbent upon the trial Judge to consider all the probabilities that appear from the evidence before him and he cannot afford to be credulous and omit to consider reasonable probabilities.

41. In the aforesaid context, we may quote with profit the observations of the Supreme Court in the case of Lal Mandi v. State of West Bengal, reported in (1995) Criminal Law Journal, 2659, as contained in paragraph 5 of the decision.

"5. To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial Court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in Tota Singh's case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate Court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and

separate. The presumption of innocence of an accused which gets strengthened on his acquittal is not available on his conviction. An appellate Court may give every reasonable weight to the conclusions arrived at by the trial Court but it must be remembered that an appellate Court is duty bound, in the same way as the trial Court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial Court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence."

(41) In view of the aforesaid discussion and upon considering the overall facts and circumstances of the case, the prosecution story and the involvement of the appellant in the murder of the deceased, cannot be said to have been proved beyond reasonable doubt. Thus, this Court is of the view that the appellant is entitled for benefit of doubt.

(42) The Hon'ble Supreme Court, in the case of **Moniruddin Ahmed alias Lalu Dealer and Others Vs. State of West Bengal (Supra)**, has held that it is basic law that the prosecution is to prove that the accused was present at the scene and had participated in the crime and once the prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. The relevant paragraph 15 is extracted here-in-below:-

"15. It is basic law that the prosecution is to prove that the accused was present at the scene and had participated in the crime. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. However, once the prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. It is also settled that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. In the case on hand, we have already noted the absolute evidence indicating the presence of Lalu Dealer at the scene of occurrence. He was not only at the spot but also caused the death of Abdul Hasib by a fatal blow with spear. As rightly observed by the High Court, the stand taken by the defence witnesses is unacceptable."

(43) Adverting to the facts of the present case, as discussed above, there is material contradiction in the prosecution case, as set up in the F.I.R., and the prosecution witnesses and among themselves and the material on record. The case set up by the prosecution has also not been completely proved by the prosecution witnesses. There is material contradiction in the ocular evidence account of the prosecution witnesses i.e. P.W.-1 and P.W.-2, in which there is contradiction in the manner of assault and the gun shot fires and the presence of the persons, who fired, considering which as well as the evidence adduced by the defense and the material placed on record, the accused persons have been acquitted except the appellant. Thus, there is serious cloud on prosecution story because all the accused, except the appellant, have been acquitted considering the plea of alibi, which has been proved. It is true that parity cannot be claimed in the plea of alibi

and it is to be specifically pleaded and proved but certainly it raises serious doubt about the prosecution case.

(44) The prosecution has also failed to produce the best witnesses to prove the demand of dowry and harassment on account thereof and death of deceased, therefore, it appears that the plea was taken by P.W.-1 that the parents of the deceased and the complainant are not alive, whereas according to evidence of P.W.-2, they were alive. The testimony of such a person, who only to get his brother-in-law convicted by taking a plea of death of his parents, creates serious doubts about his testimony and it appears that they and the Kamlesh, the eye witness have been withheld so that the correct thing or picture may not come before the Court. This Court is of the view that evidence of such a witness could not be accepted, unless it is corroborated by the other evidence and material on record because if a person can state in his evidence on oath that his parents are not alive then he can do anything.

(45) This Court also cannot lose sight of the fact that on the basis of same prosecution evidence, all the accused, except the appellant, have been acquitted on one or other ground, as their presence has not been found at the place of incident and the fact that an eye witness i.e. uncle of the complainant, Kamlesh has not been produced in evidence and, admittedly, he had not returned to the place of incident after the incident, it creates serious doubt on prosecution story. Thus, this Court is of the view that the prosecution has failed to prove it's case beyond reasonable doubt but the learned Trial Court even after finding contradictions in ocular evidence account and falsehood in evidence of complainant convicted the appellant, discarding it on probabilities and assumption.

(46) The appeal is, accordingly, **allowed**. The impugned judgment and order dated 27.03.2012, convicting and sentencing the appellant, is hereby set aside. The appellant is acquitted. The appellant is in jail. He shall be released forthwith, if he is not required in any other case.

(47) Let a copy of this judgment as well as Trial Court's record be sent to the Court concerned forthwith and in any case within a week from today for information and compliance.

(2026) 2 ILRA 279
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1502 of 2021 and Jail Appeal No. 63 of 2021

Smt. Seema Gupta **...Appellant**

Versus

State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to "whether the inculpatory circumstances urged by the prosecution form that unbroken chain, which leads to no other conclusion, but the appellants' guilt" and "whether the victims died by homicide or suicide." (Para 14, 25)

Headnotes

Indian Penal Code, 1860 - S. 302 read with S. 34 - Murder - Circumstantial evidence - Homicidal vs. Suicidal strangulation - Motive - Honour killing - Daughter's pregnancy outside wedlock - Burden of proof under S. 106 of the Evidence Act.

Criminal Law - Circumstantial Evidence - "the case rests entirely on circumstantial evidence if these form that unbroken chain beyond all reasonable doubt." (Para 14)

Motive - Illicit Relationship & Pregnancy - "daughter entered into carnal relations pregnancy outside wedlock serves as a motive." (Paras 16, 20-21)

Homicidal Death vs Suicide - Strangulation - "strangulation is mostly consistent with a case of homicide and suicidal strangulation is rare." (Para 36)

Absence of Contrivance - Suicidal Strangulation Ruled Out - "no such contrivance was found rules out suicide by self-strangulation." (Paras 36-37)

Place of Occurrence - Inside Accused's Premises - "dead bodies were lying inside a room located on the appellants' premises." (Para 44)

Burden under S. 106 Evidence Act - "burden would lie upon the appellants to explain the circumstances within their special knowledge." (Para 45)

Alibi-Failure - "alibi has to be strictly proved does not inspire confidence." (Para 59)

Extra-Judicial Confession – Inadmissible - "confessions while in police custody inadmissible under S. 26 Evidence Act." (Paras 66-69)

Chain of Circumstances Complete - "complete and unbroken chain only consistent with the guilt." (Para 76)

Held: This is a commonplace homicidal death by strangulation and certainly not suicidal strangulation - burden under S. 106 lies upon the appellants to explain homicidal death - failure to explain would add a link pointing to the appellants' guilt - the alibi does not inspire confidence failure becomes a further damning circumstance - appellants having failed to come up with a cogent explanation serves as an important link - circumstances proved establish a complete and unbroken chain only consistent with the guilt - Conviction under S. 302/34 IPC rightfully convicted appeals fail and are dismissed. (Paras 38,45,46,59,61,76,78) (E-7)

Case Law Cited

Godabarish Mishra v. Kuntala Mishra, **(1996) 11 SCC 264***; Gajanan Dashrath Kharate v. State of Maharashtra,* **(2016) 4 SCC 604***; Ishwari Lal Yadav v. State of Chhattisgarh,* **(2019) 10 SCC 437***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

circumstantial evidence; illicit relations; pregnancy outside wedlock; strangulation; homicidal death; suicidal strangulation; motive; alibi; S. 106; extrajudicial confession; unbroken chain; beyond reasonable doubt; Honour killing; Ligature mark; Asphyxia.

Case Arising From

APPELLATE JURISDICTION: Judgment and order dated 18.02.2020 Sessions Trial No.519 of 2014 convicting the appellants under S. 302/34 IPC.

Appearances for Parties

Advs. for the Appellant:

Ms. Shweta Singh Rana, learned Counsel for the appellants

Advs. for the Respondents:

Mr. Anil Kumar Mishra, learned Additional Government Advocate

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

1. This appeal is directed against a judgment and order of Mr. Mohd. Quamar, the then Additional Sessions Judge/ Fast Track Court No.2, Shahjahanpur dated 18.02.2020 passed in Sessions Trial No.519 of 2014, convicting the appellants for an offence punishable under Section 302/ 34 of the Indian Penal Code (for short, 'IPC') and sentencing each of them to suffer imprisonment for life, besides a fine in the sum of Rs.10,000/- each; and, in default, ordering six months' simple imprisonment.

2. A First Information Report ('FIR' in short) was lodged by Brajesh Kumar with Police Station Kalan, District Shahjahanpur on 20.08.2014, saying that the informant was a resident of Village Mahodavan, Police Station Bilhaur, District Kanpur Nagar. His younger brother of full blood, Pradeep Kumar aged about 28 years, who was unmarried, was teaching for the three years past as a private tutor at Barah Kalan, P.S. Kalan. He was employed privately as a teacher with the Srinagar Inter College there. The employment would fetch him Rs.2500/- (presumably per month) and some money he would earn from the coaching he offered to students. Pradeep Kumar lived at Barah Kalan village in a room, he had rented from Mukesh Gupta, part of the latter's house. The informant's mother Smt. Siyarani would also frequent his brother's place. On 19.08.2014 at 11.38 p.m., the informant received a phone call on his mobile number 9621820180 from a mobile phone, bearing number 8853630754. The informant said that Mukesh Gupta had called him from Barah Kalan, who was his brother's landlord, telling him that the informant's brother had done something awful to his daughter. Mukesh Gupta, according to the informant, said that Pradeep had impregnated his daughter outside wedlock and he did not know what to do about it. The caller made Pradeep talk to the informant. The informant's brother told him that his landlord Mukesh Gupta and his wife Seema, accusing him of illicit relations with their daughter 'X', had locked him up in a room and intend to do him to death. He wanted to talk to their mother. The informant made their mother Siyarani talk to his brother, who was very panicky. The informant further on says that he and his mother pleaded with Mukesh and wife not to harm Pradeep and that he along with his mother would reach their place by the following morning. According to the informant, the way Mukesh Gupta spoke to him over mobile, made him sense some evil in the offing. Therefore, the informant, besides his mother, also took along Rakesh Katiyar, Narendra Katiyar, Ashok, Vinod, Ishwar Dayal and Pradeep, hiring a vehicle and left for Barah Kalan. The informant received a phone call from one Master Yadav, a colleague of his brother, calling from the latter's mobile number 7525079412, who informed him that his brother Pradeep Katiyar and 'X' have both been done to death by Mukesh Gupta and his wife Seema, throttling the two by tightening something around their neck. The informant and his family were deeply saddened and reached Barah Kalan only to find the dead bodies of his brother Pradeep and Mukesh's daughter 'X', lying in an anteroom of Mukesh Gupta's shop. The informant said that Mukesh and his wife had done the two to death on account of the illicit relations. The informant also reported that Mukesh owed his brother a sum of about Rs.1 lac. This too, according to the informant, was the reason for Mukesh to murder his brother and his own daughter.

3. On the basis of the said information, an FIR was lodged on 20.08.2014 at 12.30 p.m., giving rise to Case Crime No.429 of 2014, under Section 302 IPC, Police Station Kalan, District Shahjahanpur. The Police commenced investigation. They held inquests regarding Pradeep

Kumar's unnatural death as well as that of 'X' on 20.08.2014. The inquest on Pradeep's cadaver commenced at 1.15 p.m. ending 2.25 p.m., whereas 'X's inquest commenced at 2.30 p.m. ending at 3.30 p.m. The dead bodies were then sent for autopsy. Pradeep Kumar's autopsy report dated 21.08.2014 opined the cause of death as asphyxia as a result of ante-mortem strangulation. 'X's autopsy report, also dated 21.08.2014, shows the cause of death as asphyxia as a result of ante-mortem strangulation.

4. There is on record a report from Verma Clinic and Maternity Home, Railway Station Road, Civil Lines, Budaun dated 19.08.2014, marked Ex. Ka-2, relating to 'X', which shows her to be in the family way.

5. The Police, after investigation, filed a charge-sheet on 17.09.2014 against Mukesh Gupta and Smt. Seema Gupta, his wife, charging them of an offence punishable under Section 302 IPC.

6. The learned Magistrate took cognizance of the offence and summoned the appellants. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers as provided under Section 207 Cr.P.C. Thereafter, the learned Magistrate committed the case to the Sessions, where it came up before the learned Sessions Judge for framing of charges.

7. The learned Sessions Judge vide order 19.11.2014 jointly charged Mukesh Gupta and Seema Gupta of sharing a common intention, and in furtherance thereof, murdering the informant's brother Pradeep Kumar and their daughter 'X' by throttling the two to death. They were charged with the commission of an offence punishable under Section 302/34 IPC. The appellants pleaded not guilty and claimed to be tried.

8. The prosecution produced the following witnesses in support of their case:

1. PW-1 - Brajesh Kumar, the first informant and brother of the deceased Pradeep Kumar,
2. PW-2 - Siyarani, mother of the deceased Pradeep Kumar,
3. PW-3 - Narendra Kumar, one of the men, who accompanied the informant from Bilhaur, Kanpur Nagar,
4. PW-4 - Rakesh, another man, who had accompanied the informant from Bilhaur, Kanpur Nagar,
5. PW-5 - Dr. Smt. Manju Verma, the doctor from Badaun, who had examined 'X', done an ultrasound of the abdomen and opined her pregnant,
6. PW-6 - Dr. Manoj Kumar Srivastava, who had done autopsy on the cadavers of Pradeep and 'X',
7. PW-7 - SI Prem Chandra Sharma, then a Head Moharrir posted at P.S. Kalan, District Shahjahanpur, who had registered the check FIR and made the necessary G.D. Entries,
8. PW-8 - Retired SI Ranveer Singh, then a Sub-Inspector posted at P.S. Kalan, District Shahjahanpur, who held inquests of the dead bodies, and,
9. PW-9 - Sher Singh Tomar, the then Station House Officer, P.S. Kalan, District Shahjahanpur and the Investigating Officer of the crime.

9. The following documentary evidence and materials were produced by the prosecution to establish their case:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1.	Ex. Ka-1	Written report dated 20.08.2014 lodged with the Police Station Kalan, District Shahjahanpur, proved by PW-1, Brajesh Kumar
2.	Ex. Ka-2	Ultrasound (Obstetric) report dated 19.08.2014, proved by PW-5, Dr. Smt. Manju Verma
3.	Ex. Ka-3	Postmortem Report of the deceased Pradeep Kumar, dated 21.08.2014, proved by PW-6, Dr. Manoj Kumar Srivastava
4.	Ex. Ka-4	Postmortem Report of the deceased 'X', dated 21.08.2014, proved by PW-6, Dr. Manoj Kumar Srivastava
5.	Ex. Ka-5	Check FIR dated 20.08.2014, proved by PW-7, SI Prem Chandra Sharma
6.	Ex. Ka-6	Carbon Copy of GD Entry No.29, proved by PW-7, SI Prem Chandra Sharma
7.	Ex. Ka-7	Inquest report of Pradeep Kumar dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
8.	Ex. Ka-8	Letter to CMO regarding Pradeep Kumar dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
9.	Ex. Ka-9	Challan Lash (Police Form No.13) of Pradeep Kumar, proved by PW-8, Retd. SI Ranveer Singh
10.	Ex. Ka-10	Photo Lash of Pradeep Kumar, proved by PW-8, Retd. SI Ranveer Singh
11.	Ex. Ka-11	Inquest report of 'X' dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
12.	Ex. Ka-12	Letter to CMO regarding 'X' dated 20.08.2014, proved by PW-8, Retd. SI Ranveer Singh
13.	Ex. Ka-13	Challan Lash (Police Form No.13) of 'X', proved by PW-8, Retd. SI Ranveer Singh
14.	Ex. Ka-14	Photo Lash of 'X', proved by PW-8, Retd. SI Ranveer Singh
15.	Ex. Ka-15	Site Plan of the place of occurrence, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
16.	Ex. Ka-16	Recovery memo of the mobile, Nokia Make dated 09.09.2014, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
17.	Ex. Ka-17	Charge sheet dated 17.09.2014, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
18.	Ex. Ka-18 to 27	Call detail relating to Mobile No. 8853630754, proved by PW-9, Sher Singh Tomar, then posted as SO at P.S. Kalan, District Shahjahanpur
19.	Material Ex. 1	Mobile, Nokia Make
20.	Material Ex. 2	Clothe by which the mobile was sealed

10. Upon conclusion of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C.

11. The Trial Court vide judgment and order dated 18.02.2020 has convicted and sentenced the appellants in the terms already indicated.

12. Aggrieved, Criminal Appeal No.1502 of 2021 has been instituted by Smt. Seema Gupta whereas Jail Appeal No.63 of 2021 has been preferred by Mukesh Gupta. Both the appeals have been heard together and proposed to be decided by this common judgment and order.

13. Heard Ms. Shweta Singh Rana, learned Counsel for the appellants in support of the present appeal and the connected Jail Appeal and Mr. Anil Kumar Mishra, learned Additional Government Advocate on behalf of the State.

14. The case rests entirely on circumstantial evidence as no one has seen the occurrence. We would, therefore, proceed to consider the inculpatory circumstances urged by the prosecution and find out if these form that unbroken chain, which leads to no other conclusion, but the appellants' guilt. On the other, we would consider the circumstances emphasized on behalf of the appellants in order to determine, if upon a realistic consideration of the prosecution case as a whole pitted against the appellants' evidence, a legitimate and probable doubt can be inferred about the prosecution story, so as to entitle the appellants to the benefit of it. It need not be gainsaid that the prosecution have to establish their case beyond all reasonable doubt.

15. The foremost is the motive that could have driven the appellants to take the life of their own daughter. Iconoclasts apart, the affinity of blood between the parents and a child would make the parents the most unlikely suspect in a child's murder. If not unique or rare, a very different kind of motive, is required for a sane and prudent person to deprive his/ her own child of the priceless thing called life. Nevertheless, there are some persons with deviant behaviour who could take such an unusual step and commit a crime of this kind, where another would never. More than that, there could be very prudent persons in the society who could take their child's life if confronted with certain kinds of circumstances that drive them counter to their ordinary instincts.

16. The evidence in this case suggests that the appellants' minor daughter, a girl of 15 years, entered into carnal relations with Pradeep Kumar, a matured man of 28 years. He stayed in the appellants' house as a tenant and earned his livelihood by privately coaching students, besides working as a teacher with the Srinagar Inter College. The carnal relationship between Pradeep and 'X' led the latter to conceive and the pregnancy had advanced. There is on record an ultrasound (obstetric) report dated 19.08.2014 proved by Dr. Manju Verma, Ex. Ka-2, which shows that on 19.08.2014, when the said report was scripted, 'X' was pregnant with a single live intrauterine foetus of 25 weeks. Dr. Manju Verma appeared in the witness-box as PW-5 and proved the aforesaid report. It is, thus, clearly established that the appellants' daughter, who was admittedly unmarried, was pregnant outside wedlock.

17. The fact of her pregnancy is further established upon a perusal of the autopsy report, Ex. Ka-4, dated 21.08.2014, which reports a gravid uterus. The autopsy report estimates the time of death as about one and a half day. The report being dated 21.08.2014, the date of death clearly works out to 19.08.2014, when Dr. Manju Verma's report, finding her pregnant, came into existence. According to the first informant, on 19.08.2014 at 11.38 p.m., he had received a phone call on his cellphone, where Mukesh Gupta, the appellant and 'X's father, called up the informant to say that the informant's brother had illicit relations with his daughter. He had impregnated her. Mukesh Gupta then put the informant's brother, Pradeep, on line, who said that Mukesh Gupta owed him a sum of Rs.1 lac and was falsely charging him of impregnating his daughter.

18. The informant also said in the FIR that his brother sounded very scared. The informant's family and acquaintances, all left for Barah Kalan, where the appellants lived, but later he received a phone call from a certain Ramveer Singh Yadav, saying that his brother Pradeep and 'X' had been murdered. This caller said that the appellants had tied nooses around Pradeep's and 'X's neck and done both of them to death. Upon arrival at the appellants' place, the informant found the dead bodies of his brother Pradeep and 'X' inside a room, part of Mukesh's house.

19. Testifying as PW-1, he has supported the first information version about receiving a phone call from the appellant Mukesh Gupta about his brother's illicit relations with his daughter, resulting in an unwanted pregnancy. The deceased was also put on line to speak to the informant, who said things about himself as reported in the FIR. In the examination-in-chief, these statements find place and also the fact that the informant's family left for Mukesh Gupta's place along with their relatives and associates at 7 o'clock in the morning of 20.08.2014, a fact which figures in the cross-examination of PW-1. It is then said in the examination-in-chief that later on the informant received a call from Master Ramveer Singh Yadav that his brother Pradeep and 'X' have been murdered. It was upon reaching Gupta's place that he went to his brother's room, where he found the dead bodies-both his brother's and 'X's. Mukesh was not to be found, but his wife was there, who is said to have told the informant that his brother had impregnated her daughter outside wedlock. It is also said in the informant's testimony that Mukesh's wife, that is to say, Smt. Seema Gupta, was shouting a confession that it is for this reason that she killed both of them.

20. The above evidence makes it pellucid that the appellants' daughter was believed by them to have been into an illicit relationship with the informant's brother, Pradeep, which resulted in her becoming pregnant outside wedlock. This fact was apparently believed to be true by both the appellants. As the unfolding of events would show the fact that 'X' was in the family way, the discovery on the 19th of August, 2014 apparently came as a big shock for the appellants going by the values of the society, of which they are a part. The appellants' reaction, which the informant has reported and the homicidal death of the two victims the same day that 'X's pregnancy was reported by the doctor, if indeed the appellants murdered the two victims, clearly serves as a motive for them to undertake the evil deed.

21. We must take judicial notice of the fact that since times of yore until contemporary ones, a daughter's pregnancy outside wedlock for an average Indian is a nightmare. It always invites uncontrollable reactions from parents, mostly violent, either for themselves or the daughter or the wrongdoer or both of them. The embarrassment would be there generally amongst any class of persons, but those refined by education might react in a different way, where notwithstanding disapproval, rapprochement etc., violence may or may not be there. Some might work towards avoiding the embarrassment devising some ways and means, legal or illegal. The appellants represent the ordinary and average cross-section of the Indian society, where extreme reactions to the situation are commonplace. Therefore, we are of opinion that the appellants had motive to commit the crime charged. The forceful submission of learned Counsel for the appellants, Ms. Sweta Singh Rana, that there was no motive established by the prosecution against the appellants, cannot be countenanced.

22. The next circumstance to be considered is the fact that in the late night hours of 19th August, 2014 at 11.38 p.m., the informant received a phone call on his cellphone number 9621820180 from cellphone number 8853630754. The caller identified himself as the appellant Mukesh Gupta from Barah Kalan and abruptly reported the fact to the informant that the latter's brother Pradeep Kumar was into an illicit relationship with Mukesh's daughter. He also said that Pradeep had impregnated his daughter. This circumstance shows that soon after the discovery of his daughter's pregnancy, the appellant Mukesh Gupta was desperate and called the deceased Pradeep's brother, the informant, over his cellphone late in the night. Apparently, as evidence would show,

the two were not known to each other and much less on terms where one would call the other during late night hours. The subject of the phone call and the hour it was made, speaks of desperation that the appellant Mukesh Gupta experienced. Dovetailed into the above circumstance is the fact that the appellant Mukesh Gupta made the informant's brother speak to him over cellphone.

23. The telephonic conversation between the informant and his brother did reveal that Pradeep was facing an allegation of impregnating Mukesh's daughter by the latter and his wife, the other appellant Seema Gupta, and he sounded scared. The phone call that the informant received from Mukesh was followed by another two, which must have been later in the night. The informant made Mukesh speak to his own mother. There also, the subject matter was about his daughter's pregnancy. These facts find mention in the testimony of PW-1 (examination-in-chief) and that of his mother Smt. Siyarani, PW-2. As part of this circumstance is the fact that when the informant along with his family and associates reached Barah Kalan, the next day at 11.00 a.m., he found his brother and 'X' dead in a room, located inside the appellants' house, both strangulated.

24. The learned Counsel for the appellants has endeavoured to show that the communication over cellphone about his brother's death at 6.00 a.m. in the morning from Ramveer Singh Yadav before he reached Barah Kalan or even left for that destination, is incorrect about the timing, which would be proved from the cellphone record. She has invited our attention to Ex. Ka-21 in this connection, where the informant received a call from Ramveer Singh Yadav at 10.38 a.m. and not 6.00 a.m. on 20.08.2014. The timing of the phone call reporting the murder is not at all material, even if there is some discrepancy about it. What is material is the circumstance that the appellant Mukesh Gupta was very agitated in the evening of 19.08.2014 upon discovery of his daughter's pregnancy. He blamed it upon the deceased, which made him call the informant late at night on 19.08.2014, and, again still later in the night once again. These together with the fact that the victims were murdered sometimes between the late night hours on 19.08.2014 and the morning hours on 20.08.2014 before 11.00 a.m., and their bodies were found in a room, located inside the appellants' premises, make the picture inculpatory.

25. If the deaths were homicidal or suicidal, is the next moot question. The prosecution say that the deaths were homicidal, pointing an unerring finger towards the appellants, whereas the appellants say that the two victims died by suicide. The relevant fact here is whether the victims died by homicide or suicide. If they died by suicide, there would be no culpability for the appellants. However, if they died as a result of homicide, it would add to the chain of circumstances appearing against the appellants.

26. The learned A.G.A. has argued forcefully that not only the victims were murdered, but it is a case of honour killing, where the appellants eliminated the two, outraged over the illicit relationship between their daughter and the informant's brother, which would disgrace them in society.

27. In order to determine whether the deaths were suicidal or homicidal, the nature of injuries as evidenced by the autopsy and the surrounding circumstances have to be evaluated.

28. The autopsy report relating to the deceased Pradeep, Ex. Ka-3, notices the following ante-mortem injury(s):

(1) A Ligature mark - 40cm x 3.0cm all around the neck continuous encircling horizontally and completely, Ligature mark is situated below thyroid cartilage 6.0cm below Rt. mastoid process & 7.0cm below chin and 6.0cm below left mastoid process, the bone of the groove reddish with echhymosed margin on section subcutaneous tissue mid the ligature mark is echhymosed.

29. The cause of death opined is 'asphyxia as a result of ante-mortem strangulation'. Though the hyoid bone has not been found fractured, but the tracheal rings are fractured.

30. The autopsy report relating to the deceased 'X', Ex. Ka-4, reports the following ante-mortem injury(s):

(1) A Ligature mark - 30.0cm x 4.0cm all around the neck continuous encircling horizontally and completely, Ligature mark is situated below thyroid cartilage 6.5cm below chin 5.5cm below Rt. mastoid process 5.6cm below Lt. mastoid process. The base of groove reddish with echhymosed margin on section subcutaneous tissue under the ligature mark is echhymosed.

31. The cause of death is asphyxia as a result of ante-mortem injuries. The tracheal rings and hyoid bone both were found fractured.

32. The autopsy doctor, Dr. Manoj Kumar Srivastava, PW-6, who entered the witness-box to prove the postmortem reports, after a description of the injuries and whatever he found during autopsy in his examination-in-chief, has said in his cross-examination that he did not find any other external injury or abrasion, except the ligature mark on the cadavers. There was no sign of struggle. According to the autopsy report, it could be a case of suicide because there was no sign of struggle. Ex. Ka-4 does not mention any external injury. The deceased 'X' could have died by suicide. It is possible, according to the autopsy doctor, that both the deceased died by suicide.

33. The learned Counsel for the appellants has harped much on the testimony of the autopsy doctor as well as the evidence of PW-3 and PW-4 to submit that no injuries were found on the dead bodies. She has invited our attention to the testimony of PW-3, where in his cross-examination, this witness, Narendra Kumar, has said:

"लाश को मैंने देखा था लेकिन उस पर कोई चोट नहीं थी।"

34. The learned Counsel for the appellants has also emphasized that the autopsy doctor has observed that the deceased Pradeep Kumar was a well built man with a heavy body structure. It is submitted by the learned Counsel for the appellants with great force that the lack of any other injury, except the ligature mark that resulted in deaths, shows that the deceased, particularly Pradeep, died without struggle. This in turn, according to the learned Counsel, would decisively indicate that there was no altercation, employment of force or struggle, which is characteristic of a

murder by strangulation. The absence of no other injury, except the fatal wound, indicates that the death was suicidal. To a pointed query by us that strangulation was incompatible with a case of suicide and that it was suggestive of homicide, the learned Counsel for the appellants impressed upon us the fact that medical jurisprudence recognized cases, where suicide could be committed by strangulation. She has relied upon the celebrated treaties on medical jurisprudence, entitled **'A Textbook of Medical Jurisprudence and Toxicology' by Jaising P Modi, Twenty Seventh Edition.** She has invited our attention to the tabulated differences between telltale signs of death by hanging on one hand and strangulation, on the other, mentioned in Chapter 20-'Deaths from Asphyxia' at Pages 586 and 587. She has referred to the first item in the table, which says that hanging is mostly suicidal, whereas strangulation is mostly homicidal. The learned Counsel for the appellants urges that this comparison of difference shows that strangulation is not always consistent with a case of homicide. There could be suicidal strangulation as well. In order to further impress upon us the aforesaid fact, the learned Counsel has drawn our attention to the following passage in Modi at Page No.585:

"20.3.6.2 Whether the Strangulation was Suicidal, Homicidal or Accidental

Suicidal strangulation is not very common, though sometimes cases are met with. In these cases, some contrivance is always made to keep the ligature tight after insensibility supervenes. This is done by twisting a cord several times round the neck and then tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed. In such cases, injuries to the deep structures of the neck and marks of violence on other parts of the body are, as a rule, absent."

35. The learned A.G.A, on the other hand, has submitted that there is no doubt about the fact that the deceased died by strangulation, which, under the overall circumstances, is consistent with homicide; not suicide.

36. We have given a thoughtful consideration to the matter. Medico-legal opinion generally accepts the position that strangulation is mostly consistent with a case of homicide and suicidal strangulation is rare. The exposition in Modi, relied upon eloquently, accepts it for a fact that suicidal strangulation is uncommon. In cases where suicidal strangulation may have happened, Modi acknowledges that some contrivance is always employed to keep the ligature tight until time that consciousness is lost and life ebbs away. Modi has clearly opined that, *"This is done by twisting a cord several times round the neck and then tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed".* These are the contrivances that must be employed in order to keep the ligature tight until fatal effect sets in. In this case, no such contrivance was found around the dead bodies.

37. It is not that there was a cord or a ligature that was attached to a peg or the bedpost in order to exert constant pressure consistent with a case of self-strangulation, and, a fortiori suicide. The autopsy doctor, PW-6, has no doubt testified to the fact that there is no other injury or sign of

struggle on the dead body. He has opined that going by the autopsy report, it could be a case of suicide because there was no sign of struggle. He has also opined that in both cases, that is to say, the cases of Pradeep and 'X', it is possible that deaths were caused by suicide. The testimony of PW-6 on this point is after all opinion evidence of an expert. Here also, the cross-examination does not show that it was put to the doctor, based on what Modi has opined, if in the absence of a contrivance to sustain the fatal pressure through ligatures, it could still possibly be a case of death by suicide in one or both the cases. Therefore, the doctor's opinion too does not have any decisive bearing on the point, where any inference about a case of that rare kind, that is self-strangulation, can be drawn. In this connection, reference may be made to **Godabarish Mishra v. Kuntala Mishra and another, (1996) 11 SCC 264**, where it was held:

"23. In our view, the case of committing suicide by self-strangulation by the deceased must be ruled out. Both in Modi's Medical Jurisprudence and Toxicology and in Talyor's Principles and Practice of Medical Jurisprudence, to which our attention was drawn by Mr Ranjit Kumar, it has been clearly indicated that suicide by self-strangulation is very rare. For committing suicide by self-strangulation, the person committing suicide must take aid of a contrivance so as to ensure application of sufficient force until death by strangulation. Without such contrivance, sufficient force cannot be applied because initially with the application of force, insensitivity will develop for which the hands pulling the ends of the string must get loosened. In the instant case, no contrivance was noticed either by PW 6 and PW 7 who had come to examine the deceased on hearing the alarm. The accused has also not seen any contrivance at the place of incident and in her statement under Section 313 Criminal Procedure Code, she has not disclosed any fact, which was within her special knowledge, in support of a case of suicide by self-strangulation.

25. In the instant case, it has been clearly established that the death occurred on account of strangulation. Simply because the doctor (PW 11) noticed injuries on the deep muscle of the neck of the deceased at the time of holding post-mortem, it cannot be held that such injuries noticed by the doctor had convincingly established that it was a case of death by self-strangulation, because of what has been opined by Modi. We may indicate here that suicide by self-strangulation, according to the learned author, is a rare incident. Such view has also been expressed in Taylor's Principle and Practice of Medical Jurisprudence. It is not unlikely that for want of large number of cases of suicide by strangulation to be studied carefully, various features associated with such suicide could not be indicated more precisely. That apart, opinions expressed in the said treatise are, at best, opinions of expert, which though deserve due consideration with respect, cannot be held absolutely conclusive particularly, when other evidences clearly established give a contra-indication.

26. It may also be indicated here that both in Modi's book on medical jurisprudence and Taylor's book on medical jurisprudence, it has been categorically stated that for committing suicide by self-strangulation, the aid of a contrivance to maintain force till death is got to be taken, otherwise, it is not possible to maintain the force required. The absence of such contrivance clearly rules out any possibility of suicide by self-strangulation. In the aforesaid fact, excepting the accused no other person had any opportunity whatsoever to cause the murder of the deceased. The circumstantial evidence in this case are absolutely clinching in establishing the complicity of the accused in committing the murder of the deceased. The view taken by the High Court is clearly against the weight of the evidence and cannot be held to be a possible view which could have been taken."

38. We, therefore, hold that this is a commonplace homicidal death by strangulation and certainly not that uncommon and rare case of suicidal strangulation.

39. The circumstance that the homicides happened in a room, that is part of the appellants' premises, about which no alternative explanation as to who, besides the appellants, had access or could have committed homicide, is very relevant in the chain of circumstances.

40. PW-1, Brajesh Kumar, in his examination-in-chief has testified:

".. फिर मैं प्रदीप के कमरे पर आया। मेरे भाई की और 'x' की लाश कमरे के अन्दर पड़ी थी।..."

41. PW-2, Smt. Siyarani, has stated in her examination-in-chief:

".... जब हम लोग मुकेश के मकान पर वीराकलाँ पहुंचे तो मेरा लड़का प्रदीप मुकेश के अन्दर घर के कमरे मे मरा पड़ा था तथा दूसरी तरफ उसकी लड़की 'x' मरी पड़ी थी।....."

42. PW-3, Narendra Kumar, has testified in the examination-in-chief about the place, where the dead bodies have been found, thus:

"..... और 11 बजे बारह कला पहुचे जब हम लोग मुकेश व सीमा के घर पहुंचे तो देखा प्रदीप मरा पड़ा था उसके गले कपड़ा लिपटा था तथा पड़ोस के ही सीमा की बेटी 'x' का भी लाश पड़ी थी उसके गले मे भी कपड़ा बंधा था।...."

43. Likewise, PW-4, Rakesh, has stated in his examination-in-chief:

"..... सभी लोग सफेद गाड़ी से बाराकला को निकले मै भी था, बाराकला सुबह करीब 10-11 बजे के बीच मे पहुंचे, मुकेश गुप्ता के मकान मे बहुत भीड़ थी तथा पुलिस भी मौजूद थी उसके बाद हम लोग मकान के अन्दर गये तथा एक कमरे मे गले मे फन्दा लगी दो लाश एक प्रदीप की थी तथा दूसरी मुकेश गुप्ता की लड़की की थी...."

44. In the cross-examination of some of these witnesses, though endeavour has been made to ascertain the geographical location of Mukesh Gupta's house or the size of the room, where the dead bodies were found lying, there is neither suggestion given nor anything elicited from the prosecution witnesses to contradict their consistent stand that the dead bodies were lying inside a room located on the appellants' premises. The other things apart, even if the room, where the dead bodies were found, was tenanted to the deceased Pradeep, it was an integral part of the appellants' premises. Therefore, some explanation has to be given by the appellants about the circumstances in which Pradeep and their daughter were murdered, consistent with their innocence. This is particularly so as both the dead bodies were lying in the same room within the appellants' premises.

45. A careful perusal of the site-plan shows that Pradeep's rented room is to the west of the room where the dead bodies were found. It is, therefore, apparent that the room where the dead bodies were found, was not the room in which Pradeep lived, but a part of the premises in the appellants' occupation. The dead bodies have been found inside a room located on the appellants' premises, which too was not in Pradeep's exclusive tenancy. Burden under Section 106 of the Evidence Act would lie upon the appellants to explain the circumstances, in which the deceased met with a homicidal death. This is so because it is the appellants, who are the owners and inmates of the house and would have special knowledge of the fact, which no one else has seen or could possibly see.

46. Admittedly, this is a case of circumstantial evidence. So far as the prosecution are concerned, none amongst those who have testified for the prosecution or could have testified for them, have seen what have happened inside the appellants′ house on the fateful night of 19/20th August, 2014, leading to Pradeep and 'X′s homicidal death. It is, therefore, for the appellants to explain the circumstances in which the homicide was committed. A failure to explain the circumstances or giving an explanation, which is not found true, would add a link to the circumstances, pointing to the appellants' guilt. In **Gajanan Dashrath Kharate v. State of Maharashtra, (2016) 4 SCC 604**, it was held by the Supreme Court:

"13. As seen from the evidence, appellant Gajanan and his father Dashrath and mother Mankarnabai were living together. On 7-4-2002, mother of the appellant-accused had gone to another Village Dahigaon. The prosecution has proved presence of the appellant at his home on the night of 7-4-2002. Therefore, the appellant is duty-bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of the occurrence, when the accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime."

47. In order to give an explanation about the crime committed on their premises, the appellants have come forward under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and put in separate statements under Section 233(2) Cr.P.C. The explanation offered by the two appellants are complementary. The appellant Seema Gupta in her written statement has said that her minor son Vagesh, aged 12 years, had sustained burn injuries 3-4 days after Holi from heated oil and he was undergoing treatment. In the night intervening 19/20.08.2014, she was asleep on the upper floor of her house along with her son Vagesh aged 12 years, daughters Babita aged 10 years, Sarita aged 8 years and son Kuldeep aged 6 years. Her daughter 'X′ was asleep on the ground floor.

48. Her husband at the relevant time owned a Maxi Mahindra Mini Truck, bearing registration No. UP-27T-5190. He had left for Jaswant Nagar, Etawah with a herd of goats to sell them off in some kind of a Wednesday market there. When the appellant Seema Gupta woke up on the following morning, she called out her daughter 'X', but there was no response. When she came down to the ground floor, she saw Pradeep and 'X' lying dead in Pradeep's room. She informed her husband over his cellphone No. 9794339343 from a P.C.O. Upon his bidding, she called the Barah Kalan Police Chowki, P.S. Kalan, informing them of the two deaths. The Police detained her at the Chowki and informed Pradeep's family members. After their arrival, the Police concocted a story and got this appellant and her husband implicated in the crime. She has further said that Cell No. 8853630754 does not belong to her or her husband. The Police's story is fabricated and she is innocent.

49. Likewise, the appellant Mukesh Gupta in his statement under Section 313 read with Section 233(2) Cr.P.C. has said that he had left home in his Maxi Truck, bearing registration No. UP-27T-5190, along with driver Jaiveer son of Ravindra, on 19.08.2014 with a herd of goats to sell at Jaswant Nagar, Etawah in the Wednesday market there. He received a phone call over his Cell No. 9794339343 from his wife that his daughter 'X' and Pradeep's dead bodies were lying in Pradeep's room. He promptly advised his wife to inform the Police. His wife informed the Barah Kalan Police Chowki, P.S. Kalan. The Police called up Pradeep's home at Kanpur Nagar and also informed S.O. P.S. Kalan. In the early morning hours, the Police carried off both the dead bodies to P.S. Kalan and upon arrival of Pradeep's family members, concocted a story, implicating him and his wife in a false case. He has then said that his wife was sleeping with the children on the upper flour and that Pradeep and 'X' had committed suicide. This appellant has also stated that mobile No. 8853630754 does not belong to him and the Police have concocted the entire story.

50. The appellants entered defence and examined two defence witnesses, to wit, Jaiveer son of Ravi, DW-1 and Sone Lal @ Sonu son of Om Prakash, DW-2.

51. Jaiveer is the driver, who is said to have driven the appellant Mukesh Gupta on his trade journey to Jaswant Nagar Etawah to sell off goats in the Wednesday market there. DW-1 has testified in his examination-in-chief thus:

"……मैं प्राइवेट चालक हूं तथा मेरे पास कई वर्षो से वाहन चलाने का लाइसेंस है करीब 5-6 वर्षो से हैवि वाहन चलाने का लाइसेंस है हाज़िर अदालत मुल्जिम मुकेश गुप्ता के पास मैक्सी मेहिन्द्र छोटा ट्रक UP 27 T 5190 था जिसको मैं मुकेश गुप्ता के साथ रहकर चलाता था, दिनांक 19-8-2014 को मगंलवार के दिन धर्मेन्द्र व्यापारी की बकरियां लोड करके जसवतनगर इटावा लेकर मुकेश गुप्ता के साथ गया था सुबह करीब चार बजे जसवंतनगर के पास ढावे पर रोक गये थे। सुबह के समय मुकेश गुप्ता के मोबाईल नम्बर 9794339343 पर मुकेश गुप्ता की पत्नी सीमा गुप्ता का फोन आया जिस पर मुकेश गुप्ता ने उन्हे चौकी पर पुलिस को सूचना देने को कहा था तथा मुझे बताया था कि 'x' और प्रदीप ने प्रदीप के कमरे में लाशें पड़ी होने की बात बतायी है उस दिन सुबह बुधवार था....."

52. In his cross-examination, DW-1 has said:

"मैं तारीख पता चलने पर आया हूं पुलिस ने विवेचना के दौरान पुलिस ने मुझसे कोई पूछताछ नही किया था और न ही मैने पुलिस को कुछ बताया था अब मुकेश गुप्ता का ट्रक उनके पास नही है। बीक चुका है। घटना के दो तीन माह बाद बिक गया था इस घटना के बाद भी मैं ट्रक चलाता रहा मुझे वकील साहब ने कोई गवाही नही सिखाई है। 'x' प्रदीप जब मरे थे तब मैं मौके पर नही था ट्रक लेकर गया था यह कहना गलत है कि मैने जो भी बयान दिया वह मुकेश गुप्ता के वकील साहब के सिखाने की वजह से झूठा दिया है। यह भी कहना गलत है कि दिनांक 19-8-2019 को शाम के वक्त मुकेश गुप्ता के साथ बकरियां लेकर जसवंत नगर इटावा न गया हो।....."

53. DW-2 Sone Lal @ Sonu, who is a brother (Sadhu) of Mukesh Gupta, has endeavoured to explain how the Police planted Cell No. 8853630754 by making him and his mother sign blank papers. He has stated in his examination-in-chief thus:

".... हाज़िर अदालत अभियुक्त मुकेश गुप्ता मेरे साढ़ू है 'x' की मृत्यु के करीब 15 दिन पश्चात मैं अपनी मां के साथ मुकेश गुप्ता के घर पर व उनके छोटे छोटे बच्चों की देखभाल के लिए था मेरी पत्नि भी वही थी पुलिस वाले मुकेश गुप्ता के घर पर आये और मुझसे व मेरी मां से एक साथ कागज पर दस्तखत कराये थे लेकिन मैने उन्हे कोई मोबाइल सिम पड़ा हुआ या बिना सिम का नही दिया था। मुझसे व मेरी मां से दस्तखत कराते समय कागज सादा था। कोई लिखापढ़ी नही हुई थी। 'x' की मृत्यु के समय मुकेश गुप्ता के साथ मोबाइल नं0 9794339343 रहता था। मुकेश गुप्ता का मोबाइल नं0 8853630754 नही था। किसका था? मुझे नही पता।

पत्रावली में संलग्न कागज सं0 7क जो प्रदर्श क-16 हैं, पर मेरे हस्ताक्षर बने है। तथा मेरी मां के भी हस्ताक्षर बने है लेकिन उस पर सारी लिखा पढ़ी पुलिस ने बाद में थी। मैने कोई मोबाइल फोन पुलिस को नही दिया था और न ही किसी पुलिस वाले ने मुझसे पूछताछ की थी।"

54. In his cross-examination, DW-2 has stated:

"यह कहना गलत है कि मोबाइल नं0 8853630754 मैने पुलिस को दिया हो।

यह कहना गलत है कि पुलिस ने फर्द की लिखा पढ़ी करके सुनाकर मुझसे उस पर हस्ताक्षर कराये हो।"

55. The appellants have endeavoured to come with a consistent explanation, or rather an alibi, demonstrating their absence from the scene of crime - in case of the appellant Mukesh Gupta from his house and village, and in case of Seema Gupta, from the part of the house, where the crime was committed. We are afraid that it cannot be accepted.

56. So far as Mukesh Gupta is concerned, who has pleaded his absence from home in his alibi, relies on the testimony of the driver, who is said to have driven him to Jaswant Nagar, Etawah with a herd of goats belonging to Dharmendra, a trader in livestock on Tuesday, the 19th of August. No doubt, this witness has supported the appellants' case of driving to Jaswant Nagar, Etawah with goats belonging to Dharmendra, which Mukesh would sell in the Wednesday market there, as well as the case of Mukesh receiving a call from his wife at 4.00 a.m. in the morning of 20th about the crime, but it is a well regarded principle that if the prosecution have established the presence of the accused at the scene of crime, alibi is a plea which has to be strictly proved by the defence. Now, in this case, proof of Mukesh Gupta's presence at the scene of crime has been established by the prosecution witnesses, PW-1 and PW-2, that is to say, Brajesh Kumar, the deceased Pradeep's brother and PW-2, Smt. Siyarani, Pradeep's mother. It has been categorically said by these witnesses in their examination-in-chief that Mukesh made Pradeep speak to both of them over cellphone.

57. PW-1 has testified to the fact that a call was received on his cellphone No. 9621820180 from cellphone No. 8853630754. This cellphone may not be using a simcard issued in the name of Mukesh Gupta, but was certainly in his use. The Police recovered this SIM number on 09.09.2014, lodged in a mobile Nokia, black colourded handset, from Sonu Gupta, Mukesh Gupta's brother-in-law (Sadhu) and placed it under a seal. The recovery memo, relating to this mobile phone carrying cell No. 8853630754, was prepared in the presence of two witnesses, to wit, Yogesh Kumar Gupta and Gyan Devi Gupta. The calls, that PW-1 received on his cellphone No. 9621820180 from Mukesh Gupta, according to the call detail record, Ex. Ka-19, were two in number on 19.08.2014. The first call was made at 11.53 p.m. and the other at 11.55 p.m. This call detail record has been proved by the Investigating Officer, PW-9, in his testimony sufficiently to establish its veracity. It was this mobile phone, which was used by Mukesh Gupta to speak to PW-1, the first informant. Even if it be assumed that PW-1 was not familiar with Mukesh Gupta's voice, he was certainly familiar with his brother, the deceased Pradeep's voice. The conversation, that PW-1 had with Mukesh and Pradeep through these calls, is reported by PW-1 in his examination-in-chief thus:

"दि० 19-8-2014 को रात 11.38 पर मेरे फोन नं० 9621820180 पर फोन नम्बर 8853630754 से फोन आया। पहले कहा कि सीमा गुप्ता बोल रही थी। फिर कहा कि मुकेश गुप्ता बाराकलां बोल रहा हूँ और इन्होंने बताया कि आपके भाई प्रदीप कुमार के मेरी लड़की के साथ नाजायज सम्बन्ध है। प्रदीप ने मेरी लड़की को गर्भवती बना दिया है। फिर मुकेश गुप्ता ने मेरे भाई प्रदीप से मेरी बात करायी। प्रदीप ने मुझे बताया कि मेरे मकेश गुप्ता पर एक लाख रूपये उधार के है। जिसकी मैंने उनसे मांग की थी। तब उन लोगों ने मुकेश गुप्ता व सीमा गुप्ता ने यह आरोप लगा दिया कि तुमने हमारी लड़की 'x' को बिन ब्याहे गर्भवती बना दिया। उसके बाद मेरे भाई से फोन ले लिया गया। मेरा भाई बात करते समय बहुत डरा-डरा था। बाद में फिर फोन आया 2 बार आया तब मेरी माँ से बात हुई दुबारा फोन आया तो कहा कि मेरी बेटी को गर्भवती बना दिया है।"

58. PW-2, who is PW-1's mother, also had a conversation with Mukesh Gupta and Pradeep on PW-1's cellphone No. 9621820180 with Mukesh speaking using cellphone bearing No.

8853630754. This call was made within minutes of the first call in the night of 19th August. PW-2, Smt. Siyarani, has reported the subject matter of the call in her examination-in-chief as follows:

"दिनांक 19.8.2014 को रात मे फोन आया था। मेरे बड़े लड़के ब्रजेश के पास, फोन आया था। फोन मुकेश गुप्ता का था। मेरे लड़के ने बात की उसके बाद मेरे लड़के ने मुकेश से मेरी बात करायी मुकेश ने मुझसे कहा कि तुम्हारे लड़के प्रदीप ने मेरी लड़की को गर्भवती बना दिया है। मैने कहा कि जो भी बात हुई हो मै सुबह आ जाऊंगी फिर मैने मुकेश से कहा कि प्रदीप से मेरी बात करा दो तो प्रदीप से मेरी बात हुई तो मुकेश ने मेरे लड़के प्रदीप को फोन दिया। मैने उधर से कहा कि बेटा तुम कहां हो? प्रदीप ने बताया कि मै मुकेश गुप्ता के घर मे हूं। मैने कहा कि इतनी रात में तुम वहां क्या कर रहे हो तो प्रदीप ने बताया कि मेरे एक लाख रुपया मुकेश पर उधार के है जो मैने मांगे है वही रुपये दने के लिए मुझे आज मुकेश ने अपने घर बुलाया था। जब मै घर आया तो मुकेश ने अपनी बेटी के साथ मेरे गलत सम्बन्ध होने का। आरोप मुझपर लगाया है और कह रहे है कि हम तुमको जान से मार देंगे। मेरा लड़का बहुत घबराया हुआ था और कह रहा था कि अम्मा जल्दी आ जाओ नही तो ये लोग हमे मार देंगे।"

59. In his cross-examination, PW-1 has stood by his case that he received the phone call from Mukesh Gupta using mobile No. 8853630754 in the dead of night on 19.08.2014, where he spoke whatever has been extracted hereinabove, and at the same time made Pradeep speak to PW-1. Mukesh also made Pradeep, the deceased, speak to PW-2, who is PW-1's mother as well as Pradeep's. These facts go to establish that in the late night hours of 19th August, Pradeep and Mukesh were together. Since Pradeep died in the night intervening 19/ 20.08.2014 at Barah Kalan in Mukesh's house, it is evident that Mukesh was present in his house about time when the crime was committed. The alibi that Mukesh has put forward of leaving Barah Kalan to sell goats, belonging to a cattle trader, on his Mini Truck for Jaswant Nagar, Etawah, does not inspire confidence. The reason, all the more why the testimony of DW-1, Jaiveer, the driver, who claims to have driven Mukesh to Jaswant Nagar on 19th, does not inspire confidence, is that except for his bald assertions, there are no documents to evidence the journey to Jaswant Nagar. Taking it that there would be no consignment notes or GST papers for the stock that the two were carrying to Jaswant Nagar, considering the petty nature of their trade, there would certainly be toll receipts from different toll plaza or tollbooths lying on way, a charge always levied on vehicles moving on highways. Even if there was no tollbooths on way, there would be some other documents, such as a fuel receipt of the relevant date from a distant place to show that the journey, in fact, was undertaken. In the absence of any document to prove that the journey to Jaswant Nagar was, in fact, undertaken, may be through a substantial distance, if not all the way, it is difficult to believe the bald testimony of DW-1 for the standard to prove an alibi are by means of evidence of the highest quality. The appellant Mukesh Gupta's presence at the place and time of crime being established, the failure of his alibi becomes a further damning circumstance in the chain.

60. So far as the other appellant, Seema Gupta is concerned, she has urged a case that she was fast asleep in a room on the upper floor of the house along with four of her children and came to know of the crime in the morning, when she got up and called her daughter 'X'. It is, indeed,

unbelievable that 'X', who herself was a minor, aged 15 years and was discovered to be pregnant in a test done earlier in the day on 19th at Budaun, would have been left by the appellant Seema Gupta to sleep by herself on the ground floor, a part of the house where Pradeep was staying in his room. Pradeep was after all blamed of impregnating 'X'.

61. The learned Trial Judge has also adopted this reasoning to reject the appellant Seema Gupta's case of alibi placing her away from the crime scene and we wholeheartedly agree with the learned Trial Judge's reasoning on this score. Seema Gupta's alibi too having failed the circumstance that homicides happened in a room, that is part of the appellants' premises, stares in the appellants' face. The appellants having failed to come up with a cogent explanation supported by necessary evidence about the twin homicides inside their house, the fact serves as an important link in the chain of evidence against the appellants, speaking about their complicity.

62. The next circumstance is an extrajudicial confession by the appellant, Seema Gupta, which though in itself a weak evidence, but read together with the other circumstances, may have decisive bearing on the fact-in-issue. It has come in the testimony of PW-1, that is to say, in his examination-in-chief that when he, along with his father, mother and other associates, reached Barah Kalan, he found his brother's and 'X's dead bodies inside the deceased Pradeep's room. The appellant Mukesh was not around, but his wife, that is to say, Seema Gupta was there and she said to the witness that his brother had impregnated her daughter outside wedlock and for that reason she did them to death. In the cross-examination, though this witness has acknowledged that the informant and his associates went to Police Station Kalan at 11.00 a.m. and from there they proceeded to Village Barah Kalan, where they found the Police present, who had apprehended the appellant Seema Gupta before 11.00 a.m., but there is nothing to contradict that Seema Gupta did not confess to this witness or the other, who are ad idem about the fact.

63. The Investigating Officer, PW-9, in his examination-in-chief and cross-examination, has stood by the fact that after the case was registered at Police Station Kalan at 12.30 p.m. on 20.08.2014, the Police left for Village Barah Kalan, where they did not find the appellant Mukesh Gupta.

64. The testimony of PW-1 as well, who says in his cross-examination that the Police had apprehended Seema in words, *'lekin Seema ko police pakade hue thi'*, renders the testimony of PWs-1, 2, 3 and 4 consistent that when they reached the place of occurrence, Seema was sitting somewhere between the two dead bodies and confessing to having murdered Pradeep and 'X', a confession after all in police custody.

65. Seema Gupta in her statement under Section 313 read with Section 233(2) Cr.P.C. has taken the stand that upon discovery of the deaths of 'X' and Pradeep, she immediately informed her husband, who was away to Jaswant Nagar of the mis-happening. He advised her to immediately inform Police Chowki Barah Kalan, which she did, but the Police detained her at the police chowki. This assertion finds support from PW-1's admission of the fact in his cross-examination that Seema had been apprehended by the Police before 11.00 a.m.

66. It seems that Seema was apprehended by the Police before 11.00 a.m. without a formal arrest and available at home by time the informant and his associates arrived there. The confessions which PW-1 to PW-4, therefore, heard from Seema about having murdered the two victims, were apparently made while in police custody, may be held under a suspicion and before the lodging of an FIR. These confessions would be inadmissible under Section 26 of the Evidence Act.

67. It was submitted on behalf of the State by the learned A.G.A. that confession made to a police officer is inadmissible after investigation commences, that is to say, after registration of the FIR. It is urged that before a person is accused of an offence, a confession made by him would not be hit by Section 25 of the Evidence Act. The FIR was registered in this case at 12.30 p.m. and these confessions were made at about about 11.00 a.m. Even if Seema was held as a suspect, she was in the custody of a police officer within the meaning of Section 26 of the Evidence Act.

68. There is a distinction between a confession made to a police officer and a confession made by a person while in the custody of a police officer. The former is governed by Section 25 of the Evidence Act and the latter by Section 26. The confession referred to under Section 26 may be made to any person other than a police officer but while in the custody of one, whereas that under Section 25 is necessarily one made to a police officer. The confession under Section 26 may be made to any other person while in police custody, or may be to a police officer himself, but in the custody of the Police. The scope of Section 26 is wider because the embargo there applies to the case of a person, who is in the legal sense of the term not yet accused of an offence, but in the custody of the Police, which may be as a suspect pending ascertainment of facts or the formal registration of a crime.

69. By contrast, Section 25 would be attracted to a case where the person, making the confession is accused of an offence, may be as the result of an FIR registered against him or being accused pending investigation. He may or may not be in custody. Therefore, the scope of Sections 25 and 26 is very different. Here, what is attracted is Section 26 of the Evidence Act, where Seema was apparently in police custody as a suspect, when she made the confessions attributed to her by PWs-1, 2, 3 and 4. The FIR was registered later in the day. Nevertheless, Seema apparently being in police custody, the extrajudicial confessions attributed to her cannot be read against her, unless these were in the immediate presence of a Magistrate, which is not the case here. We are, therefore, of opinion that the circumstance about the extrajudicial confession cannot be read against the appellants in this case.

70. The learned A.G.A. has placed reliance upon **Ishwari Lal Yadav and another v. State of Chhattisgarh, (2019) 10 SCC 437**, where speaking for a three Judge Bench of their Lordships of the Supreme Court, R. Subhash Reddy, J. held

"21. The confessional statements made to the police by the appellants, cannot be the basis to prove the guilt of the accused but at the same time there is no reason to discard the confessions made to the independent witnesses at the time when Chirag's body was found, prior to the arrival of police. It is true that extra-judicial confession, is a weak piece of evidence but at the same time if the same is corroborated by other evidence on record, such confession can be taken into consideration to prove the guilt of the accused. In the case on hand, the evidence from

independent witnesses is in one voice and consistent. The medical evidence on record also substantiated the case of the prosecution. In addition to the same, PW 2 and PW 3, who are the parents of the deceased have identified the clothes, which the deceased child was wearing on the date of missing. It is also clear from the evidence that the skeletal remains were removed. They have also found the cloth pieces, attached to skeletal remains. The colour of such cloth pieces was tallied with the description in the missing report lodged by PW 2 earlier on 4-3-2010. As such it is clearly proved beyond any reasonable doubt that the appellants are responsible for the offence alleged against them."

71. We must note that **Ishwari Lal Yadav** (supra) was a case where the confessions were made to an independent witnesses before the Police arrived. It was not a case where the confessor was in police custody even as a suspect. The principle in **Ishwari Lal Yadav,** therefore, has no application in the context of the present case, where Seema was in the custody of the Police, albeit as a suspect, when she is said to have made the confessions. We are of opinion that the confessions were hit by Section 26 of the Evidence Act and cannot be read against her; much less against Mukesh Gupta. To this extent, we do not agree with the reasoning of the learned Trial Judge to the contrary.

72. The last circumstance to be noticed is the phone call, which PW-1 received from a certain Master Ramveer Singh Yadav. He was apparently a colleague of the deceased Pradeep and called his brother, PW-1, at 6.00 a.m. in the morning and informed him that his brother and 'X' have been done to death by the appellants. PW-1 in his examination-in-chief has testified:

"..... उसके बाद मैं अपनी माता जी व पिता ईश्वर दयाल व राकेश कटियार अशोक कटियार, नारेन्द्र कटियार, प्रदीप कटियार को लेकर बोलैरो गाड़ी में बाराकलां आये उसी बीच मुझे मेरे भाई के साथ पढ़ाने वाले मास्टर रामवीर सिंह यादव का फोन मिला। तो उन्होंने सूचना दी कि तुम्हारे भाई प्रदीप का व 'x' का Murder हो गया है। उन्हीं दोनों को मुकेश गुप्ता व उसकी पत्नी सीमा ने गले में फन्दा डालकर हत्या कर दी है फिर मैं प्रदीप के कमरे पर आया....

73. In his cross-examination, this witness has said:

".....जिन मास्टर जी (रामवीर सिंह यादव) का फोन आना मैने बताया है उनका नम्बर 7525079412 था। यह फोन करीब 6 बजे सुबह मेरे मोबाइल पर आया था। मुझे ध्यान नही है कि उपरोक्त फोन मोबाइल वाली बाते सही है या गलत है।...."

74. Though, in the last line of his cross-examination noted, he has said that he does not remember if the fact about the mobile call from Ramveer Singh Yadav is correct, that is a general reference to the mobile call earlier received from the appellant Mukesh and Master Ramveer Singh Yadav. This inconsistency does not derogate from the fact that the call from Master Ramveer Singh Yadav, speaking through his mobile No. 7525079412, was received by PW-1 at 6.00 a.m. in the morning, intimating him that his brother and 'X' had been murdered by the appellants. The receipt

of this call by the informant on his mobile No. 9621820180 is evident from a perusal of the call detail records, Ex.21, where the incoming call on PW-1's phone number from cell No. 7525079412 is shown in the call detail records as one received at 10.35 a.m. Therefore, the call was received by PW-1 from Master Yadav, but not at 6.00 a.m. It was received at 10.35 a.m. on 20.08.2014. The fact of PW-1 receiving the call from Master Ramveer Singh Yadav is, therefore, proved as well as the information, which PW-1 received over his mobile phone from Master Ramveer Singh Yadav, though not the fact if the information was indeed correct that the twin murders had been committed, as reported by Ramveer Singh Yadav. That for a fact was discovered to be true later on, after PW-1 and the other prosecution witnesses reached the place of occurrence. The circumstance, therefore, proved is that there was a phone call received by PW-1 from Master Ramveer Singh Yadav, a colleague of the deceased Pradeep, to the effect that 'X' and Pradeep had been murdered by the appellants, which to the extent of the twin murder being committed was found true for a fact.

75. The following circumstances have, therefore, been proved by the prosecution to the hilt:

(a) that Pradeep was a tenant in a part of the appellants' house;

(b) that PW-1, the deceased Pradeep's brother received a phone call from mobile No. 8853630754 in the night of 19.08.2014, where the caller identified himself as the appellant Mukesh Gupta and accused the deceased Pradeep of impregnating his unmarried daughter, and made Pradeep talk to PW-1 over phone. The call was repeated once and Pradeep also spoke to PW-2, calling from the same number on PW-1's number;

(c) that the phone, bearing mobile No. 8853630754, was recovered by the Police from the appellant Mukesh Gupta's house from the custody of one Sonu, a brother-in-law of the appellant Mukesh, who was staying in the premises;

(d) that Pradeep was alive on 19.08.2014 until the last call received by PW-1 at 11.56 p.m.;

(e) that Pradeep and 'X' died sometime between the midnight of 19.08.2014 and the morning hours of 20.08.2014, certainly before 11.00 a.m. on 20.08.2014 and the dead bodies of Pradeep and 'X' were found in a room within the appellants' premises;

(f) that 'X', a girl of 15 years, had been examined by a gynecologist, Dr. Manju Verma, at Budaun on 19.08.2014 and though unmarried, she was found pregnant in the medical report dated 19.08.2014;

(g) that Pradeep and 'X' were both murdered in the night intervening 19/ 20.08.2014, soon after discovery of her pregnancy outside wedlock, where Pradeep was suspected by the appellants of impregnating 'X';

(h) that the cause of death is strangulation and there is no such extraordinary contrivance, which may show the strangulation to be suicidal;

(i) that there was a strong motive in the totality of circumstances for the appellants to murder Pradeep and 'X'; and,

(j) the fact that the appellants have not come up with an explanation about the twin murders within the confines of their premises, a fact exclusively within their knowledge and failed to discharge their burden in this regard under Section 106 of the Evidence Act.

76. All these circumstances put together, in our considered opinion, establish a complete and unbroken chain, which are only consistent with the guilt of the appellants and no other possible hypothesis. We are, therefore, of opinion that the appellants have been rightfully convicted by the learned Trial Judge of the offence punishable under Section 302/34 IPC. The minimum permissible sentence has been awarded, which, in our opinion, is condign.

77. We place on record our appreciation for the very able assistance rendered in these appeals by Ms. Sweta Singh Rana, who made the best out of a difficult cause for her clients.

78. In the result, both the appeals fail and are **dismissed**. The appellant Smt. Seema Gupta is on bail. She will surrender within a period of **two weeks** of the date of this judgment, failing which the Chief Judicial Magistrate, Shahjahanpur, shall cause her to be taken into custody and commit her to prison to serve out her sentence. The bail bonds furnished by the appellant Smt. Seema are cancelled and the sureties discharged.

79. This order shall be communicated to the appellant, Mukesh Gupta, who is in jail through the Jail Superintendent, Pilibhit by the Registrar (Compliance).

80. Let a copy of this order be forwarded to the Trial Court concerned along with the lower court record for information and necessary compliance.

(2026) 2 ILRA 300
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD-26.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 2926 of 1985

Ramchandra & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the conviction of the appellants under S. 302 IPC is sustainable on the basis of eyewitness testimony despite alleged defects in investigation, non-recovery of weapon, non-examination of some witnesses and minor contradictions in evidence. (Para 29, 30, 31, 36, 37)

Headnotes

Criminal Law - Double Murder - Eyewitness Testimony - Defective Investigation - Appreciation of evidence - "the testimony of PW1, Khem Karan Lal and PW-2 Smt Maya Devi their versions can be seen to be corroborating each other" - conviction based on consistent eyewitness account upheld. (Para 31).

Defective investigation - "error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about" - non-recovery of weapon not fatal. (Para 31).

Non-examination of witnesses - "persons avoid to testify they do not want to involve in a criminal case much less in the crime of the present magnitude" - not fatal to prosecution. (Para 36).

Minor contradictions - "very trivial in nature does not affect the foundation of the prosecution case" - cannot discredit evidence. (Para 38).

Defence evidence - found "untrustworthy and cannot be believed" - does not dent prosecution case. (Para 43, 44, 45).

Motive - dispute over land and share in property leading to Panchayat and assault - proved. (Para 47-52).

Conclusion - "prosecution has successfully proved its case beyond all reasonable doubt" - appeal dismissed. (Para 56-57).

Held: No prejudice is caused to the accused by non-recovery of the weapon of assault - their versions can be seen to be corroborating each other inspires confidence of this Court - persons avoid to testify in such cases it was quite natural that they did not come forward - minor contradiction is of no help to the appellant does not affect the foundation - evidence of DW-1 is untrustworthy and cannot be believed - the evidence of DW-2 is of no help rather it strengthen the case of the prosecution - the evidence of DW-3 is also not helpful - the prosecution has successfully proved its case beyond all reasonable doubt - Accordingly, the criminal appeal is dismissed. (Paras 31,36,38,43,44,45,56,57) (E-7)

Case Law Cited

Karnel Singh Vs. State of M.P., **1995 SCC (5) 518***; Ram Bihari Yadav v. State of Bihar, J.T.* **(1998) 3 SC 290***; Paras Yadav and others Vs. State of Bihar,* ***1999 Cr.L.J. 1122****; Edakhandi Dineshan alias P. Dineshan and others Vs. State of Kerala,* **2025 Live Law (SC) 25***; State of Rajasthan Vs. Kalki* **(1981) 2 SCC 752***; State of U.P. Vs. M.K. Anthony* **(1985) 1 SCC 505***; State represented by Inspector of Police Vs. Saravanam* **(2008) 17 SCC 587.**

List of Acts

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

List of Keywords

Murder; Panchayat; eyewitness; defective investigation; non-recovery of weapon; minor contradictions; motive; land dispute; corroboration; defence witnesses; prosecution case; beyond reasonable doubt.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from judgment and order dated 18.10.1985 passed by the Sessions Judge, Bareilly in Sessions Trial No. 489 of 1984 convicting the appellants under S. 302 IPC.

Appearances for Parties

Advs. for the Appellant:
Shri Raj Kumar Vaishya
Advs. for the Respondents:
Shri S.K. Ojha, learned Additional Government Advocate

(Delivered by Hon'ble Chandra Dhari Singh, J.)

.1. This criminal appeal has been filed against a judgement and order dated 18.10.1985 passed by the learned Sessions Judge, Bareilly in Sessions Trial No. 489 of 1984, under Section 302 IPC, police station Baheri, district Bareilly whereby the learned Judge convicted and sentenced both the appellants Ram Chandra and Babu Ram to life imprisonment under section 302 IPC or in the alternative under Section 302/34 IPC for committing the murder of Damodar.

2. Both the appellants were also convicted and sentenced to imprisonment for life under Section 302 IPC or in the alternative, under Section 302/34 IPC for committing the murder of the deceased Chandra Pal.

3. However, both the sentences, were directed to run concurrently.

Facts of the case

4. The facts that formed the bedrock of the present criminal appeal, in short compass, are that an oral information was given by the first informant Maya Devi, wife of Damodar Gaderia at the police station Bahedi, district Bareilly that she is the resident of village Rajpura, police station Bahedi. Her father-in-law was three brothers, namely Munna Lal, Dhani Ram and Chunni Lal. Munna Lal had three sons namely Ram Chandra, Babu Ram and Om Prakash. Chunni Lal had one son namely Beche Lal. After the death of first wife of her father-in-law, he brought another lady, who has two sons namely her husband Damodar and Chandrapal. Her uncle-in-law (Chachiya Sasur) Jhodi had a field of one Bigha, in which, this year there was a crop of sugar cane, which was being ploughed and cultivated jointly. The crop was harvested by Ram Chandra, Babu Ram and Om Prakash. On enquiry by her husband Damodar and brother-in-law Chandrapal, they told that Jhodi had made an agreement of the said filed in their favour. Due to that reasons, there had been certain altercation between her husband and brother-in-law on one side and Ram Chandra, Babu Ram and Om Prakash on other. In the field of nine bighas which was being ploughed and cultivated by Ram Chandra and his real brothers, whereas all the sons of her three father-in-law are the shareholders. A few days ago, when her husband and brother-in-law demanded their share in the property, Ram Chandra denied.

5. The first information report further recounts that today at 09:00 PM, a Panchayat was convened for the partition of field in which several persons of the village have participated. In the Panchayat, lantern and Tabri were burning. In the panchayat, her husband Damodar and brother-in-law Chandra Pal had asked Ram Chandra and Babu Ram that they got a forged agreement of the land of Jhodi done. Thereupon, Ram Chandra and Babu started abusing and attacked her husband Damodar and brother-in-law Chandra Pal by knife and lathis. The first informant and her sister-in-law Smt Ram Wati made hue and cry. Her husband ran towards Masjid, whereas her brother-in-law ran towards his Ghair. Ram Chandra and Babu Ram chased Chandra Pal and assaulted him badly by knife and lathis and fled away. When injured Chandra Pal was being taken to the police station, he succumbed to the injuries. Beside the Masjid, his husband was also found dead. The FIR also alleges that her husband Damodar (hereinafter referred to as the deceased-Damodar) and brother-in-law Chandra Pal (hereinafter referred to as the deceased Chandra Pal) have been assassinated by Ram Chandra and Babu Ram assaulting by knife and lathis. The incident was witnessed by Roshan

Gaderia, Khem Karan Gaderia, Jameel and Khem Karan Gangwar and several other persons of the village in the lantern, Tabri and Torches.

6. On the basis of the aforesaid oral information given by the first informant Smt. Maya Devi, a case was registered by the Head Muharrir Ram Prakash Gangwar, Ext. Ka-2, on which the first informant put her thumb impression.

7. After the registration of the case, the law set into motion and investigation of the case was taken up by PW-3 SI Laxmi Narain. On 03.07.1985, after completing formalities in respect of registration of the FIR, he recorded the statement of Head Muharrir Ram Prakash. He copied the relevant papers in the Case Diary and left for the place of occurrence along with Constable Puran Singh, Ram Pal and Shakil Ahmad. On the way, the dead bodies of Damodar and Chandra Pal were found. He inspected the spot and prepared site plan, Ext. Ka 5. After appointing Panch (witnesses of inquest), he got the inquest on the bodies of the deceased conducted, Ext. Ka-6 and Ext. Ka-7. After getting the inquest conducted, he recorded the statements of the first informant Smt. Maya Devi and witness Khem Karan. PW-3 collected bloodstained earth and simple earth from the place where body of the deceased-Damodar was lying, which was marked as Ext. Ka-8. He also collected bloodstained earth and simple earth from the place where deceased-Chandra Pal was lying, Ext. Ka-9. He also recorded the statement of witnesses Ram Wati, Mala, Jameel and Ajay in the case diary. After preparing necessary documents, he handed over both the dead bodies to Constable Puran Singh and Constable Ram Pal for getting the postmortem examination done. PW-3, SI Laxmi Narain on 04.07.1984 raided the house of the appellants. However, no articles relating to the crime was recovered. He also inspected the torch of the informant , witnesses Jameel and Pradhan Khem Karan, which were found in working conditions and have been given in Supurdgi Exts. Ka. 3, Ka-11 and Ka-1. He came to know that on 07.07.1985, accused surrendered before the Court and have been sent to jail.

8. Pursuant to the order of Circle Officer dated 19.07.1984, the investigation of the case was transferred to SI Maan Singh. On 19.07.1984, PW-3, SI Laxmi Narain accompanied SI Maan Singh to the place of occurrence and took into possession the Lantern and Dibbi, which were found in working condition and made memos thereof. On 04.08.1984 SI Maan Singh recorded the statements of the accused-appellants in jail and after completing necessary formalities, SI Maan Singh submitted charge sheet against the accused-appellants, which has been marked as Ext. Ka-13.

9. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 489 of 1984. The learned Sessions Judge, Bareilly framed the charges against the accused-appellants under Section 302 IPC vide order dated 21.05.1985, which were read over and explained to the accused in Hindi.

10. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as four witnesses, out of which PW-1, Khem Karan Lal and PW-2 Maya Devi are the witnesses of facts, whereas PW-3, Laxmi Narain is the first investigating officer, who carried out almost all the investigation, and PW-4, Dr. M.C. Sharma, who conducted autopsy on the bodies of the deceased.

11. PW-1, Khem Karan Lal, son of Seva Ram, in his examination-in-chief deposed that he is the Gram Pradhan of village Narain Nagla. The murdered took place in village Rajpura. He is Gangwar by caste. He knows accused-appellants as well as deceased Damodar and Chandra Pal. At the time of incident, appellants and the deceased were residing separately. The land of Karat of appellants and the deceased were joint, which was being ploughed and cultivated separately. Two bighas of land belonging to Jodhi, who was uncle of the accused-appellant and deceased, was also being cultivated by the accused and the deceased. The standing crop on the said land of Jodhi was harvested by accused Ram Chandra, on which deceased Damodar objected. In addition to the aforesaid land, there was a field of 09-10 bighas, which was being harvested by Ram Chandra and he does not allow the deceased to harvest. Deceased Chandra Pal and Damodar have purchased four bighas of land from Chhadmi Lal. In the said land, accused-appellant wanted to make drainage, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder. He further deposed that a Panchayat was convened at the Chaupal of of Ram Autar at 09:00 PM, which was attended by this witness along with Roshan Lal, Jameel Ahmad, Khem Karan and 24-25 other persons. Accused-appellants also participated in the Panchayat. At the place of Panchayat, lantern was burning. Dibri was also burning at the Chabutra (a raised platform) of Momsen, a place of deity. In addition to the aforesaid lantern and Dibri, this witness along with Jameel Ahmad and one Mala Devi was also having torch. PW-1, further deposed that as soon as the Panchayat started, deceased-Damodar asked the accused Ram Chandra that he has wrongly done the agreement. On hearing this accused Ram Chandra slapped him and thereafter Ram Chandra and Babu started assaulting the deceased Damodar and Chandra Pal with lathis. As soon as accused-appellant started assault, stampede broke out. Both the accused-appellants assaulted deceased Damodar and Chandra Pal by knife. After being injured deceased-Damodar ran towards Masjid. Chandra Pal was shielding Damodar, both the accused assaulted him with knife. After being injured, Chandra Pal ran towards his Gher where he was assaulted by the accused-appellant by knife. This incident was witnessed by this witness in Lantern, Dibiya and torches. When, he reached there, Chandra Pal was alive, who told his sister-in-law (first informant) to take him to Bahedi. As soon as he reached near Masjid, he found the dead body of the deceased-Damodar. Chandra Pal after seeing the dead body of Damodar, also breathed his last.

12. PW-2, Maya Devi, in her examination-in-chief, deposed that deceased-Damodar was her husband and deceased-Chandra Pal was her brother-in-law, who were killed by accused Ram Chandra and Babu. There was a dispute over two bighas of sugar cane filed. The field initially belonged to Jodhi. The standing crops on the said field had been harvested by accused Ram Chandra, which have been ploughed and cultivated by deceased Damodar. In addition to the aforesaid land/field, there had been a filed of about 09-10 bighas, which was being cultivated by the accused Ram Chandra, Babu and Beche Lal and they did not allow the deceased to cultivate, whereas all have equal share. This witness further deposed that deceased Damodar and Ram Chandra have purchased four bighas of land, accused-appellant wanted to make drainage in the said land, due to which quarrel took place between the accused-appellants and the deceased a day prior to the incident of murder. In order to settle the dispute between the parties, a Panchayat was convened at 09:00 PM on the date of incident at the Chaupal of Ram Autar. The Panchayat was attended by Jameel, Vishan Lal, Khem Karan and others. A lantern and a Dibiya were burning at the place of Panchayat. She was also present at the place of Panchayat along with her sister-in-law (Devrani) Smt. Ram Wati and nand Mala. In the Panchayat both the appellants and both the

deceased were also present. She was having a torch. Jameel and Chairman were also having torch. PW-2 Smt. Maya Devi further deposed that deceased-Damodar asked the accused Ram Chandra that he has wrongly done the agreement. On hearing this, accused Ram Chandra slapped him and thereafter Ram Chandra and Babu started assaulting the deceased Damodar and Chandra Pal with lathis. Thereafter, both the accused-appellants assaulted deceased Damodar and Chandra Pal by knife. After being injured deceased-Damodar ran towards Masjid. Deceased-Chandra Pal ran towards north to the Gher, where he was assaulted by the accused-appellants by knife. This witness also went to Gher and saw that Chandra Pal was alive. While he was being taken to hospital and as soon as she reached near Masjid, she found her husband lying dead. On the way to Bahedi, injured Chandra Pal succumbed to the injuries.

13. PW-4, Dr. M.C. Sharma, in his examination-in-chief deposed that on 03.07.1984, he was posted as Senior Surgeon in district Hospital, Bareilly. On that date at about 04:30 PM, he conducted postmortem on the body of the deceased-Damodar and found the following ante-mortem injuries on his person:

1. Stab wound 2 cm x 1 cm x chest cavity deep right side of back of chest 9 cm below lower border of scapula.

2. Stab wound 2 cm x 1 cm x chest cavity deep on back of chest $^{1/2}$ cm from midline, 27 cm below root of neck.

3. Stab wound 2 cm x 1 cm x chest cavity deep on back of chest, $^{1/2}$ cm lateral to midline, 25 cm below root of neck.

14. On internal examination, puncture of both sides in pleura, puncture in lower lobe of right lung and puncture in lower lobe of left lung were noticed. It was also observed that semi digested food was present in the stomach and gases and faecal matter were present in the large and small intestines.

15. In the opinion of the doctor, the death of the deceased might have occurred due to shock and haemorrhage on account of ante-mortem injuries caused with a sharp edged weapon like knife about $^{3/4}$ day prior to the time of medical examination. He was also of the opinion that the death might have occurred at about 10:00 PM on 02.7.1984 subject to variation of about 4 to 6 hours either side.

16. PW-4, Dr. M.C. Sharma conducted postmortem examination on the same day at about 05:00 PM on the body of the deceased Chandra Pal and found the following ante-mortem injuries.

1. Incised wound 1 cm x 1 cm x muscle deep, on back of right elbow upper part.

2. Incised wound 5 cm x 2 cm x muscle deep on right back of elbow.

3. Incised wound 8 cm x 2 cm x muscle deep on right forearm back, 4 cm below elbow joint.

4. Three linear incised wounds 5 cm x $^{1/2}$ cm , 2 cm x $^{1/4}$ cm, 1 cm x $^{1/4}$ cm , on back of right forearm below elbow.

5. Four incised wounds in an area of 8 cm x 6 cm , 2 cm x 1/2 cm , 3 cm x 1 cm, 2-1/2 cm x 1/2 cm x 1 cm x 1/2 cm, all muscle deep, on back of right side of abdomen, 10 cm above base of sacral region, 2 cm from midline.

6. 2 incised wounds 2 cm x 1/2 cm , 3 cm x 2 cm x muscle deep on left back, 3 cm from midline, 8 cm above the sacral region .

7. Incised wound 8 cm x 1/2 cm x muscle deep on midline o back, 2 cm above sacral region.

8. Incised wound 2 cm x 1 cm x muscle deep, back of right buttock upper part.

9. Contused abrasion 2 cm x 2 cm, on the upper part of buttock fold in between.

10. Three incised wound 3 cm x 1 cm, 1 cm x 1/2 cm, 1 cm x 1/2 cm, all muscle deep on back of right thigh in the middle.

11. Incised wound 6 cm x 2 cm x muscle deep, on right iliac fossa.

12. Incised wound 6 cm x 2 cm x cavity deep on left loin with a tailing of 13 cm long (cutting the kidney).

13. Incised wound 3 cm x 1 cm x muscle deep on arm, lower 1/3rd back left.

14. Incised wound 2 cm x 1 cm x muscle deep back of left elbow.

15. Incised wound 2 cm x 1/2 cm outer side of back of elbow left side.

16. Contused abrasion 2 cm x 1/2 cm outer side of back.

17. Incised wound 1 cm x 1/2 cm x bone deep, on back distal side phalanx middle finger left.

18. Incised wound 1/2 cm x 1/2 cm x bone deep on back of ring finger left hand.

19. Abrasion with contusion 5 cm x 4 cm, on front of left knee.

20. Contusion 7 cm x 4 cm on middle of right thigh inner side.

21. Incised wound 2 cm x 1/2 cm x muscle deep on inner left foot.

22. Incised wound 1/2 cm x 1/2 cm x muscle deep front of left leg upper part.

23. Lacerated wound 3 cm x 2 cm x muscle deep front of lower 1/3rd of right leg.

17. In the opinion of the doctor, incised wounds might have been inflicted with some sharp edged weapon like a knife while contusions etc. might have been inflicted with a blunt weapon like a lathi. Doctor further opined that death of the deceased Chandra Pal might have occurred due to shock and haemorrhage on account of ante-mortem injuries about 3/4 day prior to the medical examination.

18. Evidence of PW-3, SI Laxmi Narain has already been discussed above.

19. After the closure of the prosecution evidence, the statements of the accused-appellants Ram Chandra and Babu Ram were recorded under section 313 Cr.P.C. in which he denied the circumstances appearing against them and stated that they have been falsely implicated in this case at the instance of Pradhan.

20. In this case three defence witnesses have also been examined, namely DW-1, Ram Autar, DW-2, Roshan Lal and DW-3, Khem Karan.

21. DW-1, Ram Autar has deposed that he knows the accused-appellants and both the deceased as they are the resident of his village. Both the deceased had good relation with Khem

Karan, who is the Chairman. They were having visiting terms. Deceased has no enmity with the appellants. He further deposed that a day prior to the incident, neither any Panchayat was held in his Chaupal between the accused-appellants and the deceased nor any quarrel took place. On the date of occurrence, he was present in his house throughout the day and night and when he woke up in the morning, he came to know that Damodar and Chandra Pal have been done to death. There is no other person in the village in his name and parentage. He further deposed that on 16.09.1985, when he along with Khem Karan, son of Ghanshyam and Roshan Lal, were going to Court, they were arrested by the police and kept them in the police station till 20.09.1985 where they were being beaten at the instance of Khem Karan.

22. DW-2, Roshan Lal, son of Jorawar, deposed that he is the Vice-Chairman, whereas Khem Karan is Chairman. There is no other person of his name and parentage in the village. Khem Karan, Chairman has good relation with the deceased. He does not know whether any Panchayat was convened at the Chaupal of Ram Autar or not. No body has come to call me. Deceased Damodar and Chandra Pal have not been assassinated before him. He further deposed that on 16.09.1984, when he was going for his evidence, a constable from police station Bahedi came to him and took him to the police station. Thereafter, Ram Autar and Khem Karan also went to the police station. In the police station, they have been detained for four days where they were being abused and beaten.

23. DW-3, Khem Karan, son of Ghanshyam, deposed that there is no other person in the village of his name and parentage. He knows deceased and the appellants. Khem Karan is the Chairman of his village. Deceased had good relation with Khem Karan. He further deposed that no Panchayat was held either in his house or in the house of Ram Autar. Police have detained him for four days in the police station.

24. Learned Sessions Judge, Bareilly after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

25. Being aggrieved and dissatisfied with the aforesaid judgement and order, the appellants have preferred the instant appeal.

Submission on behalf of the appellants

26. Shri Raj Kumar Vaishya, learned counsel for the appellants submits as under:

(a) That place of incident and presence of the witnesses at the place of occurrence is highly doubtful.

(b) That weapon of assault have not been recovered from the appellant, which makes the entire prosecution story doubtful.

(c) That only two witnesses namely Khem Karan Lal and Smt. Maya Devi have been examined during the trial, whereas as per prosecution case Roshan Gadariya, Khem Karan

Gadariya and Jameel were shown to have witnessed the occurrence, but they have not been produced.

(d) That there is contradiction in the statement of PW-2, Maya Devi.

(e) That the evidence of defence witnesses have demolished the prosecution case.

Submissions on behalf of the State

27. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate-Ist submitted as under:

(a) From the evidence of the prosecution witnesses, the place of incident and presence of witnesses at the place of occurrence is fully established.

(b) Non-recovery of weapon of assault from the accused-appellants may be a lapse on the part of investigating officer, the benefit of the same cannot be extended to the appellants.

(c) Minor contradictions should not be given unnecessary weightage.

(d) That the learned Trial Court has convicted and sentenced the appellants on the basis of cogent and concrete evidence.

Analysis and conclusion

28. Heard learned counsel for the appellants and learned Additional Government Advocate representing the State and perused the record of the case.

29. As per the evidence of two eyewitnesses namely PW-1, Khem Karan and PW-2, Smt. Maya Devi, the attacked on the deceased was launched at the Chaupal of Ram Autar from where deceased Damodar started running away and his dead body was found near the mosque (Masjid), which is situated at a distance of about 77 paces from the Chaupal in question, whereas deceased Chandra Pal ran to his Gher and was also attacked there. The Gher of the deceased-Chandra Pal is situated at a distance of about 25 paces as per the evidence of the the PW-3, Laxmi Narain, the investigating officer of the case. PW-3, Laxmi Narain, the investigating officer of the case, in his examination-in-chief deposed that he collected bloodstained earth and simple earth from the place where body of the deceased-Damodar was lying, which was marked as Ext. Ka-8 and the boxes were marked as Ext. 1 and 2. He also collected bloodstained earth and simple earth from the place where deceased-Chandra Pal was lying, Ext. Ka-9, the boxes were marked as Ext. 3 and 4. At the time of post-mortem examination, the Medical Officer, took off bloodstained Baniyan Ext. 5, Bloodstained underwear Ext. 6 and bloodstained Kurta Ext. 7 from the body of the deceased-Damodar and duly sent the same to the investigating officer in a sealed packet. Similarly at the time of post-mortem examination of the deceased-Chandra Pal, the Medical Officer (Dr. M.C. Sharma, PW-4) removed some bloodstained clothes from the body of deceased Chandrapal, i.e. shirt, Ext. 8, Baniyan, Ext. 9 and underwear Ext. 10 and sent the same to the investigating officer after getting

the same duly sealed. The aforesaid items were sent to the Forensic Science Laboratory. The Serologist report dated 19.02.1982 confirmed the presence of human blood on the bloodstained earth collected by the investigating officer, Ext. 1 from the place where the dead body of the deceased Damodar was lying and Ext. 2 from the place where place where the dead body of deceased Chandra Pal was lying. The report further indicates that on Ext. 3 to 8 , which relate to the clothes of the deceased large bloodstained was found, measuring 70, 45, 25, 50, 40 and 25 cms. From the above facts, statements of the PW-1, Khem Karan and PW-2, Smt. Maya Devi that the accused have been murdered by the accused-appellants and that the dead body of deceased Damodar was found near the mosque, situated at a distance of about 77 paces from the Chaupal of Ram Autar as also the dead body of deceased Chandra Pal was found from his hut, which is situated at a distance of about 25 paces from the Chaupal of Ram Autar, certain drops of blood must have spilled on the way, which must have been disintegrated/effaced by the movement of the people.

30. So far as contention of learned counsel for the appellants that weapon of assault has not been recovered from the appellants, it is to be noted that after the registration of the case on 03.07.1984, the investigation of the case was taken up by PW-3, Laxmi Narain on 03.07.1985. In his examination-in-chief, he stated that during the course of investigation, he recorded the statement of Head Muharrir Ram Prakash. He inspected the spot and prepared site plan, Ext. Ka 5. After appointing Panch (witnesses of inquest), he got the inquest on the bodies of the deceased conducted, Ext. Ka-6 and Ext. Ka-7. After getting the inquest conducted, he recorded the statements of the first informant Smt. Maya Devi and witness Khem Karan. He also collected bloodstained earth and simple earth from the place where bodies of the deceased-Damodar and Chandra Pal were lying, prepared necessary documents and handed over both the dead bodies to Constable Puran Singh and Constable Ram Pal for getting the postmortem examination done. PW-3, SI Laxmi Narain has specifically mentioned that on 04.07.1984, he raided the house of the appellants, but neither accused-appellants could be apprehended nor any articles relating to the crime was recovered. PW-3- further stated that search of the accused was made in several places in Bareilly, but they could not be arrested. He came to know that on 07.07.1985, accused surrendered before the Court and have been sent to jail. On the order of the Circle Officer, the investigation of the case had been transferred to SI Maan Singh on 19.07.1984. It is also mentioned that although SI Maan Singh has been transferred to Shahjanpur, but he did not take charge and was on leave. On 04.08.1984, SI Maan Singh recorded the statements of the accused-appellants in jail and next day, i.e. 05.08.1984, he submitted the charge sheet.

31. As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused. In the instance case, no prejudice is caused to the accused by non-recovery of the weapon of assault when the testimony of PW1, Khem Karan Lal and PW-2 Smt Maya Devi, is seen cumulatively, their versions can be seen to be corroborating each other. Both of them being eyewitnesses what is material to be seen is that their stand is consistent when they said that it was accused-appellants, who were responsible for assaulting and inflicting blows on both the deceased. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defense. Admittedly, there was an enmity between the deceased and

the appellants and accused and the witnesses were well acquainted with each other being close relatives.

32. In **Karnel Singh Vs. State of M.P.**, 1995 SCC (5) 518, Hon′ble Supreme Court held as under:

"Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

33. In **Ram Bihari Yadav v. State of Bihar**, J.T. (1998) 3 SC 290, Hon′ble Supreme Court, held as under:

"In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

34. In **Paras Yadav and others Vs. State of Bihar**, 1999 Cr.L.J, 1122, it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

35. In a recent judgement, Hon′ble Supreme Court in **Edakhandi Dineshan alias P. Dineshan and others Vs. State of Kerala**, 2025 Live Law (SC) 25, held as under

"Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons…."

36. The next contention of learned counsel for the appellants is that only two witnesses namely Khem Karan Lal and Smt. Maya Devi have been examined during the trial, whereas as per prosecution case Roshan Gadariya, Khem Karan Gadariya and Jameel were shown to have witnessed the occurrence, but they have not been produced. This contention of the learned counsel is totally mis-conceived. It may be noted that the presence of aforesaid persons at the spot cannot

be denied as PW-3, Laxmi Narain, in his examination-in-chief has stated that he inspected the torch of Jameel and handed over the same in his Supurdgi vide Ext. Ka 11, but looking to the manner in which both the deceased were done to death, no one can dare to depose against the accused. Moreover, it cannot be denied that persons avoid to testify in such cases as they do not want to involve in a criminal case much less in the crime of the present magnitude. Therefore, it was quite natural that they did not come forward to assist the prosecution.

37. The next contention of the learned counsel for the appellants is that there are contradictions in the evidence of PW-2, Smt Maya Devi inasmuch as in her cross-examination, which was done on 26.08.1985, PW-2, Smt Maya Devi has deposed that the accused-appellants gave 4-5 lathis blows on both the deceased and when the accused-appellants inflicted knife on her husband-Damodar, he fell down whereas her brother-in-law-Chandra Pal ran towards his Gher. However, PW-2, in her cross-examination, which was done on 28.08.1985, she deposed that after receiving knife blow, her husband (deceased-Damodar) did not fell and ran towards mosque (Masjid).

38. The contradictions pointed out by the learned counsel for the appellants is very trivial in nature. In the depositions of witnesses there may always be some normal discrepancies. These discrepancies are due to lapse of time and mental disposition such as shock and horror at the time of the occurrence. Material discrepancies are those which are not normal and go to the root of the prosecution case and not expected of a normal person. Therefore, such a minor contradiction pointed out by the learned counsel for the appellant is of no help to the appellant. Further the discrepancies pointed out by the learned counsel for the appellants is very trivial in nature, which does not, in any way, affect the foundation of the prosecution case.

39. In **State of Rajasthan Vs. Kalki** (1981)2 SCC 752, High Court of Rajasthan acquitted the accused on the grounds that PW-1 was highly interested witness because she is the wife of the deceased and that there was discrepancies in her statement. Against the order of High Court, State of Rajasthan preferred a Criminal Appeal. Hon'ble Supreme Court set aside the order of the High Court and convicted the accused. The Court in paragraphs 5, 6 and 7 held as under:

5. *As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.*

6. The second ground on which the High Court refused to place reliance on the evidence of P.W. 1 was that there were "material discrepancies". As indicated above we have perused the

evidence of P.W. 1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1.

7. Learned counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice."

40. In **State of U.P. Vs. M.K. Anthony**, (1985)1 SCC 505, Hon'ble Supreme Court held as under:

"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 scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs 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. 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. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

41. In **State represented by Inspector of Police Vs. Saravanam and another**, (2008) 17 SCC 587, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

42. Three defence witnesses have also been produced in this case, namely DW-1, Ram Autar, DW-2, Roshan Lal and DW-3, Khem Karan. DW-1, Ram Autar deposed inter alia that no Panchayat had been held at his Chaupal in the night in question nor did any incident occurred there. DW-2, Roshan Lal testified that any Panchayat at the Chaupal of Ram Autar had not been attended by him nor did the incident in question take place in his presence, whereas DW-3, Khem Karan of village Rajpura has deposed that no Panchayat was held at the Chaupal of Ram Autar in the night in question.

43. DW-1, Ram Autar in his deposition, which was done on 24.09.1985 has stated that in the night of the incident in question, he was present in his house and in the morning when he woke up, he came to know that Damodar and Chandra Pal have been done to death. The case of the prosecution from the very beginning was that Panchayat was held at the Chaupal of Ram Autar, but he was not present in the Panchayat. PW-2, Smt Maya Devi in her cross-examination, which was done on 26.08.1985 has specifically stated that Panchayat was held at the Chaupal of Ram Autar (DW-1) in which about 20-25 persons have participated. Ram Autar was not present in the Panchayat. His wife and children were also not present. PW-3, Laxmi Narain, the investigating officer of the case has specifically stated in his examination-in-chief that he made a search of Ram Autar (DW-1) on whose Chaupal, Panchayat was alleged to have been held, but he came to know that he had gone to Bahedi and therefore, Lantern and Dibbi, could not be taken into possession. On 19.07.1985, he again visited the house of Ram Autar (DW-1) in whose Chaupal, Panchayat was allegedly held where lantern and Dibbi were burning, took into possession and given in Supurdgi vide Ext. Ka-12, which was signed by Ram Autar and Brij Lal. Therefore, the evidence of DW-1, Ram Autar that no Panchayat was held at his Chaupal is untrustworthy and cannot be believed.

44. DW-2, Roshan Lal in this evidence has only stated that he was ignorant about the Panchayat and he also stated that he did not meet Ram Autar on the date of occurrence and that he saw Ram Autar 2-4 days after the occurrence. Therefore, the evidence of DW-2 is of no help to the accused-appellants rather it strengthen the case of the prosecution that on the date of occurrence, Ram Autar was not present at his house.

45. DW-3, Khem Karan, son of Ghan Shyam in his evidence has stated that neither Panchayat was held at the Chaupal of Ram Autar nor deceased was assassinated in his presence. However, in his cross-examination, he stated that he is not aware in which case, he is deposing against the accused-appellants. The evidence of DW-3, Khem Karan is also not helpful to the appellants.

46. Moreover, all the defence witnesses have stated that they have been detained by the police for four days in the police station where they have been subjected to harassment and they were also beaten badly by the police, but surprisingly, they have neither made any complaint to the superior police officer nor got themselves medically examined.

47. So far as motive behind the incident is concerned, it is stated by PW-2, Smt. Maya Devi that the incident in question took place over two bighas of land, which belonged to her uncle-in-law (Chachiya Sasur) Jhodi, in which crop of sugar cane was cultivated by the decesed-Damodar, but the same had been harvested by the accused-Ram Chandra. In addition to the aforesaid field, there was another field of 09-10 bighas. The said field was being ploughed and cultivated by the accused-appellants Ram Chandra, Babu and Beche Lal and they do not allow her husband to cultivate the same, whereas her husband had share. It is further stated that her husband-Damodar and brother-in-law Chandra Pal had purchased four bighas of land. In the said land, accused-appellants wanted to make drainage, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder and to settle the said dispute, a Panchayat was convened.

48. PW-1, Khem Karan Lal, in his evidence has also stated that two bighas of land belonging to Jodhi, who was uncle of the accused-appellants and deceased, was also being cultivated by the accused and the deceased. The standing crop on the said land of Jodhi was harvested by accused Ram Chandra, on which deceased Damodar objected. In addition to the aforesaid land, there was a field of 09-10 bighas, which was being harvested by Ram Chandra and he does not allow the deceased to harvest. Deceased Chandra Pal and Damodar have purchased four bighas of land from Chhadmi Lal. In the said land, accused-appellant wanted to make drainage in, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder for which Panchayat was convened.

49. The aforesaid facts have not specifically been denied by the accused-appellants in their statements recorded under Section 313 Cr.P.C. During the course of statement, a specific question was put to the accused that "it has come in the evidence of the prosecution that 09-10 bighas of land, in which the mother of the deceased is shareholder, was being ploughed and cultivated by the accused-appellants and they do did not allow the deceased to cultivate. In reply to this question, accused-appellant Ram Chandra has specifically stated that in the filed in question there is no share of the deceased, **but their mother is the share holder.**

50. In reply to the same question, accused-Babu Ram has not specifically denied and stated that he is not aware about the share of the mother of the deceased.

51. From the perusal of the aforesaid statements of the two accused-appellants namely Ram Chandra and Babu Ram, it is manifestly clear that both the deceased namely Damodar and Chandra Pal were not allowed by the accused-appellants to cultivate their mother's 1/3rd share in the joint land having an area of about 09-10 bighas of land as accused alone were exercising possession over the said land. Therefore, the evidence of PW-1, Khem Karan and PW-2, Smt Maya Devi that the entire land having an area of 9-10 bighas of land was being cultivated by the two accused persons and their cousin Bachey Lal and both the deceased were prevented by the accused-appellants from cultivating any part thereof, has substance and worth acceptance.

52. In addition to the aforesaid land, four bighas of land, which the deceased had purchased on their own and in the said land, accused-appellants wanted to make drainage, due to which quarrel took place

between the accused and the deceased a day prior to the incident of murder, which resulted in the incident in question in which both the deceased Damodar and Chandra Pal have been assassinated.

53. In view of the aforesaid facts, it can be inferred that both the deceased were excluded from the joint property/land by the two accused persons, despite the fact that they could exercise possession over 1/3rd share of the land in question on behalf of their mother. Further, the accused-appellants were also making drainage on the filed of the deceased, which they had purchased from Chhadmi Lal. In order to get the matter settled, they might have thought of entering into some sort of settlement with the accused persons through some influential persons of the village and accordingly a Panchayat was convened, which resulted in the incident in question wherein both the deceased have been done to death by the appellants.

54. It was a gruesome murder in which two persons have been assassinated in a dare devil manner. Perusal of postmortem shows that the both the deceased were mercilessly attacked. Severity of injuries clearly demonstrate the brutality of the attacks.

55. We have carefully scrutinized and examined the evidence of prosecution witnesses and we find that they have been correctly marshalled and assessed by the learned Trial Court.

56. In view of what has been indicated above, we are of the view that the prosecution has successfully proved its case beyond all reasonable doubt against both the accused-appellants.

57. Accordingly, the criminal appeal is dismissed.

58. The appellants Ram Chandra and Babu Ram are on bail. Their bail bonds are cancelled and sureties are discharged. They are directed to surrender before the Court concerned within three weeks to serve out the sentence awarded to them by the learned Trial Court.

59. Office is directed to send a copy of this order to the court concerned along with necessary documents for compliance and compliance report be submitted to this Court within two months.

(2026) 2 ILRA 315
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 6760 of 2017
& Other Connected Case

Smt. Seema **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether "in a case based on circumstantial evidence, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime." (Para 43)

Headnotes

Indian Penal Code, 1860 - S.s 302/34, 201 and 120B - Murder - Criminal Conspiracy - Circumstantial Evidence - Conviction and sentence of life imprisonment - Appeal against judgment of Trial Court.

Criminal Trial - Circumstantial Evidence - "the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature" (Para 33)

Circumstantial Evidence - Chain of Evidence - "all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence" (Para 33)

Circumstantial Evidence - Inference of Guilt - "the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused" (Para 33)

Homicidal Death - Proof - "from the evidence of the doctor coupled with the evidence of prosecution witnesses, it is clear that the death of the deceased-Chandra Pal was homicidal" (Para 47)

Recovery - Weapon of Assault - "the weapons of assault were recovered on the pointing out of the appellant - Dildar from the house of the deceased" (Para 49)

Motive - Illicit Relation - "the appellant-Seema had illicit relation with appellant-Dildar" (Para 54)

Hostile Witness - Evidentiary Value - "evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile" (Para 55)

Burden of Proof - S. 106 Evidence Act - "burden lies on her to explain as to how body had been buried in her house" (Para 63)

S. 106 Evidence Act – Application - "there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed" (Para 67)

Failure to Explain - Adverse Inference - "both the accused - appellants have failed to give any explanation about the afore-mentioned foundational facts" (Para 75)

Held: The death of the deceased-Chandra Pal was homicidal - the appellant-Seema had illicit relation with appellant-Dildar and that the weapon of assault has been recovered on the pointing out of the appellant-Dildar - the dead body of the deceased was recovered from the house of the appellant-Seema and burden lies on her to explain as to how body had been buried in her house - the aforementioned circumstances constitute more than a prima facie case to enable the prosecution to invoke S. 106 of the Evidence Act and shift the burden on the accused" - both the accused-appellants have failed to give any explanation - the prosecution has successfully proved its case beyond reasonable doubt against the appellants - both the criminal appeals are dismissed. (Paras – 47,54,63,74,75,76,77) (E-7)

Case Law Cited

Sharad Birdhichand Sarda Vs. State of Maharashtra, **AIR (1984) (SC) 1622***; State of U.P. Vs. Ashok Kumar Srivastava,* **(1992) Crl. L.J. 1104***; Hanumant Govind Nargundkar v. State of M.P.,* **AIR 1952 SC 343***; Padala Veera Reddy v. State of A.P.,* **1989 Supp (2) SCC 706***; C. Chenga Reddy & Ors. v. State of A.P.,* **(1996) 10 SCC 193***; Ramreddy Rajesh Khanna Reddy v. State of A.P.,* **(2006) 10 SCC 172***; Sattatiya v. State of Maharashtra,* **(2008) 3 SCC 210***; State of Goa v. Pandurang Mohite***, (2008) 16 SCC 714***; Laxman Pradad alias Laxman Vs. State of Madhya Pradesh,* **2023(3) SCC (Cri) 27***; R. Sreenivasa Vs. State of Karnataka* **(2024) 17 SCC 426***; Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh* **(1991) 3 SCC 627***;*

State of U.P. Vs. Ramesh Prasad Mishra, **(1996) 10 SCC 635***; Bhajju Vs. State of Madhya Pradesh* **(2012) 4 SCC 327;** *Selvamani Vs. State,* **2024 SCC OnLine SC 837***; Dadu alias Ankush Vs. State of Madhya Pradesh,* **2025 LiveLaw (SC) 1178***; Shambhu Nath Mehra Vs. State of Ajmer,* **AIR 1956 SC 404;** *State of West Bengal Vs. Mir Mohammad Omar,* **(2000) 8 SCC 382***; State of Rajasthan Vs. Kashi Ram***, JT 2006 (12) SCC**

254*; Trimukh Maroti Kirkan Vs. State of Maharashtra,* **(2007) 10 SCC 445***; Jagdish Vs. State of Madhya Pradesh,* **(2009) 9 SCC 495***; State of Rajasthan Vs. Thakur Singh,* **(2014) 12 SCC 211***; Nagendra Sah Vs. State of Bihar,* **(2021) 10 SCC 725***; State of Madhya Pradesh Vs. Balveer Singh,* **2025 SCC OnLine SC 390***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872

List of Keywords

circumstantial evidence; homicidal; illicit relation; weapon of assault; hostile witness; burden of proof; S. 106 of the Evidence Act; chain of circumstances; beyond reasonable doubt

Case Arising From

APPELLATE JURISDICTION: Arising out of "the judgement and order dated 24.10.2017 passed by the learned Additional Sessions Judge, Court No. 1, Agra in ST No. 730 of 2007, arising out of Case Crime No. 159 of 2007"

Appearances for Parties

Advs. for the Appellant:
Shri Mohd. Kalim; Shri Ashish Pandey
Advs. for the Respondents:
Shri S.K. Ojha, learned Additional Government Advocate-Ist

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. After being convicted and sentenced in ST No. 730 of 2007 arising out of Case Crime No. 159 of 2007, under Sections 302/34, 201 and 120B IPC, police station Etmaddaula, district Agra by the learned Additional Sessions Judge, Court No. 1, Agra vide judgement and order dated 24.10.2017, appellant-Seema filed Criminal Appeal No. 6760 of 2017, whereas appellant-Dildar filed Criminal Appeal No. 7030 of 2017.

2. By the impugned judgement and order dated 24.10.2017, the learned Judge convicted and sentenced the appellant Dildar to life imprisonment and a fine of Rs. 20,000/- (rupees twenty thousand only) under Section 302 IPC and in case of default in payment of fine, the appellant was further directed to undergo additional imprisonment of six months. He was further convicted and sentenced to seven years rigorous imprisonment and a fine of Rs. 10,000/- (rupees ten thousand only) under Section 201 IPC and in default, four months additional imprisonment.

3. Appellant Seema was convicted and sentenced to life imprisonment and a fine of Rs. 20,000/- (rupees twenty thousand only) under Section 120-B read with Section 302 IPC and in default six months additional imprisonment. All the sentences of the appellants were directed to run concurrently.

4. Since, both the afore-captioned criminal appeals have been filed against the judgement and order dated 24.10.2017 passed by the learned Additional Sessions Judge, Court No. 1, Agra in ST No. 730 of 2017, arising out of Case Crime No. 159 of 2007, under Sections 302/34, 201, 120-B IPC, PS Etmaddaula, district Agra, both the appeals have been heard together and are being disposed of by means of this common judgement.

Facts of the case

5. The facts giving rise to the present criminal appeals, in nutshell, are that a written report was given by Netrapal Singh, son of Shri Saudan Singh, resident of village Maan, police station Iglas, district Aligarh on 16.03.2007 that the marriage of his brother Chandra Pal (hereinafter referred to as the deceased) was solemnized in the year 1996-1997 with one Seema, who was the resident of district Allahabad and that they were not agree with the said marriage. Seema had a daughter named Roshni, who was born from the wedlock of Seema and her earlier husband. Three children were born from the wedlock of Seema and his brother-Chandra Pal. After the marriage, her brother (deceased) was distressed with the demeanour of his wife, who always used to quarrel with his brother and go to her maternal house. Due to the demeanour of Seema, some persons of the locality used to come to the house to meet Seema. Out of the aforesaid persons, one Dildar (hereinafter referred to as the accused-Dildar) always comes to the house of his brother. In the morning of 16.03.2007, Seema informed that after committing the murder, the dead body of Chandra Pal has been buried in the heap of sand. On the aforesaid information, when the first informant along with family members reached to his brother's house at Sadahra, the police personnel dug out the body from the heap of sand. The first information report further alleges that his brother has been killed by Seema with the help of Dildar and his 2-3 accomplices and hid the body in the heap of sand.

6. On the basis of the aforesaid information, PW-2, Constable Maherwan Singh registered the first information report at Case Crime No. 169 of 2007, under Section 302, 201 IPC against Seema, which was entered in GD No. 27 at 10:30 AM on 16.03.2007.

7. After the registration of first information report, the law set into motion and investigation of the case was taken up by SI Rajiv Yadav. He copied the FIR and recorded the statement of Chik writer, Constable Maherwan Singh and first informant Netrapal Singh and inspected the spot on the pointing out of the informant and prepared site plan, Ext. Ka-11. Thereafter, he recorded the statements of Rajpat Singh, Shri Chandra Jaat. He recorded the statement of named accused Smt. Seema and took her into custody. On the pointing out of the accused-Dildar, the investigating officer recovered weapon of assault, i.e. handle of hand pump and spade in the presence of witnesses Raghvendra Singh and Virendra Singh. SI D.P. Singh made the memo of weapon of assault in his writing, which was signed by the investigating officer, Ext. Ka-10. On 19.03.2007, he recorded the statements of witnesses of inquest namely Shri Chandra, Virendra Singh, son of Heera Singh, Virendra Singh, son of Lochan Singh, Roshan Singh, Vijay Pal Singh and Radhey Shyam as well as the scribe of FIR Shri Devendra Kumar. After culmination of investigation, the investigating officer submitted charge sheet against the appellants under Sections 302/201/120-B IPC, which he proved as Ext. Ka-12.

8. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 730 of 2007. Learned Additional Sessions Judge, Court No. 1, Agra vide order dated 09.08.2007 framed the charges against the appellant Dildar under Sections 302/201 IPC. Learned Judge also framed the charges against the appellant Seema under Section 302/34 and 120-B IPC.

9. The charges were read over and explained to both the accused-appellants, who denied the charges and claimed to be tried.

10. To bring home guilt of the appellant beyond all reasonable doubt, the prosecution has examined as many as eight witnesses.

11. PW-1, Dr. Shri Ram, in his examination-in-chief deposed that on 17.03.2007, he was posted as Medical Officer, at Police Hospital, Agra. On that date, he conducted post-mortem on the body of the deceased and found the following ante mortem injuries:

1. A wound of 2 cm x 1 cm x bone deep 4 cm away from the left side of the face.

2. A wound of 2 cm x 1.5 cm x bone deep on the left side of face, 1 cm below the left eye.

3. A wound of 2 cm x 1.5 cm x bone deep on the left side face, 1.5 cm anterior to left ear.

4. A wound of 3 cm x 2 cm on the lower face on the chin.

5. Abrasion 3 cm x 1.5 cm on forehead 2 cm above bridge of nose.

12. Bones of left mandible and maxilla were fractured. Frontal bone was also fractured.

13. In the opinion of the doctor, the cause of death was shock and haemorrhage as a result of ante mortem injures, which may have been caused 3-4 days before.

14. PW-2, Maherwan Singh, in his examination-in-chief deposed that on 16.03.2007, he was posted as Constable in police station Edmaddaula. On that date, on the basis of written report, he prepared Chik FIR, which he proved as Ext. Ka-1.

15. PW-3, Netrapal Singh, son of Saudan Singh, is the first informant of the case. In his examination-in-chief, he deposed that deceased-Chandra Pal was his younger brother. He lived in Shahadra, Nai Basti, Agra along with his wife and children. He was married to Seema Nishad, who was resident of Allahabad, prior to 12-13 years before the murder of the deceased. She has a daughter named Roshni. Seema deserted her first husband and came to the deceased along with her daughter Roshni. Three children were also born from the wedlock of Seema and the deceased. Four years prior to the murder, he along with the deceased used to reside in the same flat in separate portion. Seema was a lady of bad character and when he objected about the demeanour of Seema, she used to quarrel with him due to which after disposing of his house, he shifted to village. He further deposed that his marriage was solemnized in Assam. Accused-Dildar is his brother-in-law. Initially accused-Dildar used to reside with him, but after his departure, he used to come to the place of Seema as a result thereof he developed illicit relation with Seema.

16. PW-3, Netra Pal further deposed that on 16.03.2007, he received information about the death of Chandra Pal. Seema informed one Gambhir of the village about the death of the deceased,

who in turn informed him. On the aforesaid information, he along with his family members, Rajendra, Prabhu Singh, Balveer and Munna came to the house of the deceased at about 08:30-08:45 AM. On entering the house, he saw that the dead body of the deceased near the heap of sand. Thereafter, he went to the police station Etmaddaula and got a written report scribed by one Devendra Kumar, son of Amar Singh, lodged after putting his thump impression, which he proved as Ext. Ka-9.

17. PW-4, Rajpat Singh, son of Shri Ram Prasad, in his examination-in-chief deposed that he is the resident of Nagla and ex-Pradhan of Nagla Vihari. He knew deceased-Chandra Pal. He lived ahead of his house in Nai Basti, Shahdara. Deceased's wife is Seema. Deceased-Chandra Pal used to live in his house along with his wife and children. Accused-Dildar was the regular visitor of deceased's house. Accused-Dildar is brother-in-law (Sala) of the first informant Netra Pal. Chandra Pal was murdered a year ago. He saw the dead body of the deceased lying on the door. He had neither talked to anyone nor anyone informed him that the dead body of the deceased was lying on the floor.

18. At this juncture, on the request of ADGC, this witness was declared hostile and he was permitted to cross examine him.

19. PW-5, Constable Devendra Kumar, in his cross-examination has deposed that he knows deceased-Chandra Pal, who lives in Shahdara Colony. Accused-Seema also lives with the deceased. The first informant Netra Pal is the brother of the deceased. Accused-Seema had illicit relation with accused-Dildar. Accused-Seema used to extend threat to the deceased that if he does not desert her, she will get him killed. Seema and Dildar along with their accomplices eliminated the deceased and hid the dead body in the heap of sand. On 16.03.2007, he was told by Netra Pal that Seema has killed Netra Pal and hid the body in the heap of sand. The dead body of deceased-Chandra Pal was dug out by the police in his presence. The report of the occurrence was written by him on the dictation of Netra Pal on which he put his thump impression, which he proved as Ext. Ka-9.

20. PW-6, Virendra Singh, son of Heera Singh, in his examination-in-chief has deposed that the deceased was the resident of Shahdara, Agra. On 16.03.2007, he came to Agra on the information received by him in respect of the death of the deceased where Shri Chandra, who is the brother of the deceased was also present. At that time, police personnel also reached along with Dildar. On the pointing out of accused-Dildar, handle of hand pump and spade were recovered and memos were prepared on which he put his signature. Shri Chandra also put his thumb impression, which was marked at Ext. Ka-10.

21. However, on cross-examination, this witness has been declared hostile.

22. PW-7, Rajiv Yadav, was is investigating officer of the case. His evidence has already been discussed above.

23. PW-8. SI Dinesh Pal Singh, in his examination-in-chief has deposed that on 16.03.2007, he was posted at police station. He prepared inquest report of the deceased Chandra Pal. He

appointed Panch (inquest witnesses) and recorded their opinion in the inquest report and obtained their signature. He also prepared required papers.

24. After the closure of the prosecution evidence, the statements of the accused-appellants were recorded under Section 313 Cr.P.C, in which they denied the charges levelled against them and plead false implication and they claimed trial.

25. Kumari Roshni, daughter of the deceased-Chandra Pal and the accused-appellant Seema, was produced as defence witness to prove that the deceased and the accused-Seema had good relation.

26. DW-1, Kumari Roshni in her deposition has stated that her parents used to live together and there was no dispute between them. After the death of her father, her mother has been arrested and sent to jail. At that time, she was kept by her maternal grand-parents, who live in Allahabad. At the time of death of her father, she was with her mother. Her mother was in Allahabad. She had gone to Allahabad along with her mother eleven days prior to the incident in question. At that time, there was holidays on account of Holi. She was living with her maternal grand-parents when her mother was in Jail. She further deposed that the information about the death of her father was received from her Tau (father's elder brother).

27. Learned Additional Sessions Judge, Court No. 1, Agra after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

28. Hence, these appeals.

29. Heard Shri Mohd. Kalim, learned counsel for the appellant in Criminal Appeal No. 6760 of 2017, Shri Ashish Pandey, learned counsel for the appellant in Criminal Appeal No. 7030 of 2017 and Shri S.K. Ojha, learned Additional Government Advocate-Ist representing the State and gone through the record of the case.

Submissions on behalf of the appellants

30. Learned counsel for the appellants submits that it is a case of circumstantial evidence and there is neither any eyewitness of the occurrence nor any witness of last seen and the appellants have been dragged in the present case only on the presumption that both the accused-appellants have illicit relations without there being any evidence to that effect.

31. Learned counsel for the appellants further submitted that so called recovery of handle of hand pump and spade have been effected on the pointing out of the accused-Dildar in the presence of PW-6, Virendra Singh and Shri Chandra. PW-6, Virendra Singh did not support the prosecution case and declared hostile, whereas Shri Chandra has not been produced by the prosecution, which makes the recovery doubtful.

Submissions on behalf of the State

32. On the other hand Shri S.K. Ojha, learned Additional Government Advocate supported the findings of the learned trial court by stating that the prosecution has discharged its burden by establishing the guilt of the appellant beyond reasonable doubt. He further submitted that the judgement is well reasoned and calls for no interference by this Court.

Analysis and conclusions

33. So far as the contention of learned counsel for the appellants that it is a case of circumstantial evidence and there is no witness of last seen, is concerned, it may be noted that in a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on circumstantial evidence, the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

34. In Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR (1984) (SC) 1622, the Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under;

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of conclusive nature and tendency

(iv) They should exclude every possible hypothesis except the one to be proved and,

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

35. In State of U.P. Vs. Ashok Kumar Srivastava, (1992) Crl. L.J. 1104, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

36. In the case of Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343, Hon'ble Apex Court observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ...."

37. In the case of Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706, Hon'ble Apex Court opined as under:

"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra, (1982) 2 SCC 351)"

38. In the case of C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

39. In the case of Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172, Hon'ble Apex Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67 and Reddy Sampath Kumar v. State of A.P., (2005) 7 SCC 603)."

40. In the case of Sattatiya v. State of Maharashtra, (2008) 3 SCC 210, Hon'ble Apex Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--Bharat v. State of M.P., (2003) 3 SCC 106. "

41. In the case of State of Goa v. Pandurang Mohite, (2008) 16 SCC 714, Hon'ble Apex Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

42. The decision in Sharad Birdichand Sarda (Supra) has recently been followed by Hon’ble Supreme Court in catena of judgement including Laxman Pradad alias Laxman Vs. State of Madhya Pradesh, 2023(3) SCC (Cri) 27 and R. Sreenivasa Vs. State of Karnataka (2024) 17 SCC 426.

43. In the light of the above pronouncements of Hon'ble Apex Court, we shall now consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime. The following circumstances have to be proved.

1. Whether the death of the deceased-Chandra Pal was homicidal.

2. Whether weapons of assault, i.e. handle of hand pump and spade and dead body of the deceased-Chandra Pal have been recovered on the pointing out of the appellant-Dildar.

3. Whether deceased was done to death by the appellant-Dildar with criminal conspiracy of appellant-Seema.

44. PW-1, Dr. Shri Ram, who conducted the postmortem examination on the body of the deceased noted the following ante-mortem injuries:

1. A wound of 2 cm x 1 cm x bone deep 4 cm away from the left side of the face.

2. A wound of 2 cm x 1.5 cm x bone deep on the left side of face, 1 cm below the left eye.

3. A wound of 2 cm x 1.5 cm x bone deep on the left side face, 1.5 cm anterior to left ear.

4. A wound of 3 cm x 2 cm on the lower face on the chin.

5. Abrasion 3 cm x 1.5 cm on forehead 2 cm above bridge of nose.

45. Bones of left mandible and maxilla were fractured. Frontal bone was also fractured.

46. In the opinion of the doctor, the cause of death was shock and haemorrhage as a result of ante mortem injures, which may have been caused 3-4 days before. Doctor further opined that ante-mortem injuries received by the deceased was sufficient to cause death. He also stated that the injuries can be caused by the rod of hand pump. In the opinion of the doctor, the death was caused at about 11:00 PM on 13.03.2007. Doctor further opined that if the dead body is buried under the sand, the symptom which is found in this case during postmortem examination is present. The dead body was covered in soil.

47. From the evidence of the doctor coupled with the evidence of prosecution witnesses, it is clear that the death of the deceased-Chandra Pal was homicidal.

48. The genesis of the case is the alleged information given by the accused-appellant Seema to one Gambhir for being conveyed to the first informant Netra Pal, about the death of the deceased-Chandra Pal. The first informant in his deposition has stated that on the basis of information given by the appellant-Seema when he rushed to the house of the deceased-Chandra Pal along with Rajendra, Prabhu Singh, Balveer and Munna, at about 08:30-08:45 AM and when he entered the house, he saw that the dead body of Chandra Pal was lying beside the heap of sand. Thereafter, he lodged the report scribed by PW-5, Devendra Kumar. Thereafter, he came back to the house of the deceased Chandra Pal along with police personnel, where dead body was dug out of the sand and after conducting inquest on the body of the deceased, it was sent for postmortem examination.

49. The weapons of assault, i.e. handle of hand pump and one spade, were recovered on the pointing out of the appellant-Dildar from the house of the deceased, which was hidden behind the double bed. As the aforesaid articles do not have bloodstained, they were not sealed. Memo Ext. Ka- 10 was prepared, which was signed by Virendra Singh, Heera Singh and the accused-appellant Dildar. While recording the statement of the accused-appellant Dildar under Section 313 Cr.P.C., when this question was put to the accused-Dildar that weapon of assault was recovered on his pointing out, he has not given any specific reply and only stated that false charge sheet has been filed against him.

50. Accused-appellant Dildar is real brother-in-law (Sala) of PW-3, Netra Pal, who is the elder brother of the deceased Chandra Pal. In his deposition PW-3, Netra Pal, the first informant has stated that the character of appellant-Seema was not good and when he complaints about her demeanour, she used to quarrel. Due to her bad conduct, PW-3 Netra Pal sold out his house and settled in the village. His marriage was solemnized in Assam. Accused-Dildar is his real brother-in-law. Initially, he used to live with him, but after his departure, he used the come to Seema and developed illicit relations with Seema. On 16.03.2007, Seema informed Gambhir, who is his cousin about the murder of deceased-Chandra Pal.

51. PW-4, Rajpat Singh, who was later on declared hostile, in his examinaion-in-chief has stated that accused-appellant Dildar was the regular visitor to the house of deceased-Chandra Pal.

52. PW-5, CP Devendra Kumar in his deposition has stated that accused-Dildar used to come to the house of accused-Seema. He was having illicit relation with accused-Seema. Accused-Seema used to extend threat to the deceased that if he does not desert her, she will get him killed. Seema and Dildar along with their accomplices eliminated the deceased and hid the dead body in the heap of sand.

53. PW-6, Virendra Singh in his examination-in-chief has deposed that on 16.03.2007, he came to Agra on the information received by him in respect of the death of the deceased where Shri Chandra, who is the brother of the deceased was also present. At that time, police personnel also reached along with Dildar. On the pointing out of accused-Dildar, handle of hand pump and spade were recovered and memo whereof was prepared on which he put his signature. Shri Chandra also put his thumb impression, which was marked at Ext. Ka-10.

54. Cumulative effect of the statements of the aforesaid witnesses is that the appellant-Seema had illicit relation with appellant-Dildar and that the weapon of assault has been recovered on the pointing out of the appellant-Dildar. Appellant Dildar has also confessed to have killed the deceased.

55. So far as the evidence of hostile witness is concerned, a three Judge Bench of Hon'ble Supreme Court in Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh (1991)3 SCC 627, relying upon catena of judgement of Hon'ble Supreme Court, held that evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as

effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

56. In State of U.P. Ramesh Prasad Mishra, (1996) 10 SCC 635, Hon'ble Supreme Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

57. Hon'ble Supreme Court in Bhajju Vs. State of Madhya Pradesh (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence.

58. In Selvamani Vs. State represented by Inspector of Police, 2024 SCC OnLinw SC 837, after considering a catena of its earlier judgements on the point, Hon'ble Supreme Court held as under:

Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

59. The judgement in Ramesh Prasad Mishra (Supra) was reiterated by the Hon'ble Supreme Court in Dadu alias Ankush and another Vs. State of Madhya Pradesh and another, 2025 LiveLaw (SC) 1178.

60. In view of the above, the contention of learned counsel for the appellants that evidence of some of the prosecution witnesses, who turned hostile, cannot be taken into account has no leg to stand.

61. Now the question for consideration before this Court is as to how the accused-appellant Seema, who claims that she was not present in Agra and was in Allahabad, had the knowledge about the death of the deceased.

62. The First Information Report has been lodged on 16.03.2007 at 10:30 AM and autopsy on the cadaver was done on 17.03.2007. Dr. Shri Ram, who conducted the postmortem examination on the body of the deceased opined that the death was caused at about 11:00 PM on 13.03.2007. From the above observations, of the doctor, it cannot be denied that the appellant-Seema was present in Agra and after the incident she left for Allahabad and on 16.03.2007, she informed Gambhir about the death of the deceased.

63. Moreover, the dead body of the deceased was recovered from the house of the appellant-Seema and burden lies on her to explain as to how body had been buried in her house.

64. Scope of Section 106 of the Indian Evidence Act was examined inconsiderable details by Hon'ble Supreme Court in Shambhu Nath Mehra Vs. State of Ajmer, AIR 1956 SC 404, wherein Hon'ble Supreme Court spelt out the legal principle in paragraph 11, which is as under:

11."This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge."

65. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of State of West Bengal Vs. Mir Mohammad Omar, (2000) 8 SCC 382 in the following words:

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a recognized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered

him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

(Emphasis supplied)

66. The applicability of Section 106 of the Indian Evidence Act, 1872 has been lucidly explained by the Supreme Court in the case of State of Rajasthan Vs. Kashi Ram, JT 2006 (12) SCC 254, which reads as under:-

The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden.

67. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer an explanation.

68. The Supreme Court in Trimukh Maroti Kirkan Vs. State of Maharashtra, (2007) 10 SCC 445 reiterated as here under :-

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. xxxxxx

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

69. In Jagdish Vs. State of Madhya Pradesh, (2009)9 SCC 495, Hon'ble Supreme Court observed as under:

"It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

70. The Supreme Court in the case of State of Rajasthan Vs Thakur Singh, (2014) 12 SCC 211, while allowing the appeal preferred before it by the State of Rajasthan against the judgment and order of the Rajasthan High Court, by which the High Court had set aside the conviction of accused Thakur Singh recorded by the trial court under Section 302 I.P.C. on the ground that there was no evidence to link the respondent with the death of the deceased which had taken place inside the room in the respondent's house, in which he had taken the deceased (his wife) and their daughter and bolted it from within and kept the room locked throughout and later in the evening when the door of the room was broken open the deceased was found lying dead in the room occupied by her and the respondent-accused. The High Court did not consider the provisions of Section 106 of the Evidence Act at all. The law is quite well settled, that burden of proving guilt of the accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused, and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts. In the instant case, since the deceased died an unnatural death in the room occupied by her and the respondent, cause of unnatural death was known to the respondent. There is no evidence that anybody else had entered their room or could have entered their room. The respondent did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred, nor did he set up any case that some other person entered room and cause to the unnatural death of his wife. The facts relevant to the cause of the death of the deceased being known only to the respondent, yet he chose not to disclose them or to explain them. The principle laid down in Section 106, Evidence Act, is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that the deceased was murdered by the respondent. It is not that the respondent was obliged to prove his innocence or prove that he had not committed any offence. All that was required of the respondent was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

71. The Hon'ble Supreme Court further held as under

In our opinion,he High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the trial court in a situation where the respondent failed to give any explanation whatsoever for the death of his wife by asphyxia in his room. In facts of the case, approach taken by the trial court was the correct approach under the law and the High Court was completely in error in relying primarily on the fact that since most of the material prosecution witnesses (all of whom were relatives of the respondent) had turned hostile, the prosecution was unable to prove its case. The position in law, particularly Section 106, Evidence Act, was completely overlooked by the High Court, making it a rife at a perverse conclusion in law.

72. In Nagendra Sah Vs. State of Bihar reported in (2021) 10 SCC 725, wherein Supreme Court observed as under:

22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.

73. In a recent judgement in State of Madhya Pradesh Vs. Balveer Singh, 2025 SCC OnLine SC 390, Hon'ble Supreme Court after considering a catena of judgements on the point, held thus:

86. Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family like in the case on board, even if he is a witness of the crime, would come forward to depose against another family member.

87. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book. In the case of Trimukh Maroti Kirkan (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

74. In view of the legal position enunciated herein above, we are of the view that the aforementioned circumstances constitute more than a prima facie case to enable the prosecution to invoke Section 106 of the Evidence Act and shift the burden on the accused to explain the following circumstances:

1. How the deceased-Chandra Pal died.

2. How and who buried the body of the deceased under the heap of sand.

3. How the appellant-Seema came to know about the presence of the dead body in her house.

4. How weapon of assault reached the house of Seema.

5. How the appellant-Dildar had the knowledge of weapon of assault in the house of appellant-Seema.

75. In the instant case both the accused-appellants have failed to give any explanation about the afore-mentioned foundational facts. When the aforesaid facts have been put to the accused-appellants while recording their statements, under Section 313 Cr.P.C., they have not not made any whisper in this regard.

76. In view of what has been indicated herein above, this Court is of the view that the prosecution has successfully proved its case beyond reasonable doubt against the appellants. The impugned judgement and order dated 24.10.2017 passed by the Additional Sessions Judge, Court No. 1, Agra in ST No. 730 of 2007, which has been assailed in these criminal appeals do not call for any interference.

77. Accordingly, both the criminal appeals are dismissed. Appellants are in jail. They shall remain in jail to serve out the sentence awarded to them by the Trial Court.
78. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 2 ILRA 332
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:ALLAHABAD 13.02.2026

BEFORE

THE HON'BLE ANIL KUMAR-X, J.

Criminal Appeal No. 10405 of 2024

Sonu & Ors. **...Appellants**
Versus
State of U.P. & Anr. **...Respondents**

Issue for consideration

The appellant challenged orders from the Special Judge SC/ST , Kannuj , after charges were framed without the court considering a subsequent Final Report that found the allegations against them false.

Headnotes

Criminal law-Indian Penal Code,1860-Sections 147, 452, 323, 504, 506-SC/ST (Prevention of Atrocities) Act,1989-Section 3(1)(d)-Investigation-Supplementary Report-Procedure to be

followed by Magistrate upon submission of a "Final Report" under section 173(8) subsequent to taking cognizance of an initial charge-sheet-A supplementary report submitted under section 173(8) Crpc must be treated as an integral part of the primary report-The magistrate is legally bound to exercise judicial mind and consider all police reports submitted during the investigations of a single case-Even if cognizance was previously taken on a primary charge-sheet, the Magistrate must evaluate the cumulative effect of all reports, reading them conjointly, to determine if sufficient grounds exist to proceed against the accused-The recording of a contrary opinion based on fresh facts in a supplementary report does not amount to a "review" or "recall" of the earlier cognizance order, as the judicial duty is continual and the case is not "disposed of" at the cognizance stage within the meaning of section 362 Crpc-Proceeding with a trial or framing charges without considering a subsequent Final Report constitutes a procedural illegality-Appeal allowed.(Para 12 to 26)

Held

The court ruled that the primary report, and all further supplementary must be read conjointly before reaching any conclusion. The impugned orders are set aside. The learned trial court directed to consider both the initial report. if it comes to the conclusion that a conjoint reading of both the reports prima facie makes out a case against the appellants, only then shall it proceed to frame charges against the appellants. (E-6)

Case law Cited

Vinay Tyagi Vs Irshad Ali @ Deepak & Ors 2013 (5) SCC 762, Ram Lal Narang Etc. Etc Vs State of Delhi (Admn.) 1979 AIR 1791 , 1979 SCC (2) 322, Dharmatma Singh Vs Harminder Singh & Ors, 2011 (74) ACC 266 (SC), Abhinandan Jha & Ors Vs Dinesh Mishra [AIR 1968 SC 117], Mariam Fasihuddin & Anr. Vs State by Adugodi Police Station & Anr.: 2024 LiveLaw (SC) 53-referred to.

List of Acts

Indian Penal Code,1860
SC/ST (Prevention of Atrocities) Act,1989

List of Keywords

Initial Police Report/Charge sheet, Supplementary reports, cognizance, Bar on the review or alteration, SC/ST Act,1989, Conjoint reading, Cumulative effect, Functus officio, Judicial mind, Procedural illegality , Fresh order.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No.- 10405 OF 2024

Sonu & 5 Ors Vs. State of U.P. & Anr.

From the judgment and order dated 13.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s) :-
D.K. Tripathi
Adv. for Respondent(s):- G.A.,
Manoj Kumar Srivastava

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

1. Heard learned counsel for the appellants and Sri Amrit Raj, learned AGA for the State.

2. None appeared on behalf of the respondent even in the revised call.

3. The present criminal appeal under Section 14-A(1) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred to allow this present appeal and set aside the

impugned order dated 21.08.2024, 27.06.2024 and 10.05.2024 and all other consequential orders also passed by Special Judge SC/ST Act, District-Kannauj in S.C. No.1374/2023 (State Vs. Sonu @ Bhagwan Bhakt and others) arising out of Case Crime No.627/2023 U/s 147, 452, 323, 504, 506 I.P.C. and 3 (1)(d) SC/St Act, Police Station-Kotwali Kannauj District-Kannauj.

4. Before embarking upon the above framed legal question, it will be expedient to refer proceedings of the case under challenge. An FIR in Case Crime No. 627 of 2023, under Section 147, 452, 323, 504, 506 IPC and 3(1)(d) SC/ST Act, P.S. Kotwali, District Kannauj was lodged against the appellants. Matter was investigated and I.O. submitted charge sheet against appellants on 15.9.2023. Learned court took cognizance over the said charge sheet on 21.12.2023. As the investigation was still under progress, supplementary report under Section 173(2) Cr.P.C. was submitted by I.O. on 31.3.2024 by concluding that allegations against the appellants were found false. It can be said that a final report was submitted by I.O. subsequent to the order of taking cognizance upon the charge sheet on 21.12.2023.

5. Learned counsel for the appellants submitted that court, after taking cognizance upon the charge sheet on 21.12.2023, framed charges against the appellants on 7.8.2025. It was submitted that proceedings under Section 228 Cr.P.C. were carried without considering the final report submitted on 31.3.2024. Learned counsel submitted that it was incumbent for the court to pass appropriate orders on final report dated 31.3.2024 before framing charges against the appellants on 7.8.2025.

6. Sri Amrit Raj, learned AGA has conceded to the facts disclosed by counsel for the appellants.

7. In light of the submissions made by learned counsel, a short question which arises for consideration in this appeal is:-

"What is the legal procedure and the nature of the judicial order to be passed by a Magistrate under the Code of Criminal Procedure when, following the cognizance of an initial charge sheet, a subsequent 'Final Report' (negative report) is submitted after further investigation conducted under Section 173(8)?"

8. Before expressing any opinion upon the above question, it will be appropriate to ponder upon the procedure provided by the Cr.P.C. regarding the powers which a Magistrate is bound to exercise after submission of report under Section 173 (2) Cr.P.C.

9. Upon the procedure to be adopted by Magistrate after submission of a police report (formerly under Section 173 of the Cr.P.C., now governed by Section 193 of the BNSS). Magistrate has several distinct options upon submission of police report and those options are summarized below:-

1. Accept the Report and Take Cognizance

If the report (charge sheet) indicates that an offence has been committed, the Magistrate may:

Take Cognizance: Act upon the facts disclosed in the report and issue a process (summons or warrant) to the accused.

Independent Review: The Magistrate is not legally bound by the police report. Even if the police submits Final Report because of "insufficient evidence", the Magistrate may still take cognizance if he finds that the records actually disclose a prima facie offence.

2. Reject the Report (Closure or Final Report)

A. If the police submits a "closure report" (Final Report) stating no offence was found, the Magistrate can:

Accept and Drop Proceedings: Agree with the police and discharge the accused.

Mandatory Notice: Before accepting a closure report, the Magistrate must notify the informant or victim, giving him an opportunity to be heard through a "protest petition".

B. Order Further Investigation

If the Magistrate finds the investigation was incomplete or flawed:

Direct Further Investigation: Order the police to gather more evidence under the powers now found in Section 175(3) (formerly 156(3) Cr.P.C. or Section 193(9) BNSS (formerly 173(8) Cr.P.C.

C. Convert Protest Petition into complaint

If the victim or informant files a protest petition challenging the police report (Closure Report), the Magistrate can:

Treat as a Complaint: Magistrate can treat the protest petition as a private complaint under Section 223 of the BNSS (formerly Section 200 Cr.P.C.) and then proceed further in accordance with the procedure laid down under Chapter 15 of Cr.P.C.

Dismiss the Petition: If no prima facie case is made out even after hearing the complainant, the Magistrate may dismiss the petition and accept the original police report.

10. An investigating officer may complete the entire investigation at once. If he does, he must submit a police report. However, I.O by virtue of Section 173(8) Cr.P.C have a broad power to continue the investigation even after submitting initial report (known as a charge sheet or final report). If he later discovers new evidence or facts directly related to and crucial for the case, he can conduct further investigation and file another police report. These police reports submitted after initial report are also police reports and form part of the same initial police report. Initial report may be described as "primary report" and the latter report may be classified as "supplementary report". Supreme Court in **Vinay Tyagi vs Irshad Ali @ Deepak & Ors ,2013 (5) SCC 762** held that supplementary report has to be treated by the Court in continuation of the primary report and

the same provisions of law, i.e., sub-section (2) to sub-section (6) of Section 173 shall apply when the Court deals with such report.

11. Supplementary reports under Section 173(8) Cr.P.C. may be of the following types:

Type (A): Further oral or documentary evidence that continues from the earlier police report and indicates commission of offences. It is commonly known as supplementary charge sheet.

Type (B): A conclusion opposite to the initial report, where further investigation discloses no offence was found to have been committed, commonly known as Final Report.

Type (C): An empty formality with no substantive content. It is also commonly called as supplementary charge sheet.

12. As discussed above, a "supplementary report" is essentially the same as a "primary report" and a Magistrate must treat it as part of the primary report. However, a dilemma arises particularly in those situations where a Magistrate has already taken cognizance based on an earlier "primary report" disclosing the commission of an offence, but the investigating officer thereafter submits a supplementary report in the form of a closure report (commonly termed a "Type B report"). A Magistrate is faced with a question;whether he is empowered to pass any order on the Final Report particularly if he had already taken cognizance of offence after submission of earlier police report (primary report). This dilemma occurs due to two reasons. First one is, once a court has passed an order, either way, it cannot review its own order. Second is,existence of a perception that once a Magistrate has passed an order of taking cognizance upon charge sheet, then he is not required to pass any order upon any further supplementary report (Final Report). But, both logics are against the canon of law.

13. The act of taking cognizance of an offense is not finalized by the submission of an initial report. The investigating officer's duty to pursue the investigation to its logical conclusion continues beyond the "primary report." Just as the Investigation Officer must continue their investigation until a final logical conclusion is reached, the Magistrate's obligation persists until the police submits their final conclusive report. Consequently, the Magistrate is duty-bound to exercise judicial mind and consider all police reports submitted during the investigation of a single case.

14. Now it will be relevant to discuss the dilemma of the Magistrate as mentioned earlier. Review generally refers to a court re-examining its own decision to correct an error. At this stage, it will be relevant to mention Section 362 of Cr.P.C. which reads as follows:-

"Section 362:-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 final order disposing of a case, shall after or review the same except to correct a clerical or arithmetical error."

15. It is apparent from the reading of the said section that it only restricts re-examining the merits, facts, or legal findings of a case. The power of review in criminal matters has been restricted due to the principle of Functus Officio-once a court signs its judgment or final order, its

authority over that specific matter end. Therefore, it is evident that the provision of Section 362 Cr.P.C. applies to only those cases where the Court has "disposed of a case ".

16. But where a Magistrate has to pass various orders alike in the case of investigation coupled with the fact that he has to apply his judicial mind on each and every report submitted by police under Section 173 Cr.P.C., his judicial duty is continual. Different facts may arise at different stages and naturally he will have to pass orders independently applying his judicial mind.Section 362 Cr.P.C. prohibits review but does not restrain Magistrate from passing fresh orders on emergent facts under Section 173(8). Therefore, if he, after applying his judicial mind, has to pass a contradictory order during the continuance of investigation proceedings, his latter order passed in contradiction of his earlier order of taking cognizance is not a "review" of the earlier order but it would amount only to a fresh order upon fresh facts. Passing order of cognizance at earlier stage when "primary report " has been submitted, does not "dispose of " the case as mentioned under Section 362 Cr.P.C. Similarly, Final Report submitted under Section 173 does not differ from any other report submitted under the said section. Reports may either disclose commission of offence or they may be submitted to the effect that no offence was found to be committed. Content of the report submitted under Section 173 will not change the nature of the report and Magistrate is bound to pass order upon it. Hence, both the fallacies are ill- founded.

17. Now coming to the question framed for this appeal, it will be relevant to discuss the law laid by Superior Court in order to address this issue. A similar question was raised before the Supreme Court in Vinay Tyagi (Supra). However, its context was a bit different. The question which was dealt with by the Supreme Court was, "Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), the Trial Court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect?" The answer of Supreme Court was;

"31. .... Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

32. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the Court shall discharge an accused in compliance with the provisions of Section 227 of the Code."

18. Supreme Court then proceeded to answer the issue before it and it held that;

"48. Once a Report under Section 173(2) of the Code has been filed, it can only be cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the Police nor a specialised investigating agency has any right to cancel the said Report. Furthermore, in the present case, the High Court had passed no order or

direction staying further investigation by the Delhi Police or proceedings before the court of competent jurisdiction.

49. On the contrary, the court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a supplementary report.

50. Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law. It is also interesting to note that the CBI itself understood the order of the court and conducted only 'further investigation' as is evident from the status report filed by the CBI before the High Court on 28th November, 2007.

51. In our considered view, the trial court has to consider the entire record, including both the Delhi Police Report filed under Section 173(2) of the Code as well as the Closure Report filed by the CBI and the documents filed along with these reports.

52. It appears, the trial court may have three options, firstly, it may accept the application of accused for discharge. Secondly, it may direct that the trial may proceed further in accordance with law and thirdly, if it is dissatisfied on any important aspect of investigation already conducted and in its considered opinion, it is just, proper and necessary in the interest of justice to direct 'further investigation', it may do so."

19. Hence, it is evident from the above judgment that a supplementary report under Section 173 Cr.P.C. must be treated as an integral part of the primary (initial) report. Before reaching any conclusion, the court must evaluate the cumulative effect of all reports submitted under this section, reading them conjointly (together as a whole) and will apply its mind to the reports to determine if there are sufficient grounds to presume that the accused has committed the offence. The proposition laid down by Supreme Court will apply equally at the time when Magistrate is confronted with more than one police reports and has to pass an order.

20. Situation may arise, as it has arisen in this case, where the Investigating Officer submitted a Final Report under Section 173 Cr.P.C. after filing the charge sheet, disclosing an offence of which the Court had already taken cognizance under Section 190 Cr.P.C. Such situations have also been discussed by Supreme Court. The issue came before Supreme Court in **Ram Lal Narang Etc. Etc vs State Of Delhi (Admn.),1979 AIR 1791, 1979 SCC (2) 322** and it held:-

"Anyone acquainted with the day today working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot

keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation."

21. This issue was again revisited by the Supreme Court in **Dharmatma Singh vs Harminder Singh & Ors ,2011(74) ACC 266 (SC)**, where it held :-

"10. It follows that where the police report forwarded to the Magistrate under Section 173 (2) of the Cr.P.C. states that a person has committed an offence, but after investigation the further report under Section 173 (8) of the Cr.P.C. states that the person has not committed the offence, it is for the Magistrate to form an opinion whether the facts, set out in the two reports, make out an offence committed by the person. This interpretation has given by this Court in ***Abhinandan Jha & Ors. v. Dinesh Mishra [AIR 1968 SC 117]*** *to the provisions of Section 173 and Section 190 of the Criminal Procedure Code, 1898, which were the same as in the Criminal Procedure Code, 1973. In* ***Abhinandan Jha (supra)****, para 15 at page 122 of the AIR this Court observed:*

"... The police, after such investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report."

22. Hence, it becomes abundantly clear that if a Final Report is submitted by the police after the submission of the charge sheet upon which the Magistrate has already passed an order taking cognizance, he will have to pass another order on the Final Report after applying his judicial mind to the contents available in both reports. He will have to assess both the reports conjointly for arriving at a conclusion. Again, he has the same options as are available at the time when the "primary report" under Section 173(2) Cr.P.C. is placed before him namely, to issue process by taking cognizance, accept the Final Report and drop proceedings, or to direct further investigation.This ensures the Magistrate's continuing duty to independently evaluate supplementary police reports post-cognizance, maintaining procedural fairness.

23. Hence, the Magistrate/ Courts are bound to pass orders on every subsequent reports under Section 173(8) unless supplementary charge sheet lacks fresh materials. This proposition was held

by Supreme Court in **Mariam Fasihuddin & Anr. versus State by Adugodi Police Station & Anr.: 2024 LiveLaw (SC) 53**, where it was held that :-

"27. The provision for submitting a supplementary report infers that fresh oral or documentary evidence should be obtained rather than re evaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the chargesheet under Section 173(2) CrPC. In the absence of any new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigative rigour and fails to satisfy the requisites of Section 173(8) CrPC. What becomes apparent from the facts on record of this case is that the investigating agency acted mechanically, in purported compliance with the Trial Magistrate's order dated 24.06.2015."

24. Therefore, it becomes abundantly clear that if a Magistrate has taken cognizance of an offence and, thereafter, the Investigating Officer submits a Final Report (closure report) stating that no case is made out, the Magistrate cannot ignore that report. He is legally bound to consider the Final Report and pass an appropriate order on it. He may accept it, reject it, or take cognizance despite it but he must apply his judicial mind to the report. If the Magistrate proceeds further in the case without considering the Final Report at all, such inaction amounts to a procedural illegality.

25. Therefore, it becomes evident from the above discussion that –

(i) Every supplementary report under Section 173(2) Cr.P.C. is not different from the initial report (primary report) filed by the I.O.

(ii) Though the Magistrate is empowered to take cognizance upon a police report only once, if supplementary police reports are filed, he must treat such supplementary reports as an integral part of the primary (initial) report under Section 173(2) Cr.P.C.

(iii) The primary report (initial report) and all further supplementary must be read conjointly before reaching any conclusion.

(iv) On every supplementary report, a Magistrate/Court is bound to apply his mind independently, without being influenced by his earlier order of taking cognizance upon primary report (initial report/charge sheet).

(v) If a Magistrate, after applying his judicial mind to the supplementary report, arrives at a conclusion contrary to his earlier decision of taking cognizance on the charge sheet (primary report), the recording of such a contrary opinion will not amount to a review or recall of his earlier order.

26. Accordingly, the appeal is allowed. The impugned orders dated 21.08.2024, 27.06.2024 and 10.05.2024 vide which processes were issued against the appellants in pursuance of taking cognizance of the charge sheet dated 15.9.2025 and all other consequential orders including the order of framing charge dated 7.8.2025 are set aside. The learned trial court is directed first to

consider the final report and pass an order after considering both the initial report (charge sheet) and the final report. If thereafter it comes to the conclusion that a conjoint reading of both reports prima facie makes out a case against the appellants, only then shall it proceed to frame charges against the appellants.

27. Registrar (Compliance) is directed to communicate this judgment/order to all the District Courts.

(2026) 2 ILRA 341
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.02.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Habeas Corpus Writ Petition No. 139 of 2026

Jai Kumar Aggarwal ...Petitioner
Versus
Directorate General of Gst Intelligence & Ors. ...Respondents

Issue for Consideration

Whether the petitioner has been arrested illegally and detained in jail since 16.1.2026 and the order dated 17.01.2026 passed by the Chief Judicial Magistrate, Meerut, in Case No. 1361/2025, under Section 132(1)(c) of the CGST Act, 2017, and whether the "grounds of arrest" and "reasons to believe" are mandatorily required to be supplied to the arrestee

Head Notes

The Constitution of India, 1950-Article 21, 22(1) & 226; The Central Goods and Services Tax Act-Sections 67, 69 & 132 (1) (c) - It is for the Commissioner to ascertain and record the "reasons to believe" explicitly and with reference to the material and evidence underlying his opinion. It is not provided anywhere that the "reasons to believe" should be supplied to the accused- There is serious factual dispute about actual service of "grounds of arrest" on the petitioner before affecting his arrest since in the remand order, there is no recital that the copy of "grounds of arrest" was provided to the petitioner at the time of his arrest and before producing him before the Remand Magistrate and finding of the remand order to be not in accordance with law and also keeping in view of the judgement of Apex Court in the case of *Satendra Kumar Antil*- The remand order suffers from legal infirmity and cannot be sustained.

Held- Impugned order set aside- **Writ Petition allowed**. (E-15)

(Para 21 & 28)

Case Law Cited

Radhika Agrawal Vs. Union of India, (2025) 5 SCC 545; Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, dated 11.7.2022,; V. Senthil Balaji Vs. State represented by Deputy Director and others, (2024) 2 Supreme Court Cases 51.;

List of Acts

The Constitution of India, 1950; The Central Goods and Services Tax Act

List of Keywords

Habeas corpus; Section 132 (1) (c); CGST ; Offence alleged is punishable up to 5 years only; *Satendra Kumar Antil; Serious dispute;* Actual service of "grounds of arrest"

Case Arising From

Order dated 17.01.2026 passed by the Chief Judicial Magistrate, Meerut, in Case No. 1361/2025, under Section 132(1)(c) of the CGST Act, 2017, Department DGGI, Ghaziabad, and all consequential proceedings thereof

Appearances for Parties

Counsel for Petitioner(s) : Mohit Singh
Counsel for Respondent(s) : Dhananjay Awasthi, G.A.

(Delivered by Hon'ble Siddharth, J. &
Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Imran Ullah, learned Senior Counsel assisted by Sri Mohit Singh, Sri Nadeem Murtaza, Sri Vedant Gupta, Ms. Snigdha Singh and Sri Harsh Vardhan Kediya and Sri Vineet Vikram, learned counsel for the petitioner; Sri Dhnanjay Awasthi, Sri Gopi Krishan Soodh and Sri Harmanpreet Singh, Senior Standing Counsel DGGI, Delhi (online), learned counsel for respondent nos. 1 & 2 and Mrs. Manju Thakur, learned A.G.A.-Ist for State-respondent nos. 3 & 4 and perused the material on record.

2. The above noted habeas corpus writ petition has been filed by the petitioner praying for following reliefs:-

i. To issue a writ, order or direction, in the nature of Habeas Corpus directing the respondents herein to produce the corpus/petitioner while declaring the detention, arrest, and subsequent remand and custody of the petitioner as unconstitutional, illegal and arbitrary and consequently directing that the Petitioner be released forthwith;

ii. to issue a writ, order, or direction in the nature of certiorari setting aside the order dated 17.01.2026 passed by the Chief Judicial Magistrate, Meerut, in Case No. 1361/2025, under Section 132(1)(c) of the CGST Act, 2017, Department DGGI, Ghaziabad, and all consequential proceedings thereof;

iii. to issue any other and further writ, order, or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. To allow the instant petition with costs.

3. The brief facts of the case is that on 29.12.2025 at about 8:00 a.m., officers of respondent no.1 detained the petitioner and started search proceedings at his residential premises as per Section 67 of CGST Act. After the search proceedings under Section under Section 67 of the CGST Act, petitioner was arrested on 16.1.2026 as per Section 69 of the Act aforesaid.

4. Learned Senior Counsel for the petitioners submits that at about 6:40 p.m. on 16.1.2026 respondent no.1 handed over an arrest memo without any annexure and search memo to the petitioner and directed the petitioner and his wife to accompany them. Apart from the aforesaid documents, no other documents were supplied to the petitioner at the time of his arrest. Neither "ground of arrest" nor "reasons to believe" as mandatorily required under Section 69 CGST Act read with the judgment of Apex Court in the case of **Radhika Agrawal Vs. Union of India, (2025) 5 SCC 545** were furnished to the petitioner. It has been submitted that the arrest of the petitioner under Section 69 of CGST Act is unwarranted since the offence alleged is punishable up to 5 years only and therefore in view of the recent judgment of Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, dated 11.7.2022**, the arrest of petitioner could not have been made.

5. Learned Senior Counsel for the petitioner has pointed out to the circular dated 17.8.2022 issued by the department of Central Board of Indirect Taxes and Customs (GST- Investigation Wing), the relevant portion of which reads as under:-

" F.No. GST/INV/Instructions/2021-22 GST-Investigation Unit
17th August 2022
Instruction No. 02/2022-23 [GST - Investigation]

Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017-reg.

Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

Conditions precedent to arrest:

3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of subsection (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal

requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?

3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

3.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.

3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of

tampering with evidence or intimidating or influencing witnesses exists.

3.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the deterrnining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc."

6. He has submitted, relying upon the aforesaid circular, that there was no special reason assigned at the time of the arrest of the petitioner justifying his arrest. The arrest of petitioner was made casually in disregard of the procedural safe guards provided in the circular aforesaid.

7. Further reliance has been made on paragraph no. 34 of the judgement of Apex Court in the case of **Radhika Agrawal (Supra)**, which is quoted herein below:-

"34. The contention of the DoE that while "grounds of arrest" were mandatorily required to be supplied to the arrestee, "reasons to believe", being an internal and confidential document, need not be disclosed, was decisively rejected in ***Arvind Kejriwal Vs. Directorate of Enforcement, (2025) 2 SCC 248*** *. It was held that "reasons to believe" are to be furnished to the arrestee such*

that they can challenge the legality of their arrest. Exceptions are available in one-off cases where appropriate redactions of "reasons to believe" are permissible. The relevant portion reads:

"41. Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the "reasons to believe", based upon the material available with the authorized officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons to believe" should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest. 42. We would accept that in a one-off case, it may not be feasible to reveal all material, including names of witnesses and details of documents, when the investigation is in progress. This will not be the position in most cases. DoE may claim redaction and exclusion of specific particulars and details. However, the onus to justify redaction would be on the DoE. The officers of the DoE are the authors of the "reasons to believe" and can use appropriate wordings, with details of the material, as are necessary in a particular case. As there may only be a small number of cases where redaction is justified for good cause, this reason is not a good ground to deny the accused's access to a copy of the "reasons to believe" in most cases. Where the non-disclosure of the "reasons to believe" with redaction is justified and claimed, the court must be informed. The file, including the documents, must be produced before the court. Thereupon, the court should examine the request and if they find justification, a portion of the "reasons to believe" and the document may be withheld. This requires consideration and decision by the court. DoE is not the sole judge.

43. Section 173(6) of the Code, permits the police officer not to furnish statements or make disclosures to the accused when it is inexpedient in public interest. In such an event, the police officer is to indicate the specific part of the statement and append a note requesting the Magistrate to exclude that part from the copy given to the accused. He has to state the reasons for making such request. The same principle will apply."

8. Further reliance has been made on paragraph Nos. 51, 52, 54, 64 & 66 of the aforesaid judgement:

"51. We shall now draw our attention to the provisions of the GST Acts. We have collectively referred to the Central as well as the State GST as "the GST Act".

55. To a large extent, our reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts in view of Sections 4 and 5 of the Code. Sub-section (10) to Section 67 of the GST Acts postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to Section 165 of the Code, the word 'Magistrate' shall be substituted with the word 'Commissioner'. Section 69, which deals with the

power of arrest, a provision which we will refer to subsequently, also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It also deals with the power of the authorised officers to release an arrested person on bail in case of non-cognizable and bailable offence, having the same power and subject to the same provisions as applicable to an officer in charge of a police station. We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts.

54. Section 69 of the GST Acts states that where a Commissioner has reasons to believe that a person has committed any offence specified in clauses (a) to (d) of sub-section (1) to Section 132, which is punishable under clauses (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may authorise any officer of central or state tax to arrest such person. Sub-section (2) requires that when a person is arrested for an offence specified in sub-section (5) to Section 132, the officer authorised to arrest, must inform the person of the grounds of arrest and produce him before the Magistrate within 24 hours.

64. The circular also refers to the procedure of arrest and that the Principal Commissioner/Commissioner has to record on the file, after considering the nature of the offence, the role of the person involved, the evidence available and that he has reason to believe that the person has committed an offence as mentioned in Section 132 of the GST Act. The provisions of the Code, read with Section 69(3) of the GST Acts, relating to arrest and procedure thereof, must be adhered to. Compliance must also be made with the directions in ***D.K. Basu Vs. State of W.B., 1997 SCC (Cri) 92.***

64.1. The format of arrest, as prescribed by the Central Board of Indirect Taxes and Customs in Circular No. 128/47/2019-GST dated 23.12.2019, has also been referred to in this Instruction. Therefore, the arrest memo should indicate the relevant section(s) of the GST Act and other laws.

64.2, In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST- Investigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/Instructions/21-22). The circular dated 13.01.2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo.

64.3. Instruction 02/2022-23 GST (Investigation) dated 17.08.2022 further lays down that a person nominated or authorised by the arrested person should be informed immediately, and this fact must be recorded in the arrest memo. The date and time of the arrest should also be mentioned in the arrest memo. Lastly, a copy of the arrest memo should be given to the person arrested under proper acknowledgement.

64.4. The circular also makes other directions concerning medical examination, the duty to take reasonable care of the health and safety of the arrested person, and the procedure of arresting a woman, etc. It also lays down the post-arrest formalities which have to be complied with. It further states that efforts should be made to file a prosecution complaint under Section 132 of the GST Acts at the earliest and preferably within 60 days of arrest, where no bail is granted. Even otherwise, the complaint should be filed within a definite time frame. A report of arrests made must be maintained and submitted as provided in paragraph 6.1 of the Instruction.

9. It has been submitted by learned Senior Counsel for the petitioner that it is clear from remand order dated 17.1.2026 that the "medical report" and "memo of arrest" were served on the petitioner on 17.1.2026 after remand order dated 17.1.2026 was passed by the learned Magistrate, when his arrest was effected on 16.1.2026. Therefore, it is clear that the prior to his arrest, he was no supplied the "grounds of arrest" or "reasons to believe". In fact the "reasons to believe" have not been supplied to the petitioner as yet. It has been submitted that once it is found by this Court that the after remand order was passed, "grounds of arrest" were supplied to the petitioner, the order of remand become illegal and therefore the court has jurisdiction to entertain the habeas corpus writ petition preferred by the petitioner before this Court in view of the judgment of Apex Court in the case of **Mihir Rajesh Shah Vs. State of Maharastra and another, MANU/SC/1492/2025. Relevant paragraph no. 56 thereof is quoted herein below:-**

" 56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023); ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands; iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally.

The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

10. It has finally been submitted that from the material on record and judgements cited above at bar it is clear that petitioner has been arrested illegally and detained in jail since 16.1.2026. Hence this writ petitioner deserves to be allowed by granting reliefs sought in the writ petition.

11. Sri Dhnanjay Awasthi, learned counsel for respondent nos. 1 & 2, has vehemently opposed the submissions made by learned Senior Counsel for the petitioner. The first argument of learned counsel for respondent nos. 1 & 2 is that "reasons to believe" are not required to be supplied to the petitioner. There are only internal documents to be perused by the department and the court as Section 69 (1) of the CGST Act, only provides that where Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

12. He has submitted that "reasons to believe" are not required to be supplied to such person and only Commissioner should have "reasons to believe" that such person has committed the alleged offence. He has submitted that word "may" used in Section has effect of word "shall" and is mandatory in nature and not merely directory.

13. Second argument of learned counsel for respondent nos. 1 & 2 is that in paragraph no. 58 of the judgment in the case of **Radhika Agrawal (supra)** the Apex Court has held that Commissioner must record "reasons to believe" in his order while directing arrest of the person so implicated. There is no requirement of serving copy of the "reasons to believe" of the accused.

14. He has thirdly submitted that vires of Section 69 of CGST Act has already been upheld in the case of **Radhika Agrawal (supra)** and therefore argument made by learned counsel for the petitioner is legally misconceived and deserves to be turned down.

15. He has forthly submitted that since vires of Section 69 and 70 of CGST Act has been upheld by the Apex Court in the case of **Radhika Agrawal (supra)**, therefore, unless the aforesaid provisions of CGST Act are again challenged with reference to the service of "reasons to believe", it is not open for the petitioner to raise such an argument as has been raised before this Court.

16. Learned Counsel for respondent nos. 1 and 2 has finally submitted that judgment of Apex Court in the Case of **Satendra Kumar Antil Vs. C.B.I. & Another (supra)** does not applies to the case of CGST Act which is complete code in itself and judgment of the Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another (supra)** is contrary in part to the judgment of the Apex Court in the case of **Radhika Agrawal (Supra)**. He submits that the ratio of case **Satendra Kumar Antil Vs. C.B.I. & Another (supra)**, that where offence is/are punishable upto 7 years or below arrest cannot be effected, is not applicable to the present case under CGST Act.

17. Learned counsel for respondent nos. 1 & 2 has submitted that the service of grounds of arrest on the petitioner on 17.1.20256 at 5:00 p.m. will not affect the merits of the remand order since grounds of arrest was admittedly supplied to the petitioner.

18. After hearing the rival submissions, this Court finds that the first issue to be decided is regarding the maintainability of the writ petition. It has been vehemently argued by the learned counsel for respondent nos. 1 & 2 that the petition is not maintainable since petitioner has been arrested by following procedure of law as per Section 67/69 of CGST Act. We find that such a contention raised before this Court is not apparent from record. It is settled law that if the court finds that the order of remand passed by the Magistrate is not in accordance with law. The arrest of the accused in such a case becomes illegal and the this Court has jurisdiction to entertain the habeas corpus writ petition preferred under Article 226 of the Constitution of India. This view finds support from the paragraph no. 28 of the judgement of Apex Court in the case of **V. Senthil Balaji Vs. State represented by Deputy Director and others, (2024) 2 Supreme Court Cases 51.**

19. The argument of learned Senior Counsel for the petitioner that the "reasons to believe" were required to be furnished to the petitioner alongwith the "grounds of arrest" also needs consideration. From the paragraph no.34 of the judgment of Apex Court in the case of **Radhika Agrawal (supra)** it is clear that “grounds of arrest” and "reasons to believe" are mandatorily required to be supplied to the arrestee. We find that the aforesaid observation of Hon'ble Supreme Court was with regard to the provisions of P.M.L.A. Act and not GST Act.

20 Our view finds support from the paragraph nos. 58, 59, 60, 61, 64.2 of the judgment of Apex Court in the case of **Radhika Agrawal (supra)**, quoted herein below:-

"58. It is clear from the aforesaid provisions that, to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and that the pre-conditions of sub-section (5) to Section 132 of the Act are satisfied. Failure to do so would result in an illegal arrest. With regard to the submission made on behalf of the Revenue that arrests are not made in case of bailable offences, in our considered view, the Commissioner, while recording the reasons to believe should state his satisfaction and refer to the 'material' forming the basis of his finding regarding the commission of a non-bailable offence specified in clauses

(a) to (d) of sub-section (1) to Section 132. The computation of the tax involved in terms of the monetary limits under clause (i) of sub-section (1), which make the offence cognizable and non-bailable, should be supported by referring to relevant and sufficient material.

59. The aforesaid exercise should be undertaken in right earnest and objectively, and not on mere ipse dixit without foundational reasoning and material. The arrest must proceed on the belief supported by reasons relying on material that the conditions specified in sub-section (5) of Section 132 are satisfied, and not on suspicion alone. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing - to the satisfaction of the Commissioner - that the requirements of sub-section (5) to Section 132 of the GST Act are met.

60. Our attention was drawn to the judgment of the High Court of Delhi in Makemytrip (India) Private Limited and Another v. Union of India and Others, 2016 SCC OnLine Del 4951. which is a decision interpreting the power of arrest under the Finance Act, 1994. These provisions are related to service tax. Excise duty, service tax, and other taxes are subsumed under the GST regime. Accordingly, we are in agreement with the findings recorded in this decision to the extent that the power of arrest should be used with great circumspection and not casually. Further, as in the case of service tax, the power of arrest is not to be used on mere suspicion or doubt, or for even investigation, when the conditions of sub- section (5) to Section 132 of the GST Acts are not satisfied.

61. However, relying upon the judgment in the case of Makemytrip (supra), it has been submitted on behalf of the petitioners, that the power under sub-section (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the GST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (a) to (d) to sub-section (1) of Section 132 of the GST Acts and that clause (i) to sub-section (1) is attracted. But there could be cases where even without a formal order of assessment, the department/Revenue is certain that it is a case of offence under clauses (a) to (d) to sub-section (1) of Section 132 and the amount of tax evaded, etc. falls within clause (i) of sub-section (1) to Section 132 of the GST Acts with sufficient degree of certainty. In such cases, the Commissioner may authorise arrest when he is able to ascertain and record reasons to believe. As indicated above, the reasons to believe must

be explicit and refer to the material and evidence underlying such opinion. There has to be a degree of certainty to establish that the offence is committed and that such offence is non-bailable. The principle of benefit of doubt would equally be applicable and should not be ignored either by the Commissioner or by the Magistrate when the accused is produced before the Magistrate.

64.2. In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST- Investigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/Instructions/21-22). The circular dated 13.01.2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo."

21. It is amply clear from the above paragraphs of the judgment of Apex Court in the case of **Radhika Agrawal (supra)** that it is for the Commissioner to ascertain and record the "reasons to believe" explicitly and with reference to the material and evidence underlying his opinion. It is not provided anywhere that the "reasons to believe" should be supplied to the accused. Therefore, the arguments advanced by learned Senior Counsel for the petitioner is turned down.

23. The argument of learned Senior Counsel for the petitioner that the petitioner ought not to have been arrested since he has been implicated for committing an offence, which is punishable below 7 years appears to be correct since Apex Court in the case of **Satendra Kumar Antil (supra)** has not excluded the application of ratio of the judgment to the offences covered under the Special Act. Therefore we agree that the ratio of the judgment in the case of **Satendra Kumar Antil (supra)** will apply to this case also.

24. Learned counsel for respondent nos. 1 & 2 has pointed to the counter affidavit and has demonstrated that the arrest memo, Jama Talasi, grounds of arrest and intimation regarding arrest of the petitioner sent to his wife were handed over to the petitioner and his wife and their signatures were taken on 16.1.2026 itself when the remand order was passed on 17.1.2026. Therefore, it is clear that the service of grounds of arrest and other documents were made on the petitioner before producing him before Remand Magistrate on 17.1.2026. Therefore, there is full compliance of the mandate of law regarding providing of the "memo of arrest" and "grounds of arrest" to the petitioner and also providing the copy of intimation to his wife about his arrest.

25. Learned Senior Counsel for the petitioner submits that the argument of counsel for respondent nos.1&2 is absolutely incorrect. He has submitted that the signatures of the petitioner were taken on all the documents while in custody and the copy of the same was never supplied to the petitioner or his wife. He has submitted that before the Remand Magistrate it was specifically argued on behalf of the petitioner that the "grounds of arrest" of petitioner was never provided to him in violation of the judgment of Apex Court in the case of **Radhika Agrawal (supra), Rihan Kumar**, etc. and the mandate of Apex Court has been violated. There is also no document evidencing that "reasons to believe" were present on the record and hence remand application of the prosecution should have been rejected. He has pointed out further that the Remand Magistrate has not recorded any finding that the "grounds of arrest" has been supplied to the petitioner. The findings recorded by the Remand Magistrate only is that on 16.1.2026 the accused was arrested and

the"grounds of arrest"were communicated to him in Hindi and English, orally and his signatures were taken thereon 16.1.2026 and after his arrest, memo of "grounds of arrest" was provided to him which has been brought on record. The copy of "reasons to believe" has been provided to the Court in sealed cover by the prosecution, which has been perused by the Court.

26. We find from paragraph No. 64.2 of the judgment of Apex Court in the case of **Rakhika Agrawal (Supra)** that as per the circular dated 13.1.2025, grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. In this case we find that in the arrest memo, there is no mention of any annexure. Therefore it appears that opposite party nos. 1 & 2 have not been complied their own circular dated 13.1.2025 by furnishing to the petitioner the "grounds of arrest" alongwith the arrest memo as its annexure. On this account also we find that the remand order of petitioner is illegal.

27. Learned Senior Counsel for the petitioner has pointed out that the copy of medical report and grounds of arrest were received by learned counsel for the petitioner in Court at 5:00 p.m. on 17.1.2026 as per the endorsement made in the remand order dated 17.1.2026. Therefore he contends that after the remand order was passed, the medical report and grounds of arrest were provided to the counsel for the petitioner. Earlier his signatures were taken only on grounds of arrest. Further the court did the "reasons to believe" recorded by Commissioner by opening the sealed cover, wherein it was produced before the court. As per the paragraph of the judgement of Apex Court in the case of Radhika Agrawal (Supra) the court was required to ascertain whether the "reasons to believe" show that the arrest of petitioner has been made relying upon any credible evidence or it has been made only to investigate the suspicion against petitioner. Whether the power of arrest was used with circumspection and case was required to be ascertained by court before allowing remand application of respondents, which is not apparent from the remand order.

28. After the considering the fact that there is serious factual dispute about actual service of "grounds of arrest" on the petitioner before affecting his arrest since in the remand order, there is no recital that the copy of "grounds of arrest" was provided to the petitioner at the time of his arrest and before producing him before the Remand Magistrate and finding of the remand order to be not in accordance with law and also keeping in view of the judgement of Apex Court in the case of **Satendra Kumar Antil (supra)**, we hold that the remand order suffers from legal infirmity and cannot be sustained. It is hereby set aside.

29. This writ petition is **allowed**.

30. The petitioner shall be released from custody on production of copy of this order before the court/authority concerned duly downloaded in official website of this Court without waiting for production of certified copy of this order, which shall be filed after the court reopens after weekly holidays.

31. It shall be open for the respondent to proceed afresh against the petitioner in accordance with law, if so warranted.

(2026) 2 ILRA 352
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Habeas Corpus Writ Petition No. 428 of 2025
Connected with other cases

Hasnen **...Petitioner**
Versus
Union of India & Ors. **...Respondents**

Issue for Consideration

(A) Whether the constitutional and statutory safeguards governing preventive detention, including supply of relied-upon material, consideration of representations, reference to and opinion of the Advisory Board, and adherence to prescribed timelines, were duly complied with.
(B) Whether the detaining authority's satisfaction was reached in accordance with law, on relevant and proximate material, and whether the grounds are precise and sufficient to enable an effective representation under Article 22(5).
(C) Whether the impugned detention orders are founded on material that legitimately pertains to "public order", as distinguished from a mere "law and order" situation.

Head Notes

The Constitution of India, 1950-Article 21, 22(1) & 226; The National Security Act, 1980-Section 3, 5A, 8, 10, 11, 12 & 13- No specific grievance of non-supply of relied-upon documents or of inadequacy of grounds disabling representation has been substantiated before this Court by the petitioners. The requirements of Section 8 and Article 22(5) are accordingly found to have been complied with.

The entire chain of statutory safeguards, i.e. from the making of the detention order and its approval by the State Government, through the communication of grounds, consideration of representations, reference to and hearing before the Advisory Board, receipt of the Board's opinion, and final confirmation by the State Government, has been observed in strict compliance with the timelines and requirements prescribed under Sections 3(4), 3(5), 8, 10, 11, 12 and 13 of the National Security Act, 1980, and with the constitutional mandate of Article 22(5). The requisite satisfaction has been independently arrived at by the detaining authority at each stage. No procedural infirmity has been made out by the petitioners on this count.

The detaining authority's satisfaction was independently and lawfully reached, on relevant and rationally probative material drawn from a layered chain of field assessments and intelligence inputs, with a live and proximate link to the apprehended future conduct.

The impugned detention orders are founded on material that legitimately and demonstrably pertains to "public order". The alleged activity and its aftermath community-wide fear and behavioural change, inter-community tension, risk of communal violence, extraordinary administrative response, and a contemporaneous intelligence assessment of public order collapse collectively establish a disturbance of the even tempo of community life in named

localities going well beyond an isolated criminal offence. The detaining authority not only had before it rationally probative material establishing a public order disturbance but also expressly applied the correct legal test in the grounds themselves. No case has been made out that the detention orders have been founded on a mere law and order situation dressed up as a public order concern.

Held- There are no cogent reasons to entertain the petitions and allow the prayers sought therein. **In the aforesaid terms, the petitions stand dismissed**. (E-15)

(Para 61, 68, 89, 107, 110 & 111)

Case Law Cited

Haradhan Saha v. State of W.B (1975) 3 SCC 198; A.K. Roy v. Union of India (1982) 1 SCC 271; Shalini Soni v. Union of India (1980) 4 SCC 544,; A.K. Gopalan v. State of Madras (1950) SCC 228; R.C. Cooper v. Union of India (1970) 1 SCC 248; Shibban Lal Saksena v. State of U.P (1953) 2 SCC 617; Rameshwar Shaw v. DM, Burdwan (1963) SCC OnLine SC 33; Khudiram Das v. State of W.B (1975) 2 SCC 81; Haradhan Saha v. State of W.B (1975) 3 SCC 198; Rameshwar Shaw v. District Magistrate, Burdwan (1963) SCC OnLine SC 33; Icchu Devi Choraria v. Union of India (1980) 4 SCC 531; Sunil Fulchand Shah v. Union of India (2000) 3 SCC 409; Ameena Begum v. State of Telangana (2023) 9 SCC 587; Ram Manohar Lohia v. State of Bihar 1965 SCC OnLine SC 9; Arun Ghosh v. State of W.B. (1970) 1 SCC 98; Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC; Kuso Sah v. State of Bihar, (1974) 1 SCC 185;

List of Acts

The Constitution of India, 1950; The National Security Act, 1980

List of Keywords

Habeas corpus; Section 3; Section 8; National Security Act ; Article 22; Public Order Disturbance; Apprehended future conduct; Requisite satisfaction arrived at by detaining authority at each stage

Case Arising From

The District Magistrate, in exercise of powers under Section 3(2) of the National Security Act, 1980, passed the detention order dated 28.04.2025

Appearances for Parties

Counsel for Petitioner(s) : Sushil Kumar
Counsel for Respondent(s) : A.S.G.I., G.A., Manish Pandey

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. Before this Court there are three habeas corpus petitions challenging preventive detention orders passed under the National Security Act, 1980, arising from an incident of alleged cattle slaughter in the town of Kalpi, District Jalaun committed, as the detaining authority found, on the first day of Chaitra Navratri, the very event of Eid. The detaining authority found that this act shattered public order, created inter-community tension across multiple localities, generated fear and terror among the general public, and carried within it the very real risk of communal violence. The petitioners urge that their detention is illegal, that the grounds are insufficient, and that the matter is at best one of law and order, not public order. The State urges that every constitutional and statutory safeguard has been complied with and that the detention was a necessary measure to preserve communal harmony in the area. It is these competing contentions that this Court is called upon to adjudicate.

INTRODUCTION

2. Personal liberty is the most elemental of freedoms, the one from which all others draw breath. Our Constitution, in its profound wisdom, protects it fiercely. Yet the same Constitution, with equal wisdom, acknowledges that there are moments when the safety of the community demands that one person's liberty yield to the larger imperative of preserving the peace in which all others live their lives. Preventive detention is that solemn exception, drastic, exceptional, and never to be ordinary. It is a power the courts have always viewed with searching scrutiny, for when the State detains without trial, without proof, and without the presumption of innocence, it must be held to the strictest account. The constitutional safeguards surrounding preventive detention are not technicalities to be observed in form alone, they are the thin but firm line between a constitutional democracy and arbitrary executive power. This Court, as a sentinel of personal liberty, approaches every habeas corpus petition with that awareness squarely in mind.

3. Yet liberty, however precious, does not exist in a vacuum. A nation as ancient and as diverse as ours carries within it the constant responsibility of tending to the fragile bonds of communal co-existence. When an act deliberate in its commission, precise in its timing, strikes at the deepest religious sentiments of a community at its most sacred moment, it carries within it the potential to fracture those bonds with swift and devastating effect. The law of preventive detention, when invoked on proper material and in strict accordance with constitutional safeguards, serves not merely an administrative purpose but a deeper social one, the preservation of that even tempo of life that every citizen is entitled to live, undisturbed by those who would exploit communal sensitivities to foment disorder. It is against this backdrop that this Court proceeds to examine the legality of the impugned detention orders.

FACTUAL MATRIX

4. The matter has arisen out of the facts as detailed hereunder:

(i) On 31.03.2025, an FIR was lodged at Police Station Kotwali Kalpi, District Jalaun, registered as Case Crime No. 68 of 2025, under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955, Section 11 of the Prevention of Cruelty to Animals Act, 1960, and Sections 4/25 of the Arms Act, 1959, against eight accused persons, including the present petitioners/detenues Sikandar, Saiyyaj Ali, and Hasnen, in relation to the alleged illegal slaughter of cattle within the jurisdiction of the said police station.

(ii) As per the FIR narrative, the police personnel were on patrolling duty on 30.03.2025. It is alleged that upon receiving information regarding illegal slaughter by 7□8 persons between fields/shrubs, the police party reached the spot and allegedly saw one person filling meat in a plastic bag and others allegedly engaged in slaughtering animals. It is further alleged that a raid was conducted and petitioner Sikandar was apprehended, and recovery of a knife and approximately 2-3 quintals of beef/cattle meat was made from Sikandar, and it is further alleged that he disclosed the names of Saiyyaj Ali and Hasnen.

(iii) It is the petitioners□ case that the prosecution version is founded primarily on the statement of the informant and other witnesses, who, as pleaded, are police personnel, and that the

investigation materials collected (including statements and other documents) formed part of the record placed before the detaining authority.

(iv) The investigation in Case Crime No. 68 of 2025 culminated in a charge-sheet dated 24.05.2025. Sikandar was remanded to judicial custody on 31.03.2025, whereas Husnen surrendered before the Chief Judicial Magistrate, Jalaun at Orai on 11.04.2025, and Saiyyaj Ali was remanded to judicial custody on 04.04.2025.

(v) Saiyyaj was directed to be released on bail vide order dated 21.04.2025 in Criminal Misc. Bail Application No. 300 of 2025 (Saiyyaj Ali v. State of U.P.). Hasnen was directed to be released on bail vide order dated 25.04.2025 passed in Criminal Misc. Bail Application No. 313 of 2025 (Hasnen v. State of U.P.). In the case of Sikandar, it is stated that his bail application was pending in Criminal Misc. Bail Application No. 16469 of 2025.

(vi) In relation to Sikandar, the Circle Officer, Kalpi, District Jalaun submitted a report dated 23.04.2025 to the Superintendent of Police, Jalaun, and on the same date the Superintendent of Police forwarded his report to the District Magistrate, Jalaun, whereafter the District Magistrate, in exercise of powers under Section 3(2) of the National Security Act, 1980, passed the detention order dated 28.04.2025, which is under challenge in the present petition filed by Sikandar.

(vii) In relation to Saiyyaj Ali, the Circle Officer, Kalpi, District Jalaun submitted a report dated 26.04.2025 to the Superintendent of Police, Jalaun, and on the same date the Superintendent of Police forwarded his report to the District Magistrate, Jalaun, whereafter the District Magistrate, in exercise of powers under Section 3(2) NSA, passed the detention order dated 28.04.2025, which is under challenge in the petition filed by Saiyyaj Ali.

(viii) In relation to Husnen, the Circle Officer, Kalpi, District Jalaun submitted a report dated 26.04.2025 to the Superintendent of Police, Jalaun, and on the same date the Superintendent of Police forwarded his report to the District Magistrate, Jalaun, whereafter the District Magistrate, in exercise of powers under Section 3(2) NSA, passed the detention order dated 28.04.2025, which is under challenge in the petition filed by Husnen.

(ix) Prior to the passing of the detention order, a communication dated 03.04.2025 was issued from the confidential section to the Superintendent of Police, Jalaun, indicating that if the petitioners were released on bail, they were likely to repeat the alleged offence.

(x) The detention orders dated 25.04.2025 and 28.04.2025 were passed by the District Magistrate, Jalaun on the basis of reports/inputs of the Station House Officer, Circle Officer, Additional Superintendent of Police, and Superintendent of Police, District Jalaun.

(xi) A copy of the detention order, the grounds of detention, and all other connected documents, as received from the District Magistrate, Jalaun, were also forwarded to the Central Government vide letter dated 05.05.2025.

(xii) Under Section 10 of the NSA, the State Government placed before the Advisory Board the detention order, grounds on which the order has been made and ancillary material on 05.05.2025. The petitioners submitted representations/replies dated 07.05.2025/08.05.2025 seeking revocation of the detention orders under the NSA. The same were examined and finally rejected by the State Government on 20.05.2025/21.05.2025 and communicated on the next day. Copies of the representations were also placed before the Advisory Board.

(xiii) The U.P. Advisory Board, Lucknow, vide letter dated 26.05.2025, informed the State Government that the case of the petitioner would be taken up for hearing on 28.05.2025. The Board further directed that the petitioner be informed that, if he so desired, he could appear before the U.P. Advisory Board along with a □next friend□ (non-advocate) and, upon request, be

permitted to take such next friend with him. This intimation was accordingly communicated to the petitioner through the district authorities by the State Government vide letter dated 26.05.2025. The petitioner appeared before the U.P. Advisory Board on the date fixed. The U.P. Advisory Board heard the petitioner in person as well as the Government officials, and thereafter forwarded its report along with its opinion that there existed sufficient cause for the preventive detention of the petitioner under NSA.

(xiv) Acting on the said report in exercise of its powers under Section 13 of the Act, the State Government vide order dated 12.06.2025 confirmed the detention order and directed continuance of the detention for a period of one year from the date of detention.

(xv) Aggrieved by the detention orders dated 25.04.2025 and 28.04.2025, the petitioners have approached this Hon'ble Court under Article 226 seeking, *inter alia*, quashing of the impugned detention orders and their release.

SUBMISSIONS

Petitioners' Submissions

5. The Petitioners' case, in brief, is that the instant habeas corpus petitions under Article 226 of the Constitution of India have been filed to challenge the detention orders dated 25.04.2025 and 28.04.2025 passed by the District Magistrate, Jalaun under Section 3(2) of the National Security Act, 1980, whereby the petitioners have been directed to be detained for a period of one year. It is submitted that the petitioners have been in illegal custody in pursuance of the said order and seek issuance of a writ of habeas corpus directing that they be set at liberty, along with quashing of the impugned detention orders.

6. It is stated that an FIR dated 31.03.2025 was lodged at Police Station Kotwali Kalpi, District Jalaun, registered as Case Crime No. 68 of 2025 under Sections 3/5/8 of the Prevention of Cow Slaughter Act, Section 11 of the Prevention of Animal Cruelty Act, 1960 and Sections 4/25 of the Arms Act against the petitioner and seven other co-accused.

7. Learned counsel for the petitioners refers to the contents of the FIR and submits that they have been falsely implicated in the said case. It is further submitted that the prosecution version is founded upon the statements of the informant and other witnesses, who, as pleaded, are police personnel.

8. In the case of Sikander, it is pleaded that he was sent to jail on 31.03.2025 in the aforementioned case. It is further submitted that Saiyyaj Ali was neither apprehended from the spot nor anything had been recovered from his possession and had been imprisoned since 04.04.2025; he was directed to be released on bail vide order dated 21.04.2025 in Criminal Misc. Bail Application No. 300 of 2025 (Saiyyaj Ali v. State of U.P.). In the case of Hasnen, it is stated that he surrendered before the Chief Judicial Magistrate, Jalaun at Orai on 11.04.2025 and has remained in jail since then in connection with the aforesaid case; he was directed to be released on bail vide order dated 25.04.2025 passed in Criminal Misc. Bail Application No. 313 of 2025 (Hasnen v. State of U.P.).

9. It has further been contended that the investigation in Case Crime No. 68 of 2025 has been completed and a chargesheet has been filed on 24.05.2025. It is also pleaded that the petitioners have no other criminal history apart from the aforesaid case.

10. So far as the detention proceedings are concerned, it is stated that the Station House Officer submitted a report to the Superintendent of Police regarding detention of the petitioner under the National Security Act. It is further stated that the Circle Officer and the Additional Superintendent of Police also submitted reports to the Superintendent of Police, who then forwarded a Report to the District Magistrate for passing an order under Section 3(2) of the Act, pursuant to which the District Magistrate passed the impugned detention order(s) dated 25.04.2025 and 28.04.2025.

11. On the basis of the above pleadings, learned counsel for the Petitioners submit that the detention orders are bad in the eye of law. It is further pleaded that the impugned order(s) has been passed without due application of mind. Learned counsel for the Petitioners also alleges violation of the principles of natural justice and infringement of Articles 14 and 19 of the Constitution of India.

12. Accordingly, it is prayed that this Hon'ble Court may be pleased to issue a writ of habeas corpus directing the respondents to set the petitioner at liberty and to quash the detention order(s) dated 25.04.2025 and 28.04.2025 passed by the District Magistrate, Jalaun under Section 3(2) of the National Security Act, 1980.

Respondents' Submissions

13. Learned counsels for the respondents/State submit that an FIR dated 31.03.2025 was registered as Case Crime No. 68 of 2025 at Police Station Kotwali Kalpi, District Jalaun, under Sections 3/5/8 of the U.P. Cow Slaughter Act, 1955, Section 11 of the Prevention of Cruelty to Animals Act, 1960, and Sections 4/25 of the Arms Act, 1959, against eight accused persons including the petitioners/detenues Sikandar, Saiyyaj Ali and Hasnen. It is stated that Sikandar is in judicial custody since 31.03.2025, Saiyyaj Ali since 04.04.2025, and Hasnen since 11.04.2025 in the aforesaid case. After investigation, the charge-sheet has been submitted against the accused persons including the petitioners/detenues.

14. It has been submitted that a substantial quantity of beef (about three quintals) was recovered, and cattle were found tied as well as bones/skin/weapons were also recovered. One detenue was apprehended at the spot while the others fled. The incident, having regard to its extent and local impact, caused fear and tension in and around the area and disturbed communal harmony, thereby impacting public order, not merely law and order.

15. The detaining authority/District Magistrate, Jalaun passed separate detention orders under Section 3 (2) of the National Security Act, 1980 against the petitioners/detenues. Learned counsels for the Respondents stated that the said detention orders were approved by the State Government on 03.05.2025 within the period prescribed under Section 3(4) of the Act, 1980.

16. It is submitted that the matter was placed before the U.P. Advisory Board, Lucknow. The detenues were informed to appear before the Advisory Board along with a next friend. The detenues appeared in person and were heard on 28.05.2025. The Advisory Board thereafter opined that sufficient cause exists for preventive detention of the petitioners under the National Security Act, 1980. The State Government received the Advisory Board□s report/opinion on 05.06.2025 within the time contemplated under Section 11(1) of the Act, 1980, and upon independent reconsideration of the entire material, the State Government confirmed the detention orders for twelve months from 25.04.2025 under Sections 12 and 13 of the National Security Act, 1980.

17. It is stated that the grounds of detention disclose the incident and the activities attributed to each detenue separately. The detaining authority has recorded satisfaction, on the basis of cogent material, that (i) the detenues were attempting to secure bail and there was a real possibility of their release, and (ii) upon release, they were likely to indulge in activities prejudicial to the maintenance of public order.

18. It is submitted that the entire procedure applicable to preventive detention has been duly complied with. The detention orders, grounds of detention and relied upon materials were duly served. The detenues submitted representations dated 08.05.2025, which were processed within reasonable time as reflected in the respective counter affidavits. It is stated that the representations of Saiyyaj Ali and Hasnen were rejected on 20.05.2025, and that of Sikandar was rejected on 21.05.2025, followed by communication to the detenues.

19. In view of the foregoing, it was submitted that the detention orders are based on relevant material and contain specific grounds. There is no material indicating *mala fides* or vagueness. The subjective satisfaction recorded by the detaining authority, being founded on cogent material, is not open to interference in habeas jurisdiction except on well-settled grounds, which are not made out herein.

20. Thus, it was prayed by learned counsels appearing for the Respondents that in view of the aforesaid facts and the statutory compliance at every stage, and considering the Advisory Board□s opinion and the material demonstrating disturbance of public order, the State respectfully submits that the present habeas corpus petitions are devoid of merit and liable to be dismissed.

21. During the course of the submissions, the learned counsels appearing for the Respondents placed reliance on plethora of judgments including:

Pesala Nookaraju v. Government of Andhra Pradesh
Kartik Chandra Guha v. State of West Bengal
Alijan Mian v. District Magistrate, Dhanbad
Yofendra Muraari v. State of U.P.
N. Meera Rani v. Government of Tamil Nadu
Arun Ghosh v. State of West Bengal
Raisuddin alias Babu Mamchi
Ashok Kumar v. Delhi Administration
Dr. Ram Manohar Lohia v. State of Bihar

Hetchin Haokip v. State of Manipur
A. Maimoona v. State of Tamil Nadu

22. Heard Mr. Sunil Kumar, learned counsel for the petitioners, Mr. Manish Pandey, learned counsel appearing on behalf of respondent no. 2, Mr. S.K. Ojha, learned Additional Government Advocate appearing on behalf of the State of U.P. and perused the material on record.

PREVENTIVE DETENTION & JUDICIAL REVIEW

23. Prior to adverting to the questions for consideration, and before examining the legality of the impugned detention orders, this Court deems it apposite to recapitulate the settled principles governing preventive detention, namely, the object and rationale for which such extraordinary power may be invoked, the essential requirements that must inform and sustain a valid detention order, and the limited but strict contours of judicial review in habeas corpus over such executive satisfaction.

Concept of Preventive Detention

24. The essential defining feature of preventive detention is that the restraint is not imposed to punish a person for what he has already done, but to prevent him from doing so in future. The foundation of such detention is the executive's satisfaction, on the basis of relevant material, that there exists a reasonable probability of the detenu acting in a manner akin to his past conduct, and that his detention is necessary to forestall such anticipated conduct. In cases of preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu. Preventive detention is not to punish an individual for any wrong done by him, but by curtailing his liberty, with a view to preventing him from committing certain injurious activities in future. Preventive detention is thus preventive, and not punitive.

25. Proceedings in a court of law and an order of detention under the 1980 Act operate in distinct fields: the former is punitive, while the latter is preventive. In prosecution, punishment follows only upon proof of guilt, tested against the standard of proof beyond reasonable doubt; in preventive detention, the restraint is imposed with a view to preventing the commission of acts of the nature contemplated by the statute authorising such detention.

26. Preventive detention is thus qualitatively different from punitive detention. It is a precautionary power exercised in reasonable anticipation, and may or may not be linked to a specific offence. It is neither a substitute for, nor a parallel to, criminal prosecution, and does not overlap with it merely because it may draw upon certain facts that could also furnish the basis for prosecution. A preventive detention order may be made prior to, or during, prosecution; it may be made with or without prosecution; and it may even be made in anticipation of, or after, discharge or acquittal. The pendency of prosecution is no impediment to the making of a preventive detention order, just as a detention order does not operate as a bar to prosecution.

27. Article 22(1) and (2) of the Constitution guarantee protection to a person against arbitrary arrest, except under a warrant issued by a court of law, and are vital and fundamental for

safeguarding personal liberty. Nonetheless, the protection so guaranteed is subject to clause (3) of Article 22 which operates as an exception to clauses (1) and (2) and ordains that nothing therein shall apply to, inter alia, any person who is arrested or detained under any law providing for preventive detention. The purpose of preventive detention, as delineated in ***Haradhan Saha v. State of W.B.***12, is to prevent the greater evil of elements imperilling the security and safety of a State, and the welfare of the Nation. Preventive detention, though a draconian and dreaded measure, is permitted by the Constitution itself however with the rider of safeguards as inherent in the text of the said article itself, and with the riders carved out by the constitutional courts through judicial decisions which have stood the test of time.

28. It is well settled that the executive may resort to preventive detention on the basis of reasonable suspicion and as a precautionary measure, to avert anticipated acts by the proposed detenu which are prejudicial to the specified statutory objects under a validly enacted law. Since a preventive detention order entails a serious curtailment of personal liberty on suspicion, is preventive rather than punitive in character, and since the subjective satisfaction of the detaining authority, founded on the material before it, is not ordinarily amenable to judicial scrutiny on merits, constitutional courts do not sit in appeal over whether such satisfaction has been correctly reached on each factual aspect or whether the detention is justified on a reappreciation of facts. The scope for granting relief is therefore necessarily confined. Precisely for this reason, it is imperative that such an extraordinary and drastic power is invoked only in appropriate cases and exercised with due responsibility, rationality, and reasonableness.

29. At the same time, having regard to the grave consequence of deprivation of liberty under a preventive detention order, often enforced without affording the detenu an opportunity to present his case beforehand, constitutional courts, as sentinel on the *qui vive*, have consistently intervened to set aside detention orders whenever they are found to suffer from any legally recognized infirmity within the limited ambit of judicial review.

Writ of Habeas Corpus

30. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words “habeas” and “corpus”. “Habeas Corpus” literally means “have the body”. The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure.

31. In Halsbury's Laws of England, it is stated as under:

“The writ of habeas corpus ad subjiciendum” unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the

ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiae. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."

32. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarised thus:

"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or Judge awarding the writ shall consider in that behalf." "Habeas corpus" literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence."

33. In England, the jurisdiction to grant a writ existed in Common law, but has been recognised and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. Unlike certiorari or mandamus, a writ of habeas corpus is as of right to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.

34. It is the duty of the Writ Courts to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish the detaining person and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention. It is issued in the form of an order calling upon the person who has detained another, whether in prison or in private custody, to "have the body" of that other before the Court in order to let the Court know on what ground the latter has been confined and thus to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus, the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial. Habeas corpus is available against any person who is suspected of detaining another unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ be addressed to any person whatever an official or a private individual who has another in his custody.

35. A writ of habeas corpus is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India, which provides: "21. Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law."

Scheme & Relevant Provisions under the National Security Act, 1980

36. The relevant provisions of the National Security Act, 1980 ("NSA") are set out in the following paragraphs, so as to indicate both the purpose and scheme of preventive detention under the statute, and the statutory safeguards that condition the exercise of such extraordinary power. The Long Title and Statement of Objects and Reasons show that the Parliament conceived the NSA as an exceptional measure to address grave situations affecting defence, security, public order, and essential supplies/services, while simultaneously embedding institutional checks through Governmental scrutiny and Advisory Board oversight. The Long Title & Statement of Objects & Reasons of the National Security Act, 1980 is extracted hereunder:

"An Act to provide for preventive detention in certain cases and for matters connected therewith

Be it enacted by Parliament in the Thirty-first year of the Republic of India as follows:-

Statement of Objects and Reasons.-In the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country is tackled in a most determined and effective way. The anti-social and anti-national elements including secessionist communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom.

2. Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential to the community, it is the considered view of the Government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention. The National Security Ordinance, 1980, was, therefore, promulgated by the President on September 22, 1980.

3. Subject to a modification, the Bill seeks to replace the aforesaid Ordinance. The modification relates to the composition of Advisory Boards, and is for providing that the Chairman of an Advisory Board shall be a person who is, or has been, a Judge of a High Court and the other members of the Advisory Board may be persons who are, or have been, or are qualified to be appointed as, Judges of a High Court."

37. Section 3 is the substantive source of the NSA□s preventive detention power. It authorises the Central/State Government to order detention on specified grounds, and under Section 3(2) specifically, where detention is considered necessary to prevent a person from acting prejudicially to the security of the State, the maintenance of public order, or the maintenance of supplies and services essential to the community. The State Government may further delegate this power to a

District Magistrate/Commissioner of Police for limited periods under Section 3(3). Where an officer so empowered makes a detention order, Section 3(4) mandates prompt reporting to the State Government and makes the order short-lived unless approved within the prescribed time; Section 3(5) thereafter requires reporting to the Central Government within the stipulated period. Section 3 is extracted hereunder for reference:

"3. Power to make orders detaining certain persons.-(1) The Central Government or the State Government may,-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

(b) if satisfied with respect of any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.-For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under Section 8 the grounds of detention are communicated by the officer making an order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

38. Section 5A embodies the doctrine of severability of grounds. Where a detention order under Section 3 is made on two or more grounds, the law deems the order to have been made separately on each ground, so that the order does not automatically fail merely because one ground is vague, non-existent, irrelevant, not proximate, or otherwise invalid. The provision thus prevents the detention order from being struck down solely because one among multiple grounds is defective, provided the remaining ground(s) can independently sustain the requisite satisfaction. The said provision is extracted hereunder:

"5-A. Grounds of detention severable.-Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

39. Section 8 operationalises the constitutional safeguard under Article 22(5) by requiring that, when a person is detained, the detaining authority must communicate the grounds of detention to the detenu as soon as may be, ordinarily within five days (and in exceptional circumstances, within the extended period specified in the statute), and must afford the detenu the earliest opportunity to make a representation against the order to the appropriate Government. Section 8(2) preserves a limited privilege permitting non-disclosure of facts whose disclosure is considered against public interest, while keeping the obligation of meaningful disclosure intact to enable an effective representation. The said provision is extracted hereunder:

"8. Grounds of order of detention to be disclosed to persons affected by the order.-(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate

to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

40. Section 10 establishes the mandatory institutional check of Advisory Board scrutiny. It requires the appropriate Government, in every case of detention under the NSA (save as otherwise expressly provided), to place before the Advisory Board within the prescribed time from the date of detention the grounds of detention, the representation (if any), and where the order is made by an empowered officer like a District Magistrate, the officer's report under Section 3(4). This ensures that detention does not remain solely within the executive's unilateral assessment and is subjected to an independent statutory review mechanism. The said provision is extracted hereunder:

"10. Reference to Advisory Boards.-Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of Section 3, also the report by such officer under sub-section (4) of that section.

41. Section 11 governs the Advisory Board's procedure and timelines. The Board must consider the materials placed before it, may call for further information, and must submit its report to the appropriate Government within the prescribed period from the date of detention. Importantly, if the detenu desires to be heard, or if the Board considers it essential, the detenu must be heard in person. The report must specify the Board's opinion on whether there is sufficient cause for detention; proceedings and most parts of the report are confidential, and the detenu has no entitlement to appear through a legal practitioner in matters connected with the Board. The said provision is extracted hereunder:

11. Procedure of Advisory Boards.-(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the

Advisory Board; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

42. Section 12 sets out the consequence of the Advisory Board's opinion. If the Board reports that there is sufficient cause for detention, the appropriate Government may confirm the detention order and continue detention for such period as it thinks fit (subject to the statutory maximum). Conversely, if the Board reports that there is no sufficient cause, the Government is under a mandatory duty to revoke the detention order and cause the detenu to be released forthwith. Section 12 thus makes the Advisory Board's "no sufficient cause" opinion binding in its operative effect. The said provision is extracted hereunder:

12. Action upon the report of the Advisory Board.-(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith."

43. Section 13 imposes a statutory ceiling by providing that the maximum period for which a person may be detained pursuant to a detention order confirmed under Section 12 is twelve months from the date of detention. The proviso clarifies that this maximum does not curtail the Government's power to revoke or modify the detention order earlier. Section 13 therefore simultaneously limits executive detention temporally while preserving the capacity for earlier release upon reconsideration or changed circumstances. The said provision is extracted hereunder:

"13. Maximum period of detention." The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 12 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time."

Judicial Review of Preventive Detention

44. Preventive detention, though constitutionally recognised, remains an exceptional executive power which directly trenches upon personal liberty and is therefore subject to strict constitutional and statutory control.

45. In the case of ***A.K. Roy v. Union of India***13, the Hon'ble Supreme Court upheld the constitutionality of the NSA and held that a law relating to detention cannot be struck down on a general plea of interference with the liberties of the people if otherwise constitutional. It also simultaneously reaffirmed that a detention law cannot be invalidated on a general plea of interference with liberty if otherwise constitutionally compliant, and that the safeguards in Article 22(4) and 22(5) operate as mandatory checks irrespective of whether they are expressly incorporated in the statute.

46. Earlier, in ***Shalini Soni v. Union of India***14 the Hon'ble Supreme Court explained that Article 22(5) has two inseparable facets, viz. communication of grounds and opportunity of representation, and that "grounds" must be self-sufficient and self-explanatory, comprising not merely inferential conclusions but the constituent factual material relied upon, including supply of documents referred to therein.

47. The doctrinal journey of preventive detention jurisprudence in this country began with ***A.K. Gopalan v. State of Madras***15, the first case in post-independent India where the Fundamental Rights provisions of the Constitution came up for comprehensive consideration before the Hon'ble Supreme Court, decided by its full strength of six Judges within four months of India becoming a Republic. In that case, detention ordered under the Preventive Detention Act, 1950 was challenged both on the vires of the enactment and on the validity of the detention order itself. The Court, in that foundational moment, adopted an approach of circumscribing Article 21 by a relatively literal interpretation, treating the fundamental rights articles as operating in distinct, watertight compartments. That early formalism, however, did not endure. The doctrinal evolution from ***A.K. Gopalan (supra)*** to the effects-based fundamental rights approach ushered in by ***R.C. Cooper v. Union of India***16 marked a decisive shift, one that reinforced that preventive detention must survive scrutiny not only under Article 22 but also within the broader discipline of Articles 14, 19 and 21, with courts insisting on strict compliance with procedural safeguards and meaningful opportunity to represent. What began as a narrow, compartmentalised reading of liberty has thus matured into a holistic constitutional framework within which preventive detention must justify itself at every stage.

48. Within this settled framework, the Hon'ble Supreme Court has consistently maintained that although the detaining authority's "satisfaction" is subjective and the Court does not sit in appeal over the sufficiency of grounds, the satisfaction is not immune from judicial review.

49. As early as ***Shibban Lal Saksena v. State of U.P.***17 and ***Rameshwar Shaw v. DM, Burdwan***18, the Hon'ble Supreme Court recognised that detention is vulnerable where grounds are irrelevant/foreign to the statute or so vague as to disable representation, and that where multiple grounds operate on the detaining authority's mind, the Court cannot speculate which ground weighed how much. In ***Sibban Lal (supra)***, it was held as under:

"8. The first contention raised by the learned counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this Court that the power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of mala fides [State of Bombay v. Atma Ram Shridhar Vaidya, 1951 SCC 43] . A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenue under Section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself in its communication dated 13-3-1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-

existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under Section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

50. In ***Khudiram Das v. State of W.B.***19, the Hon'ble Supreme Court authoritatively delineated the limited but real area of review, i.e. non-application of mind, improper purpose, dictation, self-created fetters, wrong test/misconstruction, reliance on extraneous material, and lack of rationally probative material; thereby ensuring that "subjective satisfaction" is a jurisdictional condition which must exist in law.

51. The proposition that Preventive detention is not permissible when the ordinary law of the land can deal with the situation, is *per incuriam* paras 19 and 32 to 34 of the Constitution Bench in ***Haradhan Saha v. State of W.B.***20

52. In ***Rameshwar Shaw v. District Magistrate, Burdwan***21, a Constitution Bench of the Hon'ble Supreme Court held as follows :

"7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the ground supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may introduce a serious infirmity in the order of his detention. If, however, the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered under Section 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala fides, the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(a) cannot be questioned before the Courts."

53. The Hon'ble Supreme Court in ***Khudiram Das v. State of W.B.***22, while examining a challenge to an order of detention passed under Section 3 of the Maintenance of Internal Security Act, 1971 by a District Magistrate, held as follows :

"8. Now it is clear on a plain reading of the language of sub-sections (1) and (2) of Section 3 that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner, as set out in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of Section 3 are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J. pointed out in State of Madras v. V.G. Row [State of Madras v. V.G. Row, (1952) 1 SCC 410] that preventive detention is "largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in R. v. Halliday [R. v. Halliday, 1917 AC 260 (HL)] , namely, that "the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. This would clearly show that the power of detention is not a quasi-judicial power. "

9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. King Emperor v. Sibnath Banerjee [King Emperor v. Sibnath Banerjee, 1943 SCC OnLine FC 15 : AIR 1943 FC 75 : (1944) 6 FCR 1] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of "improper purpose", that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in State of Bombay v. Gordhandas Bhanji [State of Bombay v. Gordhandas Bhanji, 1951 SCC 1088] and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour & National Service [Simms Motor Units Ltd. v. Minister of Labour & National Service, (1946) 2 All ER 201] the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded 'on materials which are of rationally probative value'. (Machindar Shivaji Mahar v. R. [Machindar Shivaji Mahar v. R., 1950 SCC OnLine FC 4 : AIR 1950 FC 129 : (1949-50) 11 FCR 827]) The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. (S. Pratap Singh v. State of Punjab [S. Pratap Singh v. State of Punjab, 1963 SCC OnLine SC 10 : AIR 1964 SC 72 : (1964) 4 SCR 733] .) If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

54. The Hon'ble Supreme Court has also placed the burden squarely on the detaining authority to justify detention as "procedure established by law", emphasising strictness in liberty cases in ***Icchu Devi Choraria v. Union of India***23.

55. In ***Sunil Fulchand Shah v. Union of India***24, it was reiterated that given the limited safeguards available, statutory timelines and procedural requirements must be scrupulously complied with, and any default can render detention or continued detention illegal. Thus, modern preventive detention jurisprudence recognises that no detention order is insulated merely because it is facially valid; constitutional courts will interdict detention where the statutory purpose, material foundation, clarity of grounds, live link, and procedural timelines do not withstand judicial scrutiny. It was held as under:

"11. ... The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The justification for preventive detention being necessity a person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words "may be detained" shall have to be interpreted."

56. On a conspectus of the decisions noticed above, it emerges that in the early years of constitutional adjudication, a plea was often advanced on behalf of detaining authorities that once an order of detention, ostensibly valid on its face, was produced, the Court's enquiry should practically cease. The law, however, has decisively evolved. Constitutional courts do not treat preventive detention as insulated merely because the order is formally couched within statutory language. With the deepening of Article 21 jurisprudence and the reinforcement of Articles 14, 19 and 22, it is now settled that a preventive detention order, despite *prima facie* regularity, remains open to judicial scrutiny on well-recognised grounds, including non-application of mind, reliance on irrelevant or extraneous material, vagueness disabling representation, absence of a live and proximate link, colourable exercise of power, and breach of mandatory procedural safeguards. In matters of personal liberty, no executive order can claim an impermeable shield against constitutional review.

TEST FOR LEGALITY OF DETENTION ORDER

57. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, make it clear that the "subjective satisfaction" of the detaining authority is a jurisdictional foundation which must exist in law and must be demonstrable from the detention record, including the order and grounds served. The authority for the detention flows from the order of detention itself, which the detenu or the Court can read and discern therefrom the manner in which the activity of the detenu was viewed by the detaining authority to be prejudicial to maintenance of public order and what exactly he intended should not be permitted to happen.

58. Therefore, even in the absence of elaborate pleadings, where the order itself or the materials disclosed raise a serious doubt that the detaining authority misconceived the extent of its powers, applied a wrong test, acted on extraneous considerations, or failed to address the statutory pre-requisites, the Court ought not to shut its eyes. Without embarking upon re-appreciation of

evidence or substituting its own view on the adequacy of material, the Court is entitled to examine whether the order discloses: (i) a lawful nexus between the alleged activity and the statutory purpose (e.g., "public order" as distinct from "law and order"), (ii) clear, precise and self-explanatory grounds enabling an effective representation under Article 22(5), and (iii) strict adherence to the procedural timelines and safeguards. Any detention order which, on its own terms, travels beyond the power conferred or is vitiated on these jurisdictional parameters cannot be sustained and is vulnerable to interdiction in habeas jurisdiction.

59. In the case of ***Ameena Begum v. State of Telangana***25, the Hon'ble Supreme Court collated and laid down the test for orders of preventive detention in the following terms:

"28. In the circumstances of a given case, a constitutional court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:

28.1. The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

28.3. Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

28.4. The detaining authority has acted independently or under the dictation of another body;

28.5. The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

28.10. The timelines, as provided under the law, have been strictly adhered to.

29. Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which

undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong."

60. Accordingly, the settled position of law is that while the Court does not re-appreciate evidence or substitute its own assessment for the subjective satisfaction of the detaining authority, it is duty-bound to scrutinise whether the detention is rooted in relevant, proximate and rationally probative material, whether the authority has applied its mind independently within the confines of the statute, whether the grounds are precise and self-explanatory so as to enable an effective representation under Article 22(5), and whether the mandatory timelines and procedural safeguards have been strictly complied with. Any detention which fails on these touchstones, now authoritatively collated in ***Ameena Begum (supra),*** ceases to be preventive in nature and becomes an impermissible curtailment of liberty, warranting interference in habeas jurisdiction.

QUESTIONS FOR CONSIDERATION

61. The sum and substance of the present dispute is whether the continued custody of the detenues under the impugned preventive detention orders can be sustained in law, having regard to the constitutional limits on preventive detention and the settled distinction between "law and order" and "public order". The challenge essentially turns on the legality of the decision-making process and the validity of the foundation of the detention. The matter, therefore, warrants determination of the following questions:

I. Whether the constitutional and statutory safeguards governing preventive detention, including supply of relied-upon material, consideration of representations, reference to and opinion of the Advisory Board, and adherence to prescribed timelines, were duly complied with.

II. Whether the detaining authority's satisfaction was reached in accordance with law, on relevant and proximate material, and whether the grounds are precise and sufficient to enable an effective representation under Article 22(5).

III. Whether the impugned detention orders are founded on material that legitimately pertains to "public order", as distinguished from a mere "law and order" situation.

ANALYSIS

I. Whether the constitutional and statutory safeguards governing preventive detention, including timely consideration of representations and adherence to prescribed timelines, were duly complied with.

62. The National Security Act, 1980 prescribes a precise and sequenced chain of procedural safeguards, each operating as a mandatory check upon the executive's power to deprive a person of liberty without trial. These safeguards are not mere directory formalities, they are the constitutional price exacted for the extraordinary power of preventive detention, and any breach thereof renders the detention or its continuance illegal. As the Hon'ble Supreme Court reminded in **Sunil Fulchand Shah *(supra),*** the safeguards available to a person against whom a detention order has been passed are limited, and therefore all procedural safeguards provided by law must be strictly complied with,

any default in maintaining time-limits having the effect of rendering the detention or continued detention illegal.

63. This Court, therefore, first examines whether each of these safeguards was duly observed in the present cases, as also whether the requisite satisfaction was independently arrived at by the detaining authority, in terms of the tests laid down in **Ameena Begum *(supra).***

Approval by State Government under Section 3(4)

64. Since the detention orders were made by the District Magistrate, Jalaun, who is an officer empowered under Section 3(3) of the Act, Section 3(4) mandated that the fact of detention, along with the grounds and other relevant particulars, be forthwith reported to the State Government, and that the order would not remain in force for more than twelve days unless approved by the State Government within that period. In the present case, the detention orders dated 25.04.2025 and 28.04.2025 were approved by the State Government on 03.05.2025, which falls within the prescribed period of twelve days from the respective dates of detention. The requirement of Section 3(4) is accordingly found to have been complied with.

Reporting to Central Government under Section 3(5)

65. Section 3(5) requires that when any order is made or approved by the State Government, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and other relevant particulars. In the present case, the detention orders along with connected material were forwarded to the Central Government vide letter dated 05.05.2025, i.e., within seven days of the approval dated 03.05.2025. The requirement of Section 3(5) is accordingly found to have been complied with.

Communication of grounds under Section 8 and Article 22(5)

66. Section 8 of the Act, read with Article 22(5) of the Constitution, requires that the detaining authority communicate to the detenu, as soon as may be and ordinarily within five days, the grounds on which the detention order has been made, and afford the earliest opportunity to make a representation. As the Hon'ble Supreme Court explained in **Shalini Soni *(supra),*** Article 22(5) has two inseparable facets, communication of grounds and opportunity of representation, and the grounds must be self-sufficient and self-explanatory, comprising not merely inferential conclusions but the constituent factual material relied upon, including supply of documents referred to therein.

67. In the present case, an examination of the grounds of detention reveals that the detaining authority relied upon five specific documents, which were enclosed therein, namely, the forwarding letter of the Inspector-in-Charge, Police Station Kotwali Kalpi dated 25.04.2025, the detention proposal dated 25.04.2025, the forwarding letter of the Circle Officer Kalpi dated 26.04.2025, the forwarding letter of the Additional Superintendent of Police Jalaun dated 26.04.2025, the report of the Local Intelligence Unit, Orai dated 03.04.2025, and the letter of the Superintendent of Police Jalaun dated 27.04.2025. These documents were expressly identified in the grounds and their

attested copies were enclosed for the detenues' perusal. The detenues thus had before them not merely the grounds but the entirety of the relied-upon material when making their representations.

68. Thus, the record discloses that the grounds of detention and all relied-upon documents were duly served upon the detenues, and that the detenues were able to and did submit representations dated 07.05.2025/08.05.2025 against the impugned detention orders. No specific grievance of non-supply of relied-upon documents or of inadequacy of grounds disabling representation has been substantiated before this Court by the petitioners. The requirements of Section 8 and Article 22(5) are accordingly found to have been complied with.

Consideration of representations

69. The representations submitted by the detenues dated 07.05.2025/08.05.2025 were duly considered by the State Government. The representations of Saiyyaj Ali and Hasnen were rejected on 20.05.2025, and that of Sikandar was rejected on 21.05.2025, with communication to the respective detenues following on the next day. Copies of the representations were also placed before the Advisory Board. No infirmity in the consideration or communication of the outcome of these representations has been demonstrated before this Court.

Reference to Advisory Board under Section 10

70. Section 10 mandates that in every case of detention under the Act, the appropriate Government shall, within three weeks from the date of detention, place before the Advisory Board the grounds of detention, the representation if any, and where the order is made by a District Magistrate the officer's report under Section 3(4) as well. In the present case, as the uncontroverted record suggests the matter and all relevant material was placed before the U.P. Advisory Board on 05.05.2025, which is well within three weeks from the respective dates of detention. The requirement of Section 10 is accordingly found to have been complied with.

Procedure of Advisory Board under Section 11

71. Section 11(1) requires the Advisory Board to submit its report to the appropriate Government within seven weeks from the date of detention. The detenues were informed of the hearing date and were permitted to appear before the Advisory Board along with a next friend as contemplated under Section 11(4). The detenues duly appeared before the U.P. Advisory Board on 28.05.2025 and were heard in person along with Government officials. The Advisory Board thereafter submitted its report, which was received by the State Government on 05.06.2025. Reckoning from the earliest detention date of 25.04.2025, the report was received within the seven-week period mandated by Section 11(1). The requirements of Section 11 are accordingly found to have been complied with.

Confirmation under Sections 12 and 13

72. The Advisory Board opined that sufficient cause existed for the preventive detention of the petitioners under the National Security Act, 1980. Acting upon the said opinion, the State

Government, upon independent reconsideration of the entire material, confirmed the detention orders vide order dated 12.06.2025 under Sections 12 and 13 of the Act, directing continuance of detention for a period of twelve months from the respective dates of detention, which falls within the maximum period prescribed under Section 13. The confirmation thus reflects independent application of mind by the State Government and is not a mere rubber-stamping of the Advisory Board's opinion, satisfying the requirement in **Ameena Begum** ***(supra)*** that the detaining authority's satisfaction be reached independently and not under the dictation of another body (para 28.4).

73. Thus, upon a careful examination of the procedural record, and testing the same against the parameters laid down in **Ameena Begum** ***(supra)***, this Court finds that the entire chain of statutory safeguards, i.e. from the making of the detention order and its approval by the State Government, through the communication of grounds, consideration of representations, reference to and hearing before the Advisory Board, receipt of the Board's opinion, and final confirmation by the State Government, has been observed in strict compliance with the timelines and requirements prescribed under Sections 3(4), 3(5), 8, 10, 11, 12 and 13 of the National Security Act, 1980, and with the constitutional mandate of Article 22(5). The requisite satisfaction has been independently arrived at by the detaining authority at each stage. No procedural infirmity has been made out by the petitioners on this count, and accordingly, Question I is answered against the petitioners.

II. Whether the detaining authority’s satisfaction was reached in accordance with law, on relevant and proximate material, with clear and specific grounds sufficient to enable an effective representation under Article 22(5).

74. The second issue that needs to be answered is whether all relevant circumstances were considered or whether extraneous factors weighed in the mind of the detaining authority leading to the conclusion that for prevention of further crimes by the said person(s), they ought to be detained. Incidentally, the issue of whether application of mind is manifest in first ordering detention and then confirming it by continuing such order upon rejection of the representation filed on behalf of the detenu would also be required to be answered.

A. Whether all relevant circumstances were considered and whether the satisfaction was independently reached?

Independence of the detaining authority and the 03.04.2025 communication (Ameena Begum, para 28.4)

75. The petitioners' record discloses a communication dated 03.04.2025 issued from the confidential section to the Superintendent of Police, Jalaun, indicating that if the petitioners were released on bail, they were likely to repeat the alleged offence. It was urged, by implication, that this communication predetermined the detaining authority's conclusion and that the detention orders were not the product of independent application of mind but were instead passed under the dictation or influence of another body.

76. This Court is unable to accept this contention. An examination of the grounds of detention themselves dispels any such inference. The grounds expressly identify the 03.04.2025 communication as a report of the Inspector of the Local Intelligence Unit, Orai, a field-level intelligence assessment forwarded through the chain of command. Crucially, this document was enclosed as one of five Annexures to the grounds of detention and supplied to the detenues for their perusal, demonstrating complete transparency in its use. It was not a direction to detain; it was an intelligence input, one component among a layered chain of material that was placed before the detaining authority along with the forwarding letter of the Inspector-in-Charge dated 25.04.2025, the detention proposal dated 25.04.2025, the forwarding letters of the Circle Officer Kalpi and Additional Superintendent of Police Jalaun dated 26.04.2025, and the letter of the Superintendent of Police Jalaun dated 27.04.2025.

77. The detention orders dated 25.04.2025 and 28.04.2025 were passed by the District Magistrate on the basis of this consolidated, multi-layered assessment by multiple officers across different levels of the administrative hierarchy, each independently evaluating the material before forwarding their recommendation. The sequential reporting chain from the Inspector-in-Charge through the Circle Officer and Additional Superintendent of Police to the Superintendent of Police and finally to the District Magistrate is precisely the institutional mechanism the statute contemplates to ensure that the detaining authority receives a field-tested, independently verified assessment before forming its satisfaction. No material has been placed before this Court to demonstrate that the District Magistrate was directed to pass the detention order or that his satisfaction was pre-empted or overridden by any external authority. The requirement of Ameena Begum para 28.4 is accordingly satisfied.

Application of mind to relevant circumstances (Ameena Begum, para 28.2)

78. It is well settled that the subjective satisfaction of the detaining authority, while not open to challenge on sufficiency, must reflect genuine application of mind to all relevant circumstances, without being coloured by extraneous considerations. A particularly significant feature of the grounds in the present case is that the detaining authority has expressly adverted to the correct legal test. The grounds themselves employ the phrase "even tempo of life" rendered in Hindi as "जनजीवन के सामान्य प्रवाह, सामान्य निर्वहन, सामान्य शान्ति, अमन चैन (इवेन टैम्पो आफ लाइफ)" which is the very touchstone of the distinction between law and order and public order as laid down by the Hon'ble Supreme Court in **Ram Manohar Lohia *(supra)*** and **Arun Ghosh *(supra).*** The deliberate use of this phrase in the grounds demonstrates that the detaining authority applied its mind not merely to the commission of an offence but specifically to the impact of the alleged activity upon the even tempo of community life which is the precise inquiry that the law demands. This is a strong indicator of genuine and informed application of mind to the relevant statutory purpose.

79. Further, the detention orders record separate satisfaction in respect of each detenu Sikandar, Saiyyaj Ali and Hasnen on the basis of their individual roles as disclosed in the investigation. No material extraneous to the scope and purpose of the National Security Act has been shown to have influenced the detaining authority's satisfaction. The requirement of para 28.2 is accordingly satisfied.

Rationally probative material (Ameena Begum, para 28.6)

80. As held in **Khudiram Das *(supra),*** the satisfaction of the detaining authority must be grounded on materials which are of rationally probative value, the grounds must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. In the present case, the material before the detaining authority was neither thin nor speculative. It comprised: the FIR dated 31.03.2025 recording recovery of 2-3 quintals of beef, cattle found tied at the spot, and recovery of bones, skin and weapons; field reports from the Inspector-in-Charge, Circle Officer, Additional Superintendent of Police and Superintendent of Police; a Local Intelligence Unit report dated 03.04.2025 assessing the community impact of the incident; and specific ground-level intelligence regarding the likelihood of repetition upon release on bail. Taken together, this constitutes a substantial body of rationally probative material capable of supporting the detaining authority's satisfaction. The requirement of para 28.6 is accordingly satisfied.

Live and proximate link (Ameena Begum, para 28.7)

81. It is equally settled that there must exist a live and proximate link between the past conduct of the detenu and the imperative need to detain him. Detention founded on stale material, with no rational nexus to an apprehended future act, cannot be sustained. In the present case, the incident occurred on 30/31.03.2025. The detention orders were passed on 25.04.2025 and 28.04.2025, within approximately three to four weeks of the incident, and crucially, at a stage when two of the detenues had been granted bail and the third's bail application was pending. The grounds expressly record that the detenues were attempting to secure bail and that upon release there was every possibility of repetition of similar offences and of the communal atmosphere being vitiated. The proximity of the detention orders to both the incident and the bail orders is not evidence of mala fides, rather it reflects precisely the situation which the law of preventive detention is designed to address: that the ordinary criminal process, including the grant of bail, may be insufficient to prevent acts prejudicial to public order. The pendency of prosecution or grant of bail is no impediment to the making of a detention order, as this Court has noted in the preceding section. The live link between the incident of 30/31.03.2025 and the detention orders of 25/28.04.2025 is sufficiently proximate and cannot be characterised as stale. The requirement of para 28.7 is accordingly satisfied.

Precision and clarity of grounds effective representation under Article 22(5) (Ameena Begum, paras 28.8 and 28.9)

82. Article 22(5) of the Constitution and Section 8 of the Act together require that the grounds communicated to the detenu be precise, pertinent and relevant and not vague or inferential, so as to afford him a meaningful opportunity to make an effective representation. As held in **Shalini Soni *(supra),*** the grounds must be self-sufficient and self-explanatory, comprising not merely conclusions but the constituent factual material relied upon. In the present case, the grounds of detention served upon each detenu contain specific particulars of the incident of 30/31.03.2025, the role attributed to each detenu individually, the recoveries made, the community impact in named localities of Kalpi town, village Guloli and surrounding areas, the administrative response

necessitated, and the basis of the detaining authority's apprehension regarding future conduct. Five relied-upon documents as already discussed in the analysis of Question I were also enclosed therein. The grounds are thus not inferential labels but a detailed, factual narrative enabling each detenu to understand precisely why he was being detained and to make an informed representation. That the detenues did in fact make substantive representations dated 07/08.05.2025 which were duly considered and rejected is itself indicative that the grounds were not so vague as to disable representation. No specific ground has been assailed before this Court as being vague, non-existent or incapable of being responded to. The requirements of ***paras 28.8*** and ***28.9*** of **Ameena Begum *(supra)*** are accordingly satisfied.

Single incident and absence of prior criminal history

83. The petitioners have urged that the detention is founded essentially on a single FIR and that the detenues have no prior criminal history. It is true that preventive detention based on a solitary incident, with no antecedent criminal history, calls for closer scrutiny. However, the law does not prescribe a minimum number of incidents as a precondition for preventive detention. What is required is that the single incident, if relied upon, must be of such a nature and magnitude as to rationally support the detaining authority's apprehension of future prejudicial conduct. As this Court shall examine in greater detail under Question III, the nature of the alleged activity in the present case, its timing on the first day of Chaitra Navratri, coinciding with the eve of the festival of Eid, its impact on communal harmony in named localities, and the scale of administrative response it necessitated is not a routine or isolated offence of a purely individual character. The detaining authority's satisfaction, even in the absence of a prior criminal history, cannot therefore be said to be irrational or without probative foundation.

B. Whether application of mind is manifest in the confirmation of detention?

84. The second limb of this question requires examination of whether the subsequent stages, viz. the rejection of the detenues' representations and the confirmation of the detention orders by the State Government, also reflect genuine and independent application of mind, or whether they were merely mechanical exercises rubber-stamping the initial detention.

85. This Court finds that the record discloses meaningful engagement at each subsequent stage. The representations filed by the detenues dated 07/08.05.2025 were independently considered by the State Government. The representations of Saiyyaj Ali and Hasnen were rejected on 20.05.2025, and that of Sikandar on 21.05.2025, reflecting considered decisions reached within a reasonable time of the representations being filed, and communicated to the detenues on the following day. Copies of the representations were also placed before the Advisory Board, ensuring that the detenues' own case was before the independent statutory body.

86. The Advisory Board, after hearing the detenues in person on 28.05.2025, each of whom appeared with a next friend, and after considering the Government's material, independently opined that sufficient cause existed for the preventive detention of each detenu. The Board's opinion is thus not the product of a mechanical exercise but of an independent institutional assessment after hearing both sides.

87. Most significantly, the State Government did not merely act upon the Advisory Board's opinion as a formality. The confirmation order dated 12.06.2025 records that the State Government, upon independent reconsideration of the entire material, confirmed the detention orders under Sections 12 and 13 of the Act. This independent reconsideration at the confirmation stage is a critical safeguard, since it ensures that the detaining authority's satisfaction is not a one-time, un-revisited conclusion but a continuing assessment of the necessity of detention in light of all available material including the detenues' own representations. The confirmation order thus reflects a fresh, independent application of mind and is not a rubber-stamping of either the initial detention order or the Advisory Board's opinion.

88. No material has been placed before this Court to suggest that the rejection of representations or the confirmation of the detention orders was perfunctory, mechanical, or devoid of application of mind. The requirement of **Ameena Begum *(supra*) para 28.1**, that the order be based on the requisite satisfaction of the detaining authority, is accordingly found to be satisfied not merely at the stage of the initial detention order but throughout the chain of executive decision-making.

89. Thus, upon examination of the material on record and testing the same against the parameters in **Ameena Begum *(supra),*** this Court finds that the detaining authority's satisfaction was independently and lawfully reached, on relevant and rationally probative material drawn from a layered chain of field assessments and intelligence inputs, with a live and proximate link to the apprehended future conduct. The grounds served upon the detenues were precise, pertinent, self-explanatory and supported by five enclosed Annexures, enabling effective representations which were duly considered. The detaining authority demonstrably applied the correct legal test by expressly adverting to the "even tempo of life" standard in the grounds themselves. Application of mind is further manifest not merely in the initial detention order but throughout in the considered rejection of representations, the independent assessment by the Advisory Board after hearing the detenues, and the State Government's independent reconsideration at the confirmation stage. No infirmity in the detaining authority's satisfaction or in the clarity of the grounds has been established.

90. Accordingly, Question II is answered against the petitioners.

III. Whether the impugned detention orders are founded on material that legitimately pertains to "public order", as distinguished from a mere "law and order" situation.

91. Turning our attention in the instant case to Section 3 of the Act, the Government has to arrive at a subjective satisfaction that the said person has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes "public order". An order of detention under Section 3(2) of the Act can be issued against a detenu to prevent him "from acting in any manner prejudicial to the maintenance of public order". Therefore, if the impugned detention order fails to differentiate between offences which create a "law and order" situation and which prejudicially affect or tend to prejudicially affect "public order", the same would be rendered unsustainable.

92. What needs to be addressed now with respect to the detention orders is whether the alleged acts of commission for which the detenu has been kept under detention are prejudicial to "public order". While addressing this issue, it has to be first understood as to how the Hon'ble Supreme Court has distinguished between disturbances related to "law and order" and disturbances caused to "public order".

93. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, the Hon'ble Supreme Court has clearly carved out the distinction between "law and order" and "public order". A Constitution Bench of the Hon'ble Supreme Court in ***Ram Manohar Lohia v. State of Bihar***26, expounded the difference between "law and order" and "public order". Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) expressed the same in the following words :

"54. ... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. ...

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order *and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."*

94. Further, as illustrated in ***Arun Ghosh v. State of W.B. (1970) 1 SCC 98***, it is thus evident that for an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, is that: *does the offending act lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed*

95. In ***Arun Ghosh*** case, the detenu was detained since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. In the process of

quashing the impugned order, the Hon□ble Supreme Court while referring to the decision in ***Ram Manohar Lohia v. State of Bihar***, ***1965 SCC OnLine SC 9*** ruled as under:

"3. ... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its effect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

96. In ***Kuso Sah v. State of Bihar, (1974) 1 SCC 185***, the Hon'ble Supreme Court held as under:

"4. ... The two concepts have well defined contours, it being well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ...

***

6. ...The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised."

97. Having analysed the aforementioned authorities, this Court must first apply the settled distinction between "law and order" and "public order" as not every infraction of law disturbs public order; the act must affect the community or the public at large and disturb the "even tempo of life" in the locality. Therefore, the key inquiry is the degree, reach and impact: does the incident (and the apprehended future conduct) show a community-wide disturbance (fear or panic or probable communal tension) rather than an isolated offence?

Application to the facts of the present case

98. With the above principles as the lodestar, this Court now turns to examine whether the material before the detaining authority in the present case legitimately crosses the threshold from "law and order" into "public order".

99. The incident of 30/31.03.2025 cannot, on a fair reading of the grounds of detention, be characterised as an isolated offence affecting only the individuals involved. The grounds paint a picture of a community-wide disturbance of a particularly grave character, for the following reasons.

The timing a double festival confluence

100. The incident occurred on the first day of Chaitra Navratri. As the grounds expressly record, the very next day was Eid, one of the most important and sensitive festivals in the Islamic calendar. The confluence of these two festivals, one of the most sacred occasions for the Hindu community and the most significant for the Muslim community created an atmosphere of extraordinary communal sensitivity in the locality. The slaughter of bovine animals by the accused on the first day of Navratri, in circumstances where the cow is venerated as sacred by the Hindu community, was not merely a criminal act, it was an act that directly and foreseeably struck at the religious sentiments of a significant section of the community at a moment of heightened communal sensitivity. The grounds record that this hurt the sentiments of the Hindu community and that the fear of communal frenzy spreading was real and immediate. The timing of the incident thus elevates it qualitatively beyond the category of an ordinary criminal offence into territory where its impact upon community life and public order becomes manifest.

Community-wide fear, terror and behavioural change

101. The grounds of detention record with specificity that the incident caused fear and terror, "भय व आतंक" not merely among the parties to the incident but among the general public in Kalpi town, village Guloli and surrounding areas. This fear was not abstract or inferential, it manifested in concrete behavioural change: the general public in Kalpi town and surrounding areas stopped leaving their cattle outside their homes and stopped tying them outside, out of fear. This is a precise and specific indicator of the kind of community-wide impact that the Hon'ble Supreme Court in **Arun Ghosh *(supra)*** described as the disturbance of the "even tempo of life" of the community. The disruption of a routine aspect of daily agricultural and community life, the keeping and grazing of cattle across an entire locality is not the hallmark of a law and order situation; it is evidence of a disturbance that has penetrated the normal current of community life.

Tension between two communities and risk of communal violence

102. The grounds further record that the incident created a tense atmosphere between people of the Hindu and Muslim communities in Kalpi town and surrounding areas. The general public began viewing the incident as a conspiracy to cause riots and communal violence "दंगा फसाद कराने की साजिश". Preparations for demonstrations had begun, and letters were submitted by social and religious organizations seeking strict action. The Local Intelligence Unit report dated 03.04.2025, a contemporaneous field assessment, not a post-hoc reconstruction recorded that public order had been completely shattered "लोक व्यवस्था छिन्न-भिन्न हो गयी थी" and that there was a strong possibility of communal harmony being disturbed. This is precisely the kind of inter-community tension that the Hon'ble Supreme Court in **Ram Manohar Lohia *(supra)*** described as raising the apprehension of public disorder going beyond a mere law and order problem to threaten the fabric of communal co-existence in the locality.

Unprecedented administrative response

103. The scale and nature of the administrative response to the incident is itself a powerful indicator of the degree of public order disturbance. The grounds record that in order to manage and

control the atmosphere of tension, fear and terror, the following extraordinary measures were taken: police forces from other police station areas of the district were deployed at sensitive locations in Kalpi town and village Guloli as picket and patrol parties; a riot control drill was conducted in Kalpi town; the Superintendent of Police Jalaun, Inspector-in-Charge Kalpi, Sub-Divisional Magistrate Kalpi and Circle Officer Kalpi personally conducted foot patrols; adequate police force conducted foot patrolling at sensitive locations during both day and night; communication was established with the general public to instill a sense of security; and a Peace Committee meeting was organised and dialogue was held with both communities. It is a well-recognised principle that the deployment of riot control measures, the convening of Peace Committee meetings, and the personal presence of senior district officials on patrol are responses reserved for situations of genuine public order breakdown, not for ordinary law and order incidents that can be managed through normal policing.

The detaining authority's application of the correct legal test

104. As this Court has already noted in the context of Question II, the grounds of detention themselves employ the phrase "even tempo of life" viz. "जनजीवन के सामान्य प्रवाह, सामान्य निर्वहन, सामान्य शान्ति, अमन चैन (इवेन टैम्पो आफ लाइफ)" while recording that the detenues' activities have become prejudicial to the maintenance of public order. The deliberate and conscious use of this very phrase, the touchstone laid down by the Hon'ble Supreme Court in **Ram Manohar Lohia** ***(supra)*** and **Arun Ghosh** ***(supra)*** demonstrates that the detaining authority was alive to the distinction between law and order and public order and consciously found that the present case fell within the latter category. The present case is thus materially distinguishable from cases where detention orders have been struck down on the ground that the detaining authority merely labelled an offence as a public order disturbance without engaging with the substance of that distinction.

The apprehension of future prejudicial conduct

105. Preventive detention is directed not at punishing past conduct but at preventing future conduct prejudicial to the statutory purpose. The grounds expressly record that upon release on bail, there is every possibility that the detenues will again commit similar offences of cattle slaughter, and will make every effort to vitiate the communal atmosphere in Kalpi town and surrounding areas. This apprehension is not speculative, it is grounded in the nature, scale and communal impact of the original incident, the intelligence assessment of the Local Intelligence Unit, and the field-level assessment of multiple officers across the administrative hierarchy. Given the communal sensitivity of the area, the confluence of festivals, and the demonstrated willingness of the detenues to commit the alleged acts in circumstances of maximum communal provocation, the detaining authority's apprehension of future prejudicial conduct cannot be said to be without rational foundation.

The present case is not Arun Ghosh

106. In **Arun Ghosh** ***(supra),*** the detenu's reprehensible conduct teasing, harassing and molesting young girls was found to fall short of public order because it affected only specific individuals and did not disturb the community at large. The present case is of an entirely different

character. The alleged activity here did not merely affect the individuals directly involved, it generated community-wide fear and behavioural change across multiple localities, created inter-community tension between Hindus and Muslims, risked erupting into communal violence, necessitated riot control measures and Peace Committee interventions, and struck at the religious sentiments of a significant section of the community on one of its most sacred occasions. The degree, reach and impact of the alleged activity in the present case places it squarely beyond the Arun Ghosh category of individual-directed conduct, and within the territory of genuine public order disturbance as described in **Ram Manohar Lohia** ***(supra)*** and **Kuso Sah** ***(supra).***

107. Thus, upon a careful examination of the grounds of detention in the light of the settled legal principles governing the distinction between "law and order" and "public order", this Court finds that the impugned detention orders are founded on material that legitimately and demonstrably pertains to "public order". The alleged activity and its aftermath community-wide fear and behavioural change, inter-community tension, risk of communal violence, extraordinary administrative response, and a contemporaneous intelligence assessment of public order collapse collectively establish a disturbance of the even tempo of community life in named localities going well beyond an isolated criminal offence. The detaining authority not only had before it rationally probative material establishing a public order disturbance but also expressly applied the correct legal test in the grounds themselves. No case has been made out that the detention orders have been founded on a mere law and order situation dressed up as a public order concern.

108. Accordingly, Question III is answered against the petitioners.

FINDINGS & CONCLUSION

109. Preventive detention, conceived as an extraordinary measure by the Founding Fathers and Mothers of our Constitution, should not be rendered ordinary with its invocation on a routine basis. To unchain the shackles of preventive detention, it is important that the safeguards enshrined in our Constitution, particularly under the "golden triangle" formed by Articles 14, 19 and 21, are enforced in letter and spirit. In this light, once the safeguards and tests against misuse of such provision are satisfied, a preventive detention order may be sustained to nip in the bud the risk of disturbing public order.

110. In view of the foregoing discussion, this Court records its findings on the three questions for consideration as under:

a. On Question I, this Court finds that the entire chain of constitutional and statutory safeguards governing preventive detention from the making of the detention order and its approval by the State Government, through the communication of grounds along with all relied-upon documents, the consideration of representations, the reference to and independent hearing before the Advisory Board, and the final confirmation by the State Government has been observed in strict compliance with the timelines and requirements prescribed under Sections 3(4), 3(5), 8, 10, 11, 12 and 13 of the National Security Act, 1980, and with the constitutional mandate of Article 22(5). No procedural infirmity has been established.

b. On Question II, this Court finds that the detaining authority's satisfaction was independently and lawfully reached on relevant and rationally probative material, drawn from a layered chain of field assessments and intelligence inputs. The grounds served upon the detenues were precise, pertinent and self-explanatory, supported by five documents enclosed comprising the forwarding letter of the Inspector-in-Charge Kotwali Kalpi, the detention proposal, the forwarding letters of the Circle Officer Kalpi and Additional Superintendent of Police Jalaun, the Local Intelligence Unit report dated 03.04.2025, and the letter of the Superintendent of Police Jalaun, each representing an independent tier of assessment, and collectively constituting a robust evidentiary foundation that was transparently placed before the detenues to enable effective representations. Those representations were duly considered and rejected at each stage. Application of mind is manifest not merely in the initial detention order but throughout, viz in the considered rejection of representations, the independent assessment by the Advisory Board after hearing the detenues in person, and the State Government's independent reconsideration at the confirmation stage. The detaining authority demonstrably applied the correct legal test by expressly adverting to the "even tempo of life" standard in the grounds themselves reflecting not a mechanical invocation of statutory language but a conscious and informed engagement with the precise legal distinction that the law demands.

c. On Question III, this Court finds that the impugned detention orders are founded on material that legitimately and demonstrably pertains to "public order" as distinguished from a mere "law and order" situation. The alleged activity and its aftermath community-wide fear and behavioural change across named localities, inter-community tension between Hindus and Muslims, a real risk of communal violence, an extraordinary administrative response including riot control drills and Peace Committee interventions, and a contemporaneous Local Intelligence Unit assessment of public order collapse collectively establish a disturbance of the even tempo of community life going well beyond an isolated criminal offence. The timing of the incident on the first day of Chaitra Navratri, coinciding with the eve of Eid, further underscores the communal sensitivity of the context in which the alleged acts were committed and the apprehension of future prejudicial conduct upon release.

111. This Court therefore finds that the impugned detention orders satisfy the standards laid down in **Ameena Begum v. State of Telangana**27, and are founded on relevant and proximate material demonstrating disturbance of public order. Statutory timelines and representation requirements have also been complied with. Consequently, the impugned detention orders do not disclose procedural or legal infirmity warranting interference by this Court in exercise of its writ jurisdiction. Hence, in light of the aforesaid, there are no cogent reasons to entertain the petitions and allow the prayers sought therein. In the aforesaid terms, the petitions stand dismissed.

112. Pending applications, if any, also stand disposed of.

113. It is made clear that any observations made herein shall have no bearing whatsoever on the merits of the case during any other proceedings before any other Court.

114. The judgment be uploaded on the website forthwith.

(2026) 2 ILRA 387
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Public Interest Litigation (P.I.L.) No. 128 of 2026

Rahul **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

विचारणीय विवाद्यक

विचारणीय मुख्य विधिक मुद्दा यह था कि क्या ग्राम सभा की भूमि (विशेषतः तालाब एवं खाद गड्ढे जैसी सार्वजनिक उपयोग की भूमि) पर अवैध अतिक्रमण करने वाले व्यक्ति, जो कि न तो भूमिहीन है और न ही वास्तविक रूप से निराश्रित श्रेणी में आता है, के विरुद्ध विधिवत पारित बेदखली आदेश के क्रियान्वयन से पूर्व उसे वैकल्पिक आवास प्रदान करना आवश्यक है, अथवा ऐसे आदेश का तत्काल विधिसम्मत क्रियान्वयन किया जाना चाहिए, तथा क्या शासनादेशों में निहित संरक्षण का लाभ ऐसे व्यक्ति को दिया जा सकता है जो शासकीय सेवा में कार्यरत होकर सार्वजनिक भूमि पर अतिक्रमण का दोषी पाया गया है|

हेडनोट

उत्तर प्रदेश राजस्व संहिता, 2006 - धारा 67 - वर्तमान जनहित याचिका ग्राम सभा की भूमि पर किए गए अवैध अतिक्रमण को हटाने से संबंधित है, जिसमें याचिकाकर्ता ने तहसीलदार, बहराइच द्वारा उत्तर प्रदेश राजस्व संहिता, 2006 की धारा 67 के अंतर्गत वाद संख्या 5380 सन् 2018 में पारित आदेश दिनांक 27.11.2020 के प्रभावी क्रियान्वयन हेतु निर्देश की प्रार्थना की है - उक्त आदेश में यह अभिनिर्धारित किया गया कि विपक्षी संख्या 6 द्वारा ग्राम दुहलेवा स्थित तालाब एवं खाद गड्ढे की भूमि (गाटा संख्या 300 एवं 312) पर अवैध निर्माण कर अतिक्रमण किया गया है, जिसके परिणामस्वरूप उसे बेदखल करने तथा क्षतिपूर्ति वसूलने का निर्देश दिया गया - यह भी तथ्यगत है कि पूर्व में लेखपाल की रिपोर्ट के आधार पर कार्यवाही प्रारंभ हुई, तत्पश्चात पुनरीक्षण आदेश के अनुपालन में सीमांकन कराया गया, साक्ष्य संकलित हुए, किंतु विपक्षी संख्या 6 द्वारा पर्याप्त अवसर प्रदान किए जाने के बावजूद कोई साक्ष्य प्रस्तुत नहीं किया गया, जिसके उपरांत अंतिम आदेश पारित हुआ - उक्त आदेश को विपक्षी संख्या 6 द्वारा अपील में चुनौती दी गई, जो दिनांक 07.11.2023 को निरस्त कर दी गई, फलस्वरूप बेदखली आदेश की वैधता पुष्ट हो गई - तथापि आदेश के क्रियान्वयन में विलंब होने पर याचिकाकर्ता ने पुनः प्रार्थना की - इस दौरान प्रशासन की ओर से यह अभिमत व्यक्त किया गया कि विपक्षी संख्या 6 को वैकल्पिक आवास प्रदान करने पर विचार किया जा रहा है, जबकि याचिकाकर्ता ने यह प्रस्तुत किया कि विपक्षी संख्या 6 न तो भूमिहीन है और न ही निराश्रित, अपितु वह सामुदायिक स्वास्थ्य केंद्र में चौकीदार के पद पर शासकीय सेवा में कार्यरत है, अतः ऐसे परिस्थितियों में, विधिवत पारित एवं अपीलीय स्तर पर पुष्ट बेदखली आदेश के क्रियान्वयन में किसी प्रकार की बाधा या पुनर्वास की अनिवार्यता का प्रश्न उत्पन्न नहीं होता।

अभिनिर्धारित: विपक्षी संख्या 6 शासकीय सेवा में कार्यरत व्यक्ति हैं| ऐसा व्यक्ति गरीब एवं निराश्रित की श्रेणी में नहीं आता हैं। एक शासकीय सेवा में कार्यरत व्यक्ति द्वारा तालाब की भूमि पर कब्जा किया जाना किसी भी दशा में उचित नहीं कहा जा सकता है तथा ऐसे व्यक्ति को अन्यत्र वैकल्पिक आवास प्रदान किए जाने का कोई वैधानिक आधार भी नहीं हैं। ऐसा नहीं है कि तालाब की भूमि पर अतिक्रमण हटाने का कार्य बिना विधिक प्रक्रिया अपनाए किए जाना प्रस्तावित हैं। इस उद्देशय से धारा 67, उत्तर

प्रदेश राजस्व संहिता 2006 के अंतर्गत वाद संस्थित करके विधिक प्रकार से कार्यवाही की गई। विपक्षी संख्या 6 ने बार-बार अवसर दिए जाने के उपरांत भी साक्ष्य प्रस्तुत नहीं किया तथा अंतिम आदेश पारित होने के उपरांत अपील के माध्यम से बेदखली आदेश की वैधता को चुनौती भी दी। बेदखली आदेश अपीलीय न्यायालय से पुष्ट किए जाने के उपरांत उसके क्रियान्वयन में अतिक्रमण हटाया जाना किसी भी प्रकार से बिना विधिक प्रक्रिया अपनाए हुए किसी व्यक्ति का उत्पीड़न करना नहीं कहा जा सकता – **अतः, याचिका स्वीकार कर ली गई।** [पैरा 16 से 18] (E-13)

उद्धृत निर्णय विधि

जगपाल सिंह बनाम पंजाब राज्य **(2011) 11 एससीसी 396;** *महादेव सिंह दल बहादुर सिंह बनाम उत्तर प्रदेश राज्य* **एआईआर 2024 इला. पेज 13 - संदर्भित**

अधिनियमों की सूची

उत्तर प्रदेश राजस्व संहिता, 2006

मुख्य शब्दों की सूची

जनहित याचिका; ग्राम सभा की भूमि; सार्वजनिक उपयोग की भूमि; तालाब भूमि; खाद गड्ढा; गाटा संख्या; अवैध अतिक्रमण; अनधिकृत निर्माण; बेदखली आदेश; क्षतिपूर्ति वसूली; धारा 67, उत्तर प्रदेश राजस्व संहिता, 2006; तहसीलदार का आदेश; लेखपाल की रिपोर्ट; सीमांकन कार्यवाही; सर्वे मैनुअल; साक्ष्य का अवसर; सशपथ बयान; पुनरीक्षण; अपील; अपीलीय आदेश की पुष्टि; आदेश का क्रियान्वयन; अनुपालन हेतु निर्देश; नोटिस निर्गमन; प्रशासनिक कार्यवाही; शासनादेश; वैकल्पिक आवास; पुनर्वास का प्रश्न; भूमिहीन एवं निराश्रित व्यक्ति; शासकीय सेवा में कार्यरत व्यक्ति; वैधानिक प्रक्रिया; विधिक प्रक्रिया का अनुपालन; अतिक्रमण हटाने की कार्यवाही; सार्वजनिक श्रेणी की भूमि; उत्पीड़न का अभाव; विधिक उत्तरदायित्व; याचिका स्वीकार|

से उत्पन्न प्रकरण

मूल अधिकारिता: जनहित याचिका संख्या - 128 of 2026

दिनांक 27.11.2020 के निर्णय और आदेश से, जो तहसीलदार बहराइच द्वारा वाद संख्या 5380 / 2018 में पारित किया गया है।

पक्षकारों की ओर से उपस्थित

याचिकाकर्ता के लिए अधिवक्ता:
अनिल कुमार शुक्ला

प्रत्यर्थी के लिए अधिवक्ता:
मुख्य स्थायी अधिवक्ता, पंकज गुप्ता

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

1. याचिकाकर्ता के विद्वान अधिवक्ता श्री अनिल कुमार शुक्ला, राज्य सरकार के विद्वान स्थायी अधिवक्ता श्री राम कुमार मौर्य तथा विपक्षी संख्या 5 ग्राम सभा के विद्वान अधिवक्ता श्री पंकज गुप्ता की तरफ से उपस्थित अधिवक्ता श्री मोहम्मद तालिब खान को सुना तथा याचिकाकर्ता की तरफ से प्रस्तुत पूरक शपथ पत्र अभिलेख पर लिया गया।

2. जनहित में प्रस्तुत इस रिट याचिका द्वारा याचिकाकर्ता ने तहसीलदार बहराइच द्वारा धारा 67 उत्तर प्रदेश राजस्व संहिता, 2006 के अंतर्गत प्रस्तुत वाद संख्या 5380 सन् 2018 में पारित आदेश दिनांक 27/11/2020 के क्रियान्वयन में विपक्षी संख्या 6 को ग्राम सभा की भूमि गाटा संख्या 300 क्षेत्रफल 0.0036 हेक्टेयर तथा गाटा संख्या 312 क्षेत्रफल 0.0238 हेक्टेयर स्थित ग्राम दुहेलवा, परगना बहराइच से बेदखल करने एवं क्षतिपूर्ति की धनराशि वसूल करने का निर्देश देने का अनुरोध किया है।

3. उपरोक्त निर्णय में तहसीलदार बहराइच ने यह अंकित किया कि क्षेत्रीय लेखपाल ने इस आशय की रिपोर्ट प्रस्तुत की कि विपक्षी संख्या 6 ने ग्रामसभा के तालाब खाते की भूमि पर अनधिकार मकान निर्माण करके ग्रामसभा को क्षति पहुँचाई। तत्कालीन तहसीलदार ने आदेश दिनांक 12/12/2011 द्वारा लेखपाल की रिपोर्ट को पोषणीय न होना अवधारित करते हुए विपक्षी संख्या 6 के विरुद्ध जारी नोटिस वापस लिए जाने का आदेश पारित किया। याचिकाकर्ता ने इस आदेश के विरुद्ध जिलाधिकारी/कलेक्टर के समक्ष पुनरीक्षण प्रस्तुत किया जो आदेश दिनांक 17/06/2015 द्वारा स्वीकार कर प्रकरण सर्वे मैनुअल के अनुसार पैमाइश हेतु एक टीम गठित कर तालाब की भूमि पर अवैध कब्जे के संबंध में गुण-दोष के आधार पर पुनः निर्णीत करने हेतु प्रति-प्रेषित किया।

4. इसके उपरांत सर्वे मैनुअल के अनुसार सीमांकन करवाकर आख्या दिनांक 23/03/2017 प्रस्तुत हुई एवं क्षेत्रीय लेखपाल का सशपथ बयान अंकित हुआ एवं प्रतिपरीक्षा भी की गई। विपक्षी संख्या 6 ने अनेक अवसर दिए जाने के उपरांत भी साक्ष्य प्रस्तुत नहीं किया। इस कारण से विपक्षी संख्या 6 का साक्ष्य का अवसर दिनांक 18/11/2020 को समाप्त कर दिया गया।

5. विपक्षी संख्या 6 ने दिनांक 23/11/2020 को आदेश दिनांक 18/11/2020 को वापस लिए जाने एवं साक्ष्य का अवसर दिए जाने का अनुरोध किया, जो प्रार्थना पत्र दिनांक 23/11/2020 को निरस्त कर दिया गया।

6. दिनांक 27/11/2020 के निर्णय में यह अंकित है कि राजस्व टीम की सीमांकन आख्या दिनांक 23/03/2017 एवं क्षेत्रीय लेखपाल के सशपथ बयान से यह सिद्ध हो गया है कि विपक्षी संख्या 6 ने तालाब की भूमि गाटा संख्या 300 में 36 वर्ग मीटर तथा खाद गड्डा गाटा संख्या 312 में 38 वर्ग मीटर पर पक्का निर्माण किया तथा 0.020 क्षेत्र हेक्टेयर सहन के रूप में अवैध कब्जे में लिया हुआ है। विपक्षी संख्या 6 को उपरोक्त भूमि से बेदखल करने एवं उनसे रु०2000/- क्षतिपूर्ति वसूल करने का आदेश दिया गया।

7. इस याचिका के प्रस्तर 12 में यह कथन है कि आदेश दिनांक 27/11/2020 की वैधता को चुनौती देते हुए विपक्षी संख्या 6 ने अपील संख्या 283/2021 प्रस्तुत की, जो अपर आयुक्त के निर्णय दिनांक 07/11/2023 द्वारा निरस्त हो गई।

8. जब अपील निरस्तीकरण के उपरांत भी बेदखली आदेश दिनांक 27/11/2020 का क्रियान्वयन नहीं किया गया तो याचिकाकर्ता ने आदेश के क्रियान्वयन हेतु प्रार्थना पत्र दिया। दिनांक 31/5/2025 को तहसीलदार पयागपुर, जनपद बहराइच ने विपक्षी संख्या 6 को नोटिस निर्गत कर बेदखली आदेश दिनांक 27/11/2020 के अनुपालन में 14 दिन के अंदर कब्जा हटाने का निर्देश दिया तथा नोटिस में यह भी कहा कि अन्यथा की स्थिति में अवैध कब्जा नियमानुसार हटवा दिया जाए।

9. यह याचिका प्रस्तुत किए जाने पर दिनांक 12/02/2026 को तहसीलदार पयागपुर, बहराइच ने विद्वान स्थायी अधिवक्ता को लिखित अनुदेश प्रेषित किए, जिसमें कहा गया कि प्रतिवादी संख्या 6 के पास तालाब तथा खाद गड्ढे की भूमि पर अतिक्रमण करके बनाए गए मकान के अतिरिक्त अन्य कोई आवास नहीं है एवं न ही उनके नाम अन्य कोई भूमि अभिलेख में अंकित है तो ऐसी स्थिति में विपक्षी संख्या 6 को नियमानुसार अन्यत्र स्थान पर भूमि आवंटन हेतु विचार किया जा रहा है। विद्वान स्थायी अधिवक्ता ने कहा कि दिनांक 19/10/2023 को निर्गत शासनादेश में सार्वजनिक श्रेणी की भूमि पर बसे गरीब एवं भूमिहीन लोगों को हटाए जाने के पूर्व उनको अन्यत्र बसाए जाने के संबंध में निर्देश दिए गए हैं। शासनादेश में यह कहा गया है कि विभिन्न माध्यमों से शासन के संज्ञान में आया है कि सार्वजनिक भूमि पर पूर्व से अध्यासित अनुसूचित जाति/अनुसूचित जन जाति के गरीब तथा भूमिहीन व्यक्तियों, जिनके पास अन्यत्र निवास का कोई उचित स्थान नहीं है, उन्हें बिना विधिक प्रक्रिया के अनुपालन के हटाने, बेदखल करने और उत्पीड़न किए जाने की शिकायतें निरंतर प्राप्त हो रही हैं। इस शासनादेश में पूर्व शासनादेश दिनांक 16/05/2017, 19/02/2018 एवं 14/1/2021 का उल्लेख करते हुए यह निर्देश दिए गए हैं कि अवैध संपत्तियों एवं भू-माफियाओं का चिन्हीकरण तथा आरक्षित श्रेणी की भूमि से अतिक्रमण हटाए जाने संबंधी कार्यवाही करते समय अनुसूचित जाति/अनुसूचित जनजाति के किसी गरीब व्यक्ति तथा अन्य भूमिहीन एवं निराश्रित व्यक्तियों का उत्पीड़न न होने पाए। यथासंभव उक्तवक्त वर्णित गरीब एवं निराश्रित व्यक्तियों के आवास की व्यवस्था किए जाने के बाद ही उनको बेदखल करने की कार्यवाही की जाए।

10. याचिकाकर्ता के विद्वान अधिवक्ता ने कहा कि विपक्षी संख्या 6 निराश्रित एवं भूमिहीन व्यक्ति नहीं है। याचिकाकर्ता ने एक पूरक शपथ पत्र के माध्यम से कहा कि विपक्षी संख्या 6 सामुदायिक स्वास्थ्य केंद्र भिनगा, जनपद श्रावस्ती में चौकीदार के पद पर शासकीय सेवा में कार्यरत है।

11. तहसीलदार पयागपुर द्वारा दिनांक 25/02/2026 को दिए गए लिखित अनुदेशों में यह स्वीकार किया गया है कि विपक्षी संख्या 6 वर्तमान समय में सामुदायिक स्वास्थ्य केंद्र भिनगा, श्रावस्ती में चौकीदार

के पद पर कार्यरत है। लिखित अनुदेशों में यह भी अंकित है कि ग्राम पयागपुर, परगना बहराइच, तहसील पयागपुर, जनपद बहराइच की भूमि गाटा संख्या 1776 क्षेत्रफल 2.6570 हेक्टेयर में से 0.2430 हेक्टेयर आदित्य प्रसाद गौतम नाबालिग पुत्र संजय गौतम, संरक्षक सगी नानी कलावती, पत्नी नकछेद प्रसाद के नाम दर्ज अभिलेख हैं।

12. जगपाल सिंह बनाम पंजाब राज्य (2011) 11 SCC 396 के प्रकरण में माननीय उच्चतम न्यायालय ने यह अंकित किया है कि राष्ट्र की स्वतंत्रता के बाद से गाँव की सामुदायिक उपयोग के भू-खंडो को धन-बल, बाहु-बल अथवा राजनैतिक प्रभाव के चलते व्यक्तियों द्वारा कब्जा कर लिया गया तथा कई राज्यों में सामुदायिक उपयोग के लिए गाँव में भूमि वास्तव में नहीं बची हैं। यद्यपि अभिलेखों में भूमि उपलब्ध हो सकती हैं। ऐसा राज्य सरकार के अधिकारियों तथा क्षेत्रीय स्तर के सशक्त व्यक्ति, जिनके अपने हित सन्निहित थे तथा अपराधियों की मिलीभगत से होता है। हमारे पूरवजों ने भविष्य की आवश्यकताओं एवं होने वाली पानी की कमी को ध्यान में रखते हुए हर गाँव में तालाब तथा हर मन्दिर के साथ कुआं इत्यादि बनवाए थे। पिछले दशकों में अधिकाँश तालाबों में मिट्टी भर के कब्जे कर लिए गए हैं तथा तालाब का मूलस्वरूप नष्ट कर दिया गया है, जिससे देश में पानी की कमी बढ़ी है, कई तालाबों की भूमियां अत्यन्त सस्ते दामों पर नीलाम कर दी जाती है। अब समय आ गया है कि यह कुप्रथा बन्दी होनी चाहिए।

13. **माननीय उच्चतम न्यायालय ने जगपाल सिंह** के निर्णय में प्रत्येक राज्य सरकार को यह निर्देश दिया कि वह ग्राम सभा/ग्राम पंचायत आदि की भूमियों पर अवैध कब्जेदारों को हटाने के लिए योजना बना कर इन भूमियों को ग्राम सभा/ग्राम पंचायत को वापस दिलवाएं, जिससे कि यह भूमि सामुदायिक उद्देश्यों के लिए प्रयोग की जा सकें। मात्र अवैध कब्जे के लम्बे समय से बने होने के आधार पर उसे वैध नहीं बनाया सकता है। कब्जे का नियमितीकरण मात्र अपवाद स्वरूप हो सकता है, जैसे की जहां किसी सरकारी विज्ञप्ति द्वारा भूमिहीन श्रमिकों अथवा अनुसूचित जाति/अनुसूचित जन जाति के व्यक्तियों के पक्ष में पट्टा निष्पादित कर दिया गया हो अथवा जहाँ भूमि पर कोई विद्यालय, चिकित्सालय या अन्य सामुदायिक सुविधा का निर्माण हो चुका हो।

14. महादेव सिंह दल बहादुर सिंह बनाम उत्तर प्रदेश राज्य AIR 2024 ALLD पेज 13 के निर्णय में इस न्यायालय ने यह कहा कि तालाब के अतिक्रमणकारी को विनिमय में भी कोई दूसरी भूमि नहीं दी जा सकती है। अतिक्रमण द्वारा तालाब के अंश पर कब्जा की गई भूमि का विनिमय (अदला-बदली) किसी अन्य भूमिधरी भू-खंड से नहीं किया जा सकता है।

15. **महादेव सिंह दल बहादुर सिंह** के उपरोक्त निर्णय में इस न्यायालय ने यह भी कहा कि यदि अतिक्रमणकारियों को विनिमय (अदला-बदली) में दूसरी मूल्यवान भूमि देने की प्रथा बना दी जाएगी तो इससे बाहुबलियों को अतिक्रमण करने हेतु प्रोत्सोहन मिलेगा।

16. उपरोक्त तथ्यों से यह स्पष्ट है कि विपक्षी संख्या 6 शासकीय सेवा में कार्यरत व्यक्ति है। ऐसा व्यक्ति गरीब एवं निराश्रित की श्रेणी में नहीं आता है। एक शासकीय सेवा में कार्यरत व्यक्ति द्वारा तालाब की भूमि पर कब्जा किया जाना किसी भी दशा में उचित नहीं कहा जा सकता। ऐसा नहीं है कि तालाब की भूमि पर अतिक्रमण हटाने का कार्य बिना विधिक प्रक्रिया अपनाए किए जाना प्रस्तावित है। इस उद्देशय से धारा 67, उत्तर प्रदेश राजस्व संहिता 2006 के अंतर्गत वाद संस्थित करके विधिक प्रकार से कार्यवाही की गई। विपक्षी संख्या 6 ने बार-बार अवसर दिए जाने के उपरांत भी साक्ष्य प्रस्तुत नहीं किया तथा अंतिम आदेश पारित होने के उपरांत अपील के माध्यम से बेदखली आदेश की वैधता को चुनौती भी दी। बेदखली आदेश अपीलीय न्यायालय से पुष्ट किए जाने के उपरांत उसके क्रियान्वयन में अतिक्रमण हटाया जाना किसी भी प्रकार से बिना विधिक प्रक्रिया अपनाए हुए किसी व्यक्ति का उत्पीड़न करना नहीं कहा जा सकता।

17. ऐसी स्थिति में विपक्षी संख्या 6, जो राजकीय सेवा में होते हुए तालाब एवं खाद गड्ढे की लोक उपयोगी भूमि पर अतिक्रमण करने का दोषी पाया गया है, उसे अन्यत्र आवास प्रदान किए जाने की कोई आवश्यकता नहीं है तथा अन्यत्र आवास प्रदान किए जाए बिना भी तहसीलदार सदर बहराइच द्वारा वाद संख्या 5380 सन् 2018 में पारित आदेश दिनांक 27.11.2020, जो अपर आयुक्त द्वारा अपील में पुष्ट किया जा चुका है, का क्रियान्वयन सुनिश्चित कराना विपक्षी संख्या 4 का विधिक उत्तरदायित्व है। शासकीय सेवा में कार्यरत व्यक्ति द्वारा सरकारी भूमि पर अतिक्रमण एक दुराचरण है तथा ऐसे व्यक्ति को अन्यत्र वैकल्पिक आवास प्रदान किए जाने का कोई वैधानिक आधार भी नहीं है।

18. तदनुसार, याचिका **स्वीकार** की जाती है। विपक्षी संख्या 4 को निर्देश दिया जाता है कि वाद संख्या 5380 सन् 2018 में पारित आदेश दिनांक 27/11/2020 का क्रियान्वयन विधिनुसार शीघ्रतापूर्वक यथासंभव आज की तिथि से तीन माह के भीतर करना सुनिश्चित करें।

(2026) 2 ILRA 392
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.02.2026

BEFORE

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

Public Interest Litigation (P.I.L.) No. 1427 of 2025

Rajendra Tyagi & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Issue pertains whether the determination and fixation of "Minimum Monthly Rate of Rent (MMRR)" by Municipal Commissioner, forming the basis for assessment and enhancement of property tax in Ghaziabad, is in conformity with the statutory scheme prescribed u/s 174 of U.P. Municipal Corporations Act, 1959 read with

R. 4-A and 4-B of U.P. Municipal Corporation (Property Taxes) Rules, 2000, or whether the same suffers from arbitrariness, illegality, and non-compliance with mandatory statutory parameters, thereby vitiating the consequent levy of property tax.

Headnotes

U.P. Municipal Corporations Act, 1959 - ss. 2(74), 116, 148, 172, 173, 174 - U.P. Municipal Corporation (Property Taxes) Rules, 2000 - R. 4-A, 4-B, 4-C - Municipal Law - Revision of Property tax - Validity of - Determination of annual value - Fixation of MMRR - PIL by Corporators - Maintainability - The instant Public Interest Litigation arises from a challenge to the revision and enhancement of property taxes by Ghaziabad Municipal Corporation for the financial year 2025 - 26 - The petitioners, who are present or former corporators, assail the impugned actions including the order dated 03.05.2025, notice dated 09.01.2024, and Resolution No. 139 dated 07.03.2025, contending that the increase in property tax allegedly to an excessive extent is founded upon an unlawful and arbitrary determination of Minimum Monthly Rate of Rent (MMRR) - It is their case that such determination was undertaken without adhering to the mandatory statutory framework under the U.P. Municipal Corporations Act, 1959 and the Rules of 2000, particularly by disregarding relevant factors such as prevailing rental values and by improperly relying upon circle rates, as well as by introducing impermissible criteria like road width - The petitioners further allege that the enhancement was effected without due approval of Corporation's Board and in contravention of prescribed procedures, including those relating to periodic revision and grant of rebates - The respondent -Corporation, on the other hand, submits that the MMRR was determined after due survey, classification, publication, and consideration of objections in accordance with statutory provisions, and that the revised tax regime seeks to rectify anomalies in the earlier system.

Held: Despite questioning procedural aspects such as issuance of notice, their publication etc, in the writ petition and supplementary affidavits, submissions on that line were not advanced on behalf of the petitioners - Even otherwise the Court was convinced that all steps appear to have been taken by the respondents in that regard - The dispute, therefore, remains qua determination of 'MMRR' and it has to be examined as to whether such determination is or is not in consonance with the statutory provisions - Further, the petitioners have not been able to come out with any specific submission or suggestion as to what better methodology or concrete formula could have been adopted or exercise undertaken by Municipal Commissioner for such determination - On the face of record that the petitioners never wanted any exercise to be undertaken, rather they were somehow interested in either maintaining the property tax rates as it were or its revision/enhancement not based upon any fresh exercise according to law but as per previous arrangement like 5% per year increase which was almost negligible - The Court neither find any error in determination of 'MMRR' based upon categorization/classification of properties nor any illegality in the impugned decision of respondents to revise/enhance the property taxes based upon 'MMRR' - The exercise undertaken by respondents was found to be in consonance with the statutory provisions requiring no interference, thus, petition lacks substance, dismissed. [Paras 46, 55, 68, 76] (E-13)

Case Law Cited

Dipak Babaria and another v. State of Gujarat and others: **(2014) 3 SCC 502 - referred to**

Shiv Sewak Singh and others v. State of U.P. and others: **2012 (7) ADJ 724***; Akola Municipal Corporation and another v. Zishan Hussain Azhar Hussain and another***: 2025 SCCOnline SC 2729 - followed**

Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and others: **(2002) 1 SCC 633 - distinguished**

List of Acts

U.P. Municipal Corporations Act, 1959; U.P. Municipal Corporation (Property Taxes) Rules, 2000

List of Keywords

Public Interest Litigation; Property taxes; Corporators; Public Interest; Enhancement/revision of tax; Municipal Corporation/Nagar Nigam; Board/Executive Committee; Municipal Commissioner; U.P. Municipal Corporations Act, 1959; Annual rental value; Minimum Monthly Rent Rate (MMRR); Determination/fixation of MMRR; Levy and assessment of tax; Classification / categorisation of properties, Developed / Normally developed / Backward / Slum areas; Circle rate; Carpet area/covered area; Publication of notice; Invitation and disposal of objections; Representative capacity; Arbitrariness; Illegality; Violation of Article 14; Survey; Ward-wise and Nature wise classification; Road width criteria; Master Plan; Rebate on property tax; Executive decision; Board resolution, Implementation of revision of tax; Anomaly in earlier system; Self-assessment; Compliance with R. 4-A, 4-B, 4-C; Validity of determination; Petition lacks substance; Petition dismissed.

Case Arising From

ORIGINAL JURISDICTION: Public Interest Litigation No. - 1427 of 2025

From the Judgment and Order dated 03.05.2025, notice dated 01.04.2024, Resolution No. 139 dated 07.03.2025 issued by the Municipal Corporation, Ghaziabad

Appearances for Parties

Advs. for the Petitioner:
Samir Sharma (Senior Advocate), Himanshu Agrawal

Advs. for the Respondent:
Manish Goyal (A.A.G), A.K. Goyal, (A.C.S.C), Shashi Nandan (Senior Advocate), Shreya Gupta, Raghuvansh Misra, Sunil Dutt Kautilya, Satyavrat Sahai

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Samir Sharma, learned Senior Counsel assisted by Shri Himanshu Agrawal, Advocate appearing for the petitioners, Shri Manish Goyal, learned Additional Advocate General for respondents no.1 and 2 and Shri Shashi Nandan, learned Senior Counsel assisted by Ms. Shreya Gupta, Advocate appearing for respondents no. 3 to 5.

PRAYERS IN WRIT PETITION

2. The petitioners, who are three (3) in number and are either Ex or present Corporators in the Municipal Corporation, Ghaziabad (in short 'the Corporation' or 'Nagar Nigam'), also having held different offices therein, have filed the present writ petition in purported public interest with a prayer to quash the order dated 03.05.2025, notice dated 01.04.2024, Resolution No. 139 dated 07.03.2025 issued by the Corporation, whereby revision in property taxes has been approved. Further prayer has been made to direct the Corporation to extend the benefit of rebate on property taxes as provided under Section 174(2)(a) of **U.P. Municipal Corporations Act, 1959 ('the Act')**; further restraining the Corporation from implementing the decision dated 15.02.2024 of the Executive Committee of the Corporation with a further direction to extend the benefit of rebate on early deposit of property tax.

3. The matter was heard on various dates and, on the last day of final hearing, a Civil Misc. Amendment Application No. 7 of 2026 was pressed on behalf of the petitioners, wherein prayer

was made to read the date "09.01.2024" in place of "01.04.2024" in the first relief claimed in the petition.

4. For the reasons stated in the affidavit supporting amendment application, the same is allowed. Accordingly, the notice impugned shall be treated as dated 09.01.2024 in place of 01.04.2024.

FACTS OF THE CASE

Pleadings on behalf the petitioners (Writ Petition and Supplementary Affidavits)

5. The petitioners have claimed themselves to be public spirited citizens having instituted certain petitions earlier before this Court and, by referring to various provisions of the Act, mainly sections 148, 172, 173, 174, 207 to 213, 221-B and Rules 2, 3, 4, 4-A, 4-B, 4-C, 5, 5-A and 7 of **U.P. Municipal Corporation (Property Taxes) Rules, 2000 ('the Rules')**, it is pleaded that in the meeting of the Board of Nagar Nigam, Ghaziabad ('the Board') on 07.06.2022, the matter regarding increase in property taxes in accordance with the DM circle rate was discussed, however, after due discussion, it was unanimously resolved that the matter be put up again for discussion in the next meeting of the Board. Subsequently, in the meeting held on 16.09.2022, the aforesaid resolution was never placed before the Board, instead the Municipal Commissioner orally informed the Board that the proposal had already been forwarded to the State Government, to which the petitioners raised serious objections.

6. In the meeting of the Board held on 07.01.2023, again, no proposal regarding enhancement of the property taxes was put up for discussion, however, the Board suo-moto took up the matter and a decision was taken to increase the property taxes by 10%. The said resolution of the Board was implemented on 01.04.2023. Thereafter, a notice was published on 09.01.2024 in local news papers in Ghaziabad proposing enhancement of property taxes for residential properties within Municipal limits of the Nagar Nigam in 100 wards on the basis of DM circle rates, whereby objections were invited. Prior to publishing the notice/proposal dated 09.01.2024, the same was neither placed in the meeting of the Board nor were the members of the Board informed about any such proposal.

7. In the meeting of the Executive Committee of Nagar Nigam held on 15.02.2024, members unanimously objected to the enhancement of property tax and resolved that till the matter was taken up before the Board, recovery of property tax according to the new rates be not made, however, the aforesaid proposal was finalized and published in newspapers but the same was not given effect to during the year 2024-25. Thereafter, in the meeting of the Board held on 09.10.2024, vide resolution no. 54, the proposal for enhancement of property tax on the basis of DM circle rates was rejected but, vide letter dated 26.10.2024 of the Municipal Commissioner, resolution dated 09.10.2024 was forwarded to the State Government. In response to the same, vide letter dated 06.03.2025 issued by the under Secretary, Anubhag Nagar Vikas, Lucknow, it was indicated that the property taxes be fixed according to the minimum rental value in accordance with the provisions of section 174 of the Act and the Rules.

8. Subsequently, a meeting of all Zonal Incharges and Tax Superintendents was held on 03.05.2025 for the purposes of determination of property taxes for the Financial Year 2025-26 in accordance with the newly prescribed rates of tax and it was decided that property taxes be determined for residential buildings on the basis of carpet area and for non-residential buildings, on the basis of the covered area in accordance with the newly prescribed rates. By the said order dated 03.05.2025, a decision was taken to implement the enhanced property tax rates w.e.f 01.04.2025.

9. It is further pleaded that, earlier, the Board, vide resolution dated 07.06.2016, had decided to grant rebates providing 25% rebate on depositing house tax till the month of August, 15% rebate on deposit till September, 10% rebate on deposit till December and 5% rebate on deposit till January but, due to the Covid-19 pandemic in the year 2021, benefit of 20% rebate was extended till the month of October (instead of August). However, in the meeting of the Board held on 07.06.2022, the Municipal Commissioner informed that the rebate was discontinued and the earlier rates had been revived. Nevertheless, the Board unanimously passed the resolution that 20% rebate be extended for deposit of house tax till the month of September, while 15% rebate to be removed. Accordingly, necessary orders were issued and the same rates of rebate continued for the Financial Year 2022-23 and 2023-24, however, in the meeting of the Executive Committee held on 15.02.2024, vide resolution no. 38, the 20% rebate, which was being granted for timely deposit of house tax till the month of September, was reduced till the month of July only, which decision is illegal, arbitrary and unreasonable as the same was never approved by the Board.

10. It is further pleaded that the Board, vide resolution no. 139 dated 07.03.2025, has taken a decision that the width of the road for the purposes of calculation of rental value be fixed by taking into account the area of parking, green belt, drains, etc. As fixation of width of the roads is done in accordance with the Master Plan which is duly notified by the concerned Development Authority under U.P. Urban Planning and Development Act, 1973 and approved by the State Government, the resolution dated 07.03.2025 to the extent it directs fixation of such width by adding the area of parking, green belt, drains, etc, is illegal, arbitrary and without jurisdiction.

11. It is further pleaded that even though, since the year 2001 onwards, in accordance with the resolutions of the Nagar Nigam, rate of increase of property tax was to the extent of 10% every two years, by means of the impugned action, it has been increased by approximately 300% w.e.f 01.04.2025 and without any approval of the Board. The increase of property taxes is said to be exorbitant, arbitrary, unreasonable, violative of Article 14 of the Constitution of India, in teeth of section 174 (2) (a) of the Act, without jurisdiction and against public interest.

12. By means of supplementary affidavit and second supplementary affidavit, it has been pleaded that prior to impugned order dated 03.05.2025 or implementing the revised rates of property tax w.e.f. 01.04.2025 for the year 2025-26, neither any public notice was published under Rule 4-A nor the procedure prescribed under Rules 4-A and 4-B was followed. A meeting of the Board was convened on 30.06.2025 in which the agenda to consider enhancement of the property tax on the basis of DM circle rates was placed but the proposal was unanimously rejected. Despite the said decision, the respondents are issuing and sending bills of property tax at the increased rates due to which, the Corporators have started protests and dharna etc.

Pleadings on behalf the respondents (Short Counter Affidavit and Supplementary Short Counter Affidavit)

13. Whereas, no counter affidavit has been filed on behalf of State of U.P., short counter affidavit and supplementary short counter affidavit have been filed on behalf of respondent no. 4-Corporation stating therein that as per statutory provisions, the Municipal Commissioner, Ghaziabad classified and categorized the localities situate within the entire municipal limits into Developed (A), Normally Developed (B) and Backward Area/Slum (C) categories based upon the DM circle rates in effect at that time. The Corporation conducted a survey of the then minimum monthly rent rates (in short 'MMRR') for buildings and lands in these areas. It calculated the monthly rent rates in per square foot unit and determined its average. For example: for developed areas (category-A), the average monthly rent was calculated at Rs. 13/- per square feet and was notionally taken as 4/- for the purposes of imposition of property tax; for normally developed (category-B), it was calculated as Rs. 11/- per square feet and was notionally taken as Rs. 3.5; and for backward areas/slum (category-C), it was calculated as Rs. 8/- per square feet and was notionally taken as 3/-.

14. It is further pleaded that the monthly rent rates, so classified and categorized, were published in the news dailies, having wide circulation in the city and objections were invited. Total 318 objections were received, they were heard and disposed of by the committee constituted as per the rules. The petitioners had also lodged their written objections dated 16.02.2021 and 20.02.2021, they too were heard and their objections were also duly disposed of. The monthly rent rates determined by Corporation were presented in the meeting of Executive Committee dated 29.04.2022 in the form of proposal no. 206. Thereafter, it was presented in the meeting of the House dated 21.05.2022 but discussion thereon was deferred for the next meeting. Thereafter, in the meeting dated 07.06.2022, vide proposal no. 492, it was decided by majority that the tenure of the present House was very short, therefore, it should be placed for discussion in the next constituted House.

15. It is further pleaded that regarding implementation of revision of taxes, the then Municipal Commissioner requested for guidance from the Principal Secretary, Urban Development Department, Government of Uttar Pradesh, vide office letters dated 16.06.2022 and 06.10.2023, in response whereto, Urban Development Department directed the Municipal Commissioner to take action as per the Rules at his own level as per the powers contained in Rules 4-A and 4-B. Thereupon, the Municipal Commissioner, acting in the interest of the Corporation and following the prescribed procedure, made final publication on 09.01.2024, to be effective from 01.04.2024.

16. It is further pleaded that the homeowners/city dwellers/taxpayers of Ghaziabad started depositing tax on the basis of new rates without any objection, revenue of Rs. 38.67 crores was collected under the new regime during the financial year 2024-25 and more than Rs. 65 crores have been collected so far in the financial year 2025-26.

17. It is further pleaded that the last exercise for determination of annual rental value was carried out in the year 2001. The determination so made was permitted to form basis for imposition of property tax uptil the year 2015. In the year 2015, the rental values determined in the year 2001

were enhanced by 10%, thereafter, the same were further enhanced by 5% in the year 2016, by another 10% in the year 2018, by 15% in the year 2021 and by 10% in the year 2023.

18. Further stand has been taken that the previously determined monthly rent rates had various anomalies, like the provisions contained in the Rules regarding application of category-wise monthly rent rates were not being followed, one uniform rate was being made applicable in fully developed posh areas, normally developed areas and backward areas/slums, which was not in accordance with the provisions of the Act and the Rules, wherein there is a provision for fixing the minimum monthly rent per square foot unit of carpet area but, under the old regime, the rates for carpet area and covered area were fixed separately, such that carpet area rates were higher than covered area rates. Further, taxation of residential buildings was being done according to the covered area rates and taxation of the non-residential buildings was being done according to the carpet area rates, whereas the statutory mandate is to determine the tax of non-residential buildings according to the covered area and that of residential buildings according to the carpet area.

19. Further stand is that the new tax rates remove anomalies in the past regime and determine the rates according to the specific area, width of the road, location of the building in developed/undeveloped/backward/rural/urban areas, so that the disparity can be removed. The determination based on proper categorization of areas and survey of prevalent rent rates in each area is as per the Act and the Rules and that the prescribed procedure has been fully followed.

Rejoinder affidavits (Rejoinder and Supplementary Rejoinder Affidavits)

20. Stand of the petitioners in these affidavits is that in case the decision taken by the Corporation vide resolution no. 139 dated 07.03.2025, whereby the width of the roads on which the property is situated is taken into account, annual value would be calculated by adding the green area, drains, parks etc. falling between the property and road and its effect would be that it would inflate the annual value of a property which comes within the category of a slum (in case there is a public drain or green belt adjacent to the road in front of the slum) while, on the other hand, the annual value of properties in a posh colony would remain the same. It amounts to treating un-equals equally on the basis of increasing/decreasing the width of the road on which the property is situated, thereby increasing or decreasing the annual value.

21. It is further stated that section 148 of the Act specifically provides a time period within which the property taxes have to be revised/implemented. If the decision to increase the property tax on the basis of DM circle rates was taken in the year 2022, the said decision could not be implemented in the year 2025-26. Admittedly, the 'MMRR' per square foot was revised in Ghaziabad, lastly in the year 2023, the same could not have been revised just the next year in 2024 (for the year 2024-25).

22. As far as the contention of the respondent no.4 that some amount as per revised rate has been deposited by some property owners for the year 2025-26, stand is that the same may have been done only due to ignorance on the part of the property owners regarding the resolutions passed by the House of the Corporation.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

23. Though, as per pleadings contained in the writ petition and supplementary affidavits, procedural aspects as regards issuance of notices, their publication etc were indicated, during the course of arguments, submissions on that line were not advanced by learned Senior Counsel appearing for the petitioners. He has, however, made vehement submissions that as per Section 173(2) of the Act, corporation taxes can be assessed and levied in accordance with the provisions of the Act and the Rules framed thereunder and though Section 173(2) provides that the taxes shall be levied on the annual value of buildings or land, in the present case, determination of annual value is erroneous and in teeth of the provisions of Section 174 read with Rule 4-A.

24. Elaborating his submissions, it has been argued that whereas annual value, in case of a building or land, means twelve (12) times of the value arrived at on multiplying the carpet area of the building or the land by applicable 'MMRR' per square foot of carpet area, in the present case, such determination has not been made according to the provisions contained under Section 174(1)(b) read with Rule 4-A and no exercise has been undertaken by the respondents in consonance with the said provisions.

25. It is further contended that whereas Rule 4-A provides that 'MMRR' is to be worked out for every group of buildings/land within a ward having regard to circle rate fixed by the Collector for purposes of the Indian Stamp Act, 1899 and the current 'MMRR' in the area for such building or land, the respondents have made determination only based upon the circle rates fixed by the Collector and no computation/determination has been made having regard to the current 'MMRR'. It has further been argued that whereas Section 174(1)(b) provides that 'MMRR' may be fixed once in every two years by the Municipal Commissioner, in the instant case, the last revision was done w.e.f. 01.04.2023, however, the impugned determination/ enhancement has been made effective w.e.f. 01.04.2024, i.e. within one year without waiting for expiry of two years period and, hence, for this reason alone, the impugned notice/order/resolution is liable to be set aside.

26. It is further submitted that though, vide Resolution no. 38 passed in the Board Meeting dated 15.02.2024, decision to grant rebate in different percentages was unanimously passed, no rebate is being provided by the respondents while issuing demand bills and, therefore, the Corporation is not obeying its own decision. It is further submitted that the Municipal Commissioner has attempted to justify impugned determination by categorising properties of Ghaziabad in different categories/classes based upon the width of road, but since 'road' has not been defined under the Act but only word 'street' has been defined, the respondents have no authority to make any such classification/categorisation, which is beyond their competence and also dehors the provisions of the Act itself.

27. By referring to Resolution No. 139 passed in the meeting dated 07.03.2025, it has been submitted that the respondents have illegally and arbitrarily included road, footpath, divider, central verge, green belt, parking space, service road, drain/mini drain etc. while prescribing 'MMRR' for different categories, which determination is not contemplated under the Act, inasmuch as it is only the Development Authority or the Government which has competence to determine width of the road and to decide about various parameters to be included in the said width. The very Resolution

No. 139 is, therefore, said to be illegal and also consequential determination based upon the categorisation/classification so as to arrive at 'MMRR'.

28. Further submission has been made that as per Section 174(1)(b), three (3) components compositely determine annual value of building/land, i.e. the carpet area, 'MMRR' and the figure '12' by which the carpet has to be multiplied and, out of these three components, two (2) are static and the only variable component is 'MMRR' and, unless this variable component is determined strictly in accordance with the provisions of the Act and the Rules, figure of consequential property tax would be erroneous and, therefore, the respondents were under statutory obligation to determine 'MMRR' wisely, carefully and in accordance with law and not in an arbitrary manner.

29. Reliance has been placed on behalf of the petitioners on the following judgments:-

(i) **Dipak Babaria and another Vs. State of Gujarat and others: (2014) 3 SCC 502;**
(ii) **Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others: (2002) 1 SCC 633**

SUBMISSIONS ON BEHALF OF THE RESPONDENT-CORPORATION AND ITS OFFICERS

30. Per contra, learned counsel for the respondent-Corporation and its Officers has made submissions that the controversy involved in the petition is only about 'MMRR' and not about rate of property tax. Elaborating his submissions, it is contended that as per Section 148 of the Act, power to determine rates of taxes lies with Corporation, taxes are to be imposed as per Sections 172 and 173 of the Act and determination of 'annual value' is the sole prerogative of the Municipal Commissioner. Reference has also been made to Rules 2(k) and (l) to address on the definition of 'annual value' and monthly rate and submission has been made that the Municipal Commissioner has followed the statutory mandate contained under Rule 4(1) while making 'ward-wise and nature-wise' classification of properties by forming nine (9) groups. Rules 4-A, 4-B and 4-C were read with vehemence to show strict compliance done by the Municipal Commissioner.

31. As far as the steps undertaken by the Municipal Commissioner so as to arrive at the impugned decision, submission has been made that in the year 2020, every locality in every ward was categorized into three categories: Developed Areas (A), Normally Developed Areas (B) and Backward/Slum Areas (C) based upon the DM circle rates. A team of Nagar Nigam officials was deputed by the Municipal Commissioner to carry out a survey of every locality in every ward of District Ghaziabad for determination of 'MMRR' of each category A, B and C.

32. It is further contended that on 05.02.2021, the provisionally determined 'MMRR' were widely published in two reputed newspapers of the District and objections were invited from the masses and a detailed notification was also published on the official website. On 26.04.2022, total 318 objections were received. Petitioner nos. 1 and 2 also filed their objections. All the objections were heard by a duly constituted Committee and were disposed of by reasoned and speaking orders. The outcome of the decision taken on the objections of petitioners no.1 and 2 was duly

communicated to them. On 29.04.2022, the provisionally determined 'MMRR' were placed before the Board in its meeting, vide agenda no. 206, however, discussion on it was postponed uptil the next meeting. On 21.05.2022, the provisionally determined 'MMRR' were once again placed before the Board, however, no discussions were made qua such determination.

33. It is further contended that on 07.06.2022, discussion on the provisionally determined 'MMRR' was once again postponed by the Board for the next session. On 16.06.2022, Municipal Commissioner intimated the Principal Secretary, Urban Development about the exercise carried out by him under section 174 of the Act and determination of 'MMRR' reached by him. When Municipal Commissioner did not receive any response to his letter dated 16.06.2022, he again wrote to the Principal Secretary on 06.10.2023 asking for guidance in respect of exercise carried out under section 174. On 27.10.2023, Under Secretary to the State Government required the Municipal Commissioner to carry out determination of 'MMRR' at his own level in accordance with provisions of section 174 and Rules 4-A and 4-B. On 09.01.2024, final publication of the revised rental values was made in two reputed newspapers dailies and the same were made effective from 1.4.2024.

34. It is further contended that on 15.02.2024, the Executive Committee of the Nagar Nigam resolved to keep the newly determined 'MMRR' in abeyance for the time being, consequently its implementation was suspended. Thereafter, on 09.10.2024, the Board passed a resolution bearing No. 54 rejecting the proposal for enhancement of property tax on the basis of DM circle rates. On 26.12.2024, Municipal Commissioner intimated Principal Secretary, Urban Development, Government of U.P. about the resistance being made by the Board and sought his guidance. On 10.01.2025, Under Secretary to the Government of U.P. forwarded the letter of the Municipal Commissioner dated 26.12.2024 to Director, Nagriya Nikay Nideshalaya, U.P. Lucknow and sought its report/comments in the matter.

35. On 28.01.2025, the Secretary, Financial Resources Development Board submitted a detailed report to the Government opining that the resolution no. 54 dated 09.10.2024 passed by Nagar Nigam Board is without any authority of law and is legally unsustainable. On 06.03.2025, based upon the aforesaid report, the Under Secretary to the Government of U.P. responded to the letter of the Municipal Commissioner dated 26.12.2024 requiring him to determine the monthly rental values in accordance with section 174 of the Act of 1959 and Rules 4-A and 4-B of the Rules, 2000, at his own level.

36. It is further contended that Nagar Nigam started assessing property tax as per the new regime. On 07.03.2025, its Board passed a fresh resolution taking into account the opinion of the State Government dated 06.03.2025 and accepting the determination of 'MMRR' done by the Municipal Commissioner. On 07.03.2025, the Board passed resolution no. 139 resolving to categorize localities in each ward on the basis of the width of the road indicated in the Master plan and, in its absence, as per the sanctioned map of Awasiya Yojna. On 30.06.2025, the Board convened a special session and once again passed a resolution rejecting the adoption of a 'MMRR' determined by the Municipal Commissioner under Section 174.

37. As regards submissions made on behalf of the petitioners that the Municipal Commissioner was not competent to prescribe 'MMRR' based upon width of the road, learned counsel for the respondents has made submissions that as per Section 2(74) of the Act, 'street' includes road also and, therefore, contrary submission made has no substance.

38. It is further contended that during the course of ward-wise categorization of localities, for developed areas falling under Category (A), the rent per square foot of carpet area varied from Rs.6/- to Rs.17/-, for normally developed areas, it varied from Rs.5/- to Rs.20/- and for backward/slum areas, the range was from Rs.4/- to Rs.11/-. Reference was made to a table appended as Annexure SCA-2 to the short counter affidavit indicating that an average of the monthly rent per square foot qua all the three categories was separately taken in the manner that for developed areas, the average figure was indicated as '13', for normally developed areas, the figure was shown as '11' and for backward/slum areas, it was indicated as Rs.8/-.

39. On a pointed query made by the Court from the learned counsel appearing for the Corporation that when 'MMRR' was shown to be based upon the average figures taken as 13, 11 and 8, as to why the said figures were further brought down respectively to Rs. 4, 3.5 and 3, submission was made that the 'lowest' figure of rent for all categories A, B, and C was respectively Rs. 6, 5 and 4 and the Municipal Commissioner, in his own wisdom, thought it proper to bring down the 'MMRR' even below the lowest figures and, accordingly, indications were made in the public notice dated 09.01.2024.

40. As far as the submissions made on behalf of the petitioners that since Section 174(1)(b) read with Rule 4-A obliges the Municipal Commissioner to determine the 'MMRR' once in every two years and, therefore, impugned exercise of revising the same within one year is unsustainable, it has been argued on behalf of the respondents that previous exercise under the said provisions was undertaken only in the year 2001 and not thereafter and, therefore, challenge laid to the impugned action on this ground, has no substance. Submission is that the 'MMRR' was kept intact since 2001 and it was only since 2015-16 that the same was increased to Rs. 1.10 and, then, in the year 2018, it was increased to Rs. 1.27, thereafter in the year 2021, the figure reached to Rs. 1.46 and, lastly, w.e.f. 01.04.2023, the 'MMRR' was indicated as Rs. 1.61; however, the said increment was not based upon any statutory exercise under Section 174(1)(b) read with Rule 4-A, rather it was a percentage increase based upon wisdom of the Commissioner and periodic decisions taken by the Board.

41. Lastly, it has been contended that the petitioners being Ex or present Corporators of the Corporation, they are bound by the decision of the Board and any action or stand taken by them against Board's decision cannot be made subject matter of a petition filed in purported public interest. Submission is that the petition has been filed by the petitioners only to settle their political scores with one or the other authority of the Corporation and, therefore, the same deserves to be dismissed with costs.

42. Reliance has been placed on behalf of the respondents on the following judgments:-

(i) **Shiv Sewak Singh and others Vs. State of U.P. and others: 2012 (7) ADJ 724;**

(ii) **Akola Municipal Corporation and another Vs. Zishan Hussain Azhar Hussain and another: 2025 SCCOnline SC 2729**

SUBMISSIONS ON BEHALF OF THE STATE

43. Shri Manish Goyal, learned Additional Advocate General, has made submissions that as per Section 174(1)(b) read with Rule 4-A, Municipal Commissioner is the competent authority to determine 'MMRR' and based thereupon, property taxes are levied. By referring to Section 116 of the Act, submission has been made that in case of any doubt or dispute arising as to which Corporation Authority any particular function belongs, reference can be made to the State Government whose decision shall be final and, in the present case also, Municipal Commissioner had sought opinion from the State Government, which was furnished. Specific reference has been made to communication dated 06.03.2025 whereby the State Government had required the Commissioner to proceed at his own level as per Section 174 and Rules 4-A and 4-B. In sum and substance, the contention is that determination made by the Municipal Commissioner in furtherance of the guidelines and directions issued and request made by the State Government, is strictly in accordance with the provisions of the Act requiring no interference by this Court.

DISCUSSION

44. Since applicability and interpretation of various provisions of the Act and Rules is involved in this matter and **'levy/determination of property taxes'** and **'annual value'** of a property, are germane to the controversy involved, it would be appropriate to refer to certain relevant provisions, which read as under:-

"172. Taxes to be imposed under this Act.- (1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India the Corporation shall impose the following taxes, namely –

(a) **property taxes,**

.....

(3) **The Corporation taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.**

(4) .....

173. **Property taxes leviable.-** (1) For the purposes of sub-section (1) of section 172 **property taxes** shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the city -

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale;

(b) a water tax leviable in areas where water is supplied by the Corporation;

(c) drainage tax leviable in areas provided with sewer system by the Corporation;

(d) a conservancy tax in areas in which the Corporation undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cess-pools.

(2) Save as otherwise expressly provided in this Act or rules made thereunder, these taxes shall be levied on the annual value of buildings or land as the case may be:

Provided that the aggregate of the property taxes shall in no case be less than 22 percent and not more than 32 percent of the annual value of the building or land or both assessed to such taxes, so however, that the general tax shall not be less than 10 percent and not more than 15 percent, the water tax shall not be less than 7.5 percent and not more than 12.5 percent, the drainage tax shall not be less than 2.5 percent and not more than 5 percent and the conservancy tax shall not be more than 2 percent of the annual value.

174. Definition of "annual value".- (1) "Annual value" means

(a) in case of railway stations, colleges, schools, hotels, factories, commercial buildings and other non-residential buildings, twelve times the value arrived at on multiplying with multiplier to be fixed by rules in the monthly rate of rent per square foot of residential buildings fixed under clause (b) with the covered area of the building or open area of the land or both as the case may be.

(b) in the case of a building or land not falling within the provisions of clause (a), twelve times the value arrived at on multiplying the carpet area of the building, or the area of the land, by the applicable minimum monthly rate of rent per square foot of the carpet area in the case of building or the applicable minimum monthly rate of rent per square foot of the area in the case of land, as the case may be, and for this purpose the minimum monthly rate of rent per square foot shall be such as may be fixed once in every two years by the Municipal Commissioner on the basis of the location of the building or the land, nature of the construction of the building, the circle rate fixed by the collector for the purposes of the Indian Stamp Act, 1899 and the current minimum rate of rent in the area for such building or land such other factors, and in such manner, as may be prescribed:

Provided that where the annual value of any building would by reason of exceptional circumstances, in the opinion of the Corporation, be excessive if calculated in the aforesaid manner the Corporation may fix the annual value at any less amount which appears to it equitable."

45. Since 'MMRR' is determined as per Rules of 2000, relevant Rules 4, 4-A, 4-B and 4-C read as under:-

"4. Classification of Property.- (1) Municipal Commissioner shall classify the location of property falling within the provisions of Section 174 of the Act, ward-wise and thereafter within each ward, it shall be classified basing on the situation of property on three different types of roads, namely

(a) roads having a width of more than 24 metres,

(b) roads having width of 12 metres to 24 metres,
(c) roads having width less than 12 metres.

(2) Municipal Commissioner shall classify the nature of construction of buildings falling, within the provisions of Section 174 of the Act, on the following basis-

(a) pakka building with R.C.C roof or R.B roof;
(b) any other pakka building; or
(c) kachcha building that is all other buildings not covered in Clauses (a) and (b)

(3) Municipal Commissioner shall accordingly arrange all buildings in a ward in maximum number of nine different groups and in case of all vacant plots of land, in maximum number of three different groups as shown below:

(a) in case of building, the nine groups shall be as follows-

(i) pakka building with R.C.C roof situated on a road having a width of more than 24 metres,
(ii) pakka building with R.C.C roof situated on a road having width of 12 metres to 24 metres
(iii) pakka building with R.C.C roof situated on a road having width less than 12 metres,
(iv) other pakka building situated on a road having a width of more than 24 metres,
(v) other pakka building situated on a road having a width of 12 metres to 24 metres,
(vi) other pakka building situated on a road having width less than 12 metres,
(vii) kachcha building situated on a road having a width of more than 24 metres,
(viii) kachcha building situated on a road having a width of 12 metres to 24 metres,
(ix) kachcha building situated on a road having width less than 12 metres,

(b) In case of land, the three groups will be as follows-

(i) Land situated on a road having a width of more than 24 metres;
(ii) Land situated on a road having a width of 12 metres to 24 meters;
(iii) Land situated on a road having a width less than 12 metres.

4-A Fixation of minimum monthly rate of rent.- (1)The Municipal Commissioner shall **once in every two years** work out **minimum monthly rate of rent per unit area (square foot) of the carpet area for every group of building within a**

ward or the applicable minimum monthly rate of rent per unit area (square foot) of the area for every group of land as the case may be and f ix the rate as residential building having regard to-

(i) the circle rate fixed by the Collector for purposes of the Indian Stamp Act, 1899; and

(ii) the current minimum rate of rent in the area for such building or land:

Provided that before fixing such monthly rate of rent, the Municipal Commissioner shall notify such proposed rates in two daily newspapers having circulation in such city and thereafter providing a minimum fifteen days time for filing objections by interested persons. All such objections shall be heard ward-wise after grouping the objections received in maximum number of 12 different bunches. Each bunch shall contain the objections received from one group of buildings or one group of land, as the case may be. All objections shall be disposed of by the Municipal Commissioner himself or an officer authorised by Municipal Commissioner in this behalf after giving the opportunity of being heard to at least ten per cent of the total number of objections. It shall not be necessary to hear personally all the objectors or the interested persons. The objections may be decided in bunches.

Explanation.- Keeping in view of difficulties in fixation of carpet area, the rate on the basis of covered area would be 80% of carpet area based rates for purposes of self-assessment.

(2) In the case of non-residential building and land the monthly rate of rent per unit area of covered area and the land shall be multiple of the monthly rates of rent fixed under sub-rule (1) as mentioned in the Schedule.

4-B. Publication of the rates of minimum monthly rent.- The objections when decided under Rule 4-A, the Municipal Commissioner shall notify in two daily newspapers having circulation in such city, the minimum monthly rate of rent per square foot of the carpet area for every group of building within a ward, or the applicable minimum monthly rate of rent per square foot of the area for every group of land, as the case may be, and thereafter it shall become final.

4-C. Tax Assessment.- The assessment of tax shall be made on the basis mentioned hereunder:-

(a)(i) Calculation of Annual Value of residential building-Carpet area x fixed per unit area monthly rate of rent x 12

or

Covered area x fixed per unit area monthly rate of rent x 12 x 80%

(ii) Calculation of Annual Value of residential land-Area of land x fixed per unit area monthly rate of rent x 12

(b) (i) Calculation of Annual Value of non residential buildings - Covered area x monthly rate of rent per unit area fixed on the basis of the multiplier in relation with the rate of residential building x 12

(ii) Calculation of Annual Value of non residential lands - Area of land x monthly rate of rent per unit area fixed on the basis of the multiplier in relation with the rate of residential building x 12

(2) Payable tax. - Taxes would be payable in accordance with the rates fixed under Section 148 of the Act on the basis of annual value.

(3) Rebates - Rebates shall be admissible in annual value of residential buildings and taxes shall be payable in accordance with the provisions prescribed in the Act.

……."

46. We may observe here that despite questioning procedural aspects such as issuance of notice, their publication etc, in the writ petition and supplementary affidavits, submissions on that line were not advanced on behalf of the petitioners. Even otherwise we are convinced that all steps appear to have been taken by the respondents in that regard. The dispute, therefore, remains qua determination of 'MMRR' and it has to be examined as to whether such determination is or is not in consonance with the statutory provisions.

47. A perusal of the record indicates that the Municipal Commissioner, after dividing the entire city into 100 wards, each ward comprising of different colonies and localities and also based upon the width of the road, area of the building, monthly rent and its calculation on per square foot of carpet area, classified and categorised the localities situated within the entire municipal limits of Ghaziabad in the following three categories:-

(A) Developed areas;
(B) Normally developed areas; and
(C) Backward/slum areas.

48. The classification on record indicates that for developed areas, the rent per square foot of carpet area varied from Rs.6/- to Rs.17/-, for normally developed areas, it varied from Rs.5/- to Rs.20/- and for backward/slum areas, it varied from Rs.4/- to Rs.11/-. The table appended as Annexure SCA-2 to the short counter affidavit filed on behalf of respondent no. 4 further indicates that an average of the monthly rent per square foot qua all the three categories was separately taken in the manner that for developed areas, the figure was indicated as '13', for normally developed areas, the figure was shown as '11' and for backward/slum areas, it was indicated as Rs.8/-.

49. In view of the above, though the Municipal Commissioner could have determined 'MMRR' for three categories as respectively 13, 11 and 8, in the final public notice dated 09.01.2024 the said figures were indicated quite below the average figures. For a ready reference, the entire public notice dated 09.01.2024 is reproduced as under:-

गाजियाबाद नगर निगम

(I.S.O. 9001.14001 &18001 प्रमाणित संस्था)

पत्रांकः– 872/न०आ०/2023–24 दिनांकः 09.01.2024

सार्वजनिक सूचना

सर्व साधारण को सूचित किया जाता है कि उ०प्र० नगर निगम अधिनियम 1959 के प्राविधानों व उ०प्र० नगर निगम सम्पत्तिकर नियमावली 2000 के अन्तर्गत नगर निगम गाजियाबाद स्थित कुल 100 वार्डों हेतु भारतीय स्टॉम्प अधिनियम 1899 के प्रयोजन के लिये कलैक्टर द्वारा निर्धारित सर्किल दर के आधार पर न्यूनतम आवासीय मासिक किराये की प्रति वर्गफुट की दरों का निर्धारण किये जाने हेतु दो दैनिक समाचार पत्र क्रमशः दैनिक जागरण एवं अमर उजाला में प्रकाशन तथा नगर निगम की वेबसाईट "www.nagarnigamghaziabad.in, सोशल मीडिया पर अपलोड तथा समस्त जोनल कार्यालयों में नोटिस बोर्ड पर चस्पा कराकर जनसामान्य से आपत्तियाँ आमन्त्रित की गयी थी तथा प्राप्त आपत्तियों की गठित समिति के द्वारा नियमानुसार सुनवाई करते हुए निस्तारण कर संबंधित आपत्तिकर्ताओं को नोटिस निर्गत करते हुए सूचित किया गया।

श्रेणीवार मौहल्लों की मासिक किराया दरें प्रति वर्गफुट का विवरण

		24 मी. से अधिक चौड़े मार्ग पर स्थित भवन			12 मी. से 24 मी. तक चौड़े मार्ग पर स्थित भवन			12 मी. से कम चौड़े मार्ग पर स्थित भवन			केवल भूमि/भूखण्ड के सम्बन्ध में स्थित	
क्र. सं.	श्रेणी	R.C.C./ R.B. छत सहित पक्का	अन्य पक्का भवन	कच्चा भवन	R.C.C./ R.B. छत सहित पक्का	अन्य पक्का भवन	कच्चा भवन	R.C.C./ R.B. छत सहित पक्का	अन्य पक्का भवन	कच्चा भवन	24 मी. से अधिक चौड़े मार्ग पर स्थित भूखण्ड	12 मी. से 24 मी. तक चौड़े मार्ग पर स्थित भूखण्ड
1	2	3	4	5	6	7	8	9	10	11	12	13
1	श्रेणी A	4	3.75	1.75	3.75	3.5	1.5	3.5	3.25	1.25	1.75	1.5
2	श्रेणी B	3.5	3.25	1.25	3.25	3	1	3	2.75	0.9	1	0.75
3	श्रेणी C	3	2.75	1	2.75	2.5	0.75	2.5	2.75	0.75	0.75	0.6

जिसमें नियत समय के अन्दर प्राप्त आपत्तियाँ को नियमावली में दिये गये प्राविधानों के अन्तर्गत नगर आयुक्त के द्वारा गठित समिति के द्वारा आपत्तिकर्ताओं की सुनवाई करते हुये उक्त आपत्तियों का नियमानुसार निस्तारण कराया गया।

नगर निगम सीमान्तर्गत स्थित कुल 100 वार्डों में स्थित मौहल्लों का श्रेणीवार विवरण नगर निगम की वेबसाईट www.nagarnigamghaziabad.in पर उपलब्ध है व किसी भी जोनल कार्यालय या नवयुग मार्केट स्थित मुख्य कार्यालय के चतुर्थ तल के कक्ष सं०–07 में सम्पर्क कर किसी भी कार्यदिवस मे देखी जा सकती है।

नोटः– जिन वार्डों के किसी मौहल्ले को श्रेणीवार सूची में शामिल नहीं किया गया है उन्हेंपूर्ण विकसित, विकसित एवं अर्द्धविकसित स्थिति के आधार पर प्रथम श्रेणी, द्वितीय श्रेणी, तृतीय श्रेणी में माना जायेगा।

उक्त निर्धारित दरों को अंतिम रूप से लागू किये जाने हेतु प्रस्ताव तैयार कर मा० कार्यकारिणी व मा० सदन के समक्ष रखा गया, किन्तु प्रस्तावित दरों को लागू किये जाने के संबंध कोई चर्चा / विचार विमर्श नही किया गया। तद्पश्चात उक्त दरों को लागू किये जाने हेतु प्रमुख सचिव नगर विकास उ०प्र० शासन लखनऊ को पत्र प्रेषित करते हुये नगर निगम राजस्व हित में प्रस्तावित दरों को लागू किये जाने हेतु प्रस्ताव प्रस्तुत किया गया जिस पर शासन के द्वारा अपने पत्र सं०–2143/नौ–9–2023–87 ज/22 दिनांक 27.10.2023 स्वःस्तर से सम्पत्तिकर की न्यूनतम मासिक किराया की प्रति वर्गफुट की दरों को निर्धारित करने हेतु अनुमोदन प्रदान किया गया, जिसे अन्तिम रूप से प्रकाशित करते हुये वित्तीय वर्ष 2024–25 के दिनांक 01.04.2024 से लागू किया जाता है।

नगर आयुक्त, गाजियाबाद नगर निगम

50. A perusal of the tabulated depiction of the monthly rent per square foot, as indicated in the impugned notice dated 09.01.2024, shows that for buildings falling under category (A) wherein nature of construction was that of RCC/RB and which were abutting roads having width of more than 24 metres, the monthly rent was indicated as Rs.4/- and not Rs.13/-. Similarly, for categories (B) and (C), the buildings having same nature of construction and situated abutting roads having same width, instead of monthly rent being 11/- and 8/-, as determined, the figure was indicated as Rs.3.50 and 3/- respectively. 'MMRR' in other categories of buildings and based upon width of road etc. can be perused from the table itself, which is self explanatory and requires no elaboration.

51. We find substance in the submission made on behalf of the respondents that bringing down the figures of 'MMRR' even below the average values, was the step taken by the Municipal Commissioner in his own wisdom and he had exercised his power under proviso to Section 174(1)(b) which provides that where the annual value of any building would, by reason of exceptional circumstances, be excessive, the Corporation may fix the annual value at any less amount which appears to be equitable.

52. A perusal of the impugned notice dated 09.01.2024 further indicates that the Municipal Commissioner had clearly notified therein that category-wise details of locations spread in 100 wards was available on the website of the Municipal Corporation being www.nagarnigamghaziabad.in and the same can be perused on any working day by making contact at the Head Office of the Corporation or in any zonal office. The aforesaid category-wise description of localities spread in 100 wards, being large in size, probably for this reason the clause regarding its availability on official website was inserted in the impugned public notice dated 09.01.2024.

53. Since the challenge raised in the petition is on the methodology of such categorization and arguments have been advanced on that line, the Court deems it appropriate to make a reference of such categorization. The same forms part of record as Annexure No. SCA-4 to the short counter affidavit filed by respondent no. 4. The tabulated depiction being quite large in size, it would be appropriate to refer few portions thereof indicating zone-wise, ward-wise and category-wise classification of the entire localities within the municipal limits of the Corporation. The same depicts as under:-

श्रेणीवार मौहल्लों की मासिक किराया दरें प्रति वर्गफुट का विवरण

"**श्रेणीवार मौहल्लों की मासिक किराया दरें प्रति वर्गफुट का विवरण**

क्रम सं०	श्रेणी	24 मी. से अधिक चौड़े मार्ग पर स्थित भवन			12 मी. से 24 मी. तक चौड़े मार्ग पर स्थित भवन			12 मी. से कम चौड़े मार्ग पर स्थित भवन			केवल भूमि/भूखण्ड के सम्बन्ध में स्थित		
		R.C.C. /R.B. छत सहित पक्का	अन्य पक्का भवन	कच्चा भवन	R.C.C./ R.B. छत सहित पक्का	अन्य पक्का भवन	कच्चा भवन	R.C.C./ R.B. छत सहित पक्का	अन्य पक्का भवन	कच्चा भवन	24 मी. से अधिक चौड़े मार्ग पर स्थित भूखण्ड	12 मी. से 24 मी. तक चौड़े मार्ग पर स्थित भूखण्ड	12 मी. से कम चौड़े मार्ग पर स्थित भूखण्ड
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	श्रेणी A	4.00	3.75	1.75	3.75	3.50	1.50	3.50	3.25	1.25	1.75	1.50	1.25
2	श्रेणी B	3.50	3.25	1.25	3.25	3.00	1.00	3.00	2.75	0.90	1.00	0.75	0.50
3	श्रेणी C	3.00	2.75	1.00	2.75	2.50	0.75	2.50	2.25	0.75	0.75	0.60	0.30

जिसमें नियत समय के अन्दर प्राप्त आपत्तियों को नियमावली में दिये गये प्राविधानों के अन्तर्गत नगर आयुक्त द्वारा गठित समिति के द्वारा आपत्तिकर्ताओं की सुनवाई करते हुये उक्त आपत्तियों का नियमानुसार निस्तारण कराया निस्तारण उपरान्त श्रेणीवार मौहल्लों का विवरण निम्नवत् है।

क्रम सं०	जोन का नाम	वार्ड	वार्ड का नाम	श्रेणी A	श्रेणी B	श्रेणी C
1.	विजय नगर	1.	क्रिश्चयन नगर बागू	–	–	कृष्णा नगर बागू, भीमनगर लड्डमार कॉलोनी

2.	विजय नगर	2.	सिद्धार्थ विहार	–	–	सिद्धार्थ विहार, राहुल विहार, प्रज्ञा विहार,
3.	विजय नगर	3.	पुराना विजय नगर	सै०–9 के ब्लॉक एच०, जे०के०	पुराना विजय नगर	–
4.	विजय नगर	4.	माता कॉलोनी	–	सै०–12 के ब्लॉक ए०, बी०, सी०डी०	माता कॉलोनी, रोजी कॉलोनी, संघर्ष कॉलोनी
5.	मोहन नगर	5.	गगन विहार	–	–	गगन विहार
6.	सिटी जोन	6.	दीनदयालपुरी	–	नन्दग्राम डी ब्लाक, साई एन्कलेव, लोहिया नगर	विकलांग कालोनी, दीनदयालपुरी ए व बी–ब्लाक बोम्बे कॉलोनी योजना,
7.	विजय नगर	7.	बिहारीपुरा सुदामापुरी	–	–	सुन्दरपुरी, रघुनाथपुरी, नयी बस्ती
8.	सिटी जोन	8.	नेहरू नगर–II	नेहरू नगर सी, डी, ई, व एफ ब्लाक,	लक्ष्मी विहार कालोनी क्वार्टर, मालीवाड़ा	बारादरी, दीनागढ़ी, रामागढ़ी, प्राणगढ़ी,
9.	सिटी जोन	9.	शिब्बनपुरा पटेल नगर	न्यू आर्य नगर, पटेल नगर ए, बी, सी, डी, ब्लाक, पटेल नगर–II	–	शिब्बनपुरा, तीन मंजिले क्वार्टर, बौन्झा,
10.	मोहन नगर	10.	डी.एल.एफ.	डी.एल.एफ. (दिलशाद गार्डन), विक्रम इन्कलेव	–	पप्पू कालोनी
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.....	.....	.....	.....	.....	.....	.....
95.	सिटी जोन	95.	प्रेम नगर कैला	–	–	भट्ठाजात, प्रेमनगर, कैला चौक, सादिक की पुलिया
96.	सिटी जोन	96.	नेहरू नगर–III	अम्बेडकर रोड बीच वाला हिस्सा, सलेकचन्द कालोनी, नेहरू नगर–III बी, सी, डी, ई, एफ. (आंशिक भाग) एम.एल.के.एन–ब्लाक, अशोक नगर, नेहरू नगर–II ए.बी–ब्लॉक, जी.डी.ए. कालोनी	राम नगर, कानूपुरा	–
97.	वसुन्धरा	97.	रामप्रस्थ	रामप्रस्थ, चन्द्रनगर	–	–
98.	वसुन्धरा	98.	अहिंसाखण्ड	अहिंसाखण्ड, नीतिखण्ड–3	–	–
99.	वसुन्धरा	99.	वैभवखण्ड–1	वैभवखण्ड–1	–	–
100.	वसुन्धरा	100.	शिप्रा सन सिटी	शिप्रा सन सिटी (वैभवखण्ड–2)	–	–

नोटः– जिन वार्डों के किसी मौहल्ले को श्रेणीवार सूची में शामिल नही किया गया है उन्हे पूर्ण विकसित, **विकसित** एवं अर्द्धविकसित स्थिति के आधार पर प्रथम श्रेणी, द्वितीय श्रेणी, तृतीय श्रेणी में माना जायेगा।

उक्त निर्धारित दरों को अंतिम रूप से लागू किये जाने हेतु प्रस्ताव तैयार कर मा० कार्यकारिणी व

क्रम सं०

मा० सदस्य के समक्ष रखा गया लेकिन प्रस्तावित दरों को लागू किये जाने के संबंध कोई चर्चा/ विचार विमर्श नही किया गया। **तद्परांत** उक्त दरों को लागू किये जाने हेतु प्रमुख सचिव नगर विकास उ०प्र० शासन लखनऊ को पत्र प्रेषित करते हुये नगर राजस्व हित में प्रस्तावित दरों को लागू किये जाने हेतु प्रस्ताव प्रस्तुत किया गया जिस पर शासन के द्वारा **अपने पत्र** सं०–2143/ नौ–9–2023–87 ज/22 दिनांक 27.10.2023 स्वस्तर से सम्पत्तिकर की न्यूनतम मासिक किराया की **वर्गफुट** की दरों को निर्धारित करने हेतु अनुमोदन प्रदान किया गया, जिसे अन्तिम रूप से प्रकाशित करते हुये **वित्तीय वर्ष** 2024–25 के दिनांक 01.04.2024 से लागू किया जाता है।"

नोटः- जिन वार्डों के किसी मौहल्ले को श्रेणीवार सूची में शामिल नही किया गया है उन्हे पूर्ण **विकसित**, विकसित एवं अर्द्धविकसित स्थिति के आधार पर प्रथम श्रेणी, द्वितीय श्रेणी, तृतीय श्रेणी में माना जायेगा।

उक्त निर्धारित दरों को अंतिम रूप से लागू किये जाने हेतु प्रस्ताव तैयार कर मा० कार्यकारिणी व मा० सदस्य के समक्ष रखा गया लेकिन प्रस्तावित दरों को लागू किये जाने के संबंध कोई चर्चा/विचार विमर्श नही किया गया। **तद्परांत** उक्त दरों को लागू किये जाने हेतु प्रमुख सचिव नगर विकास उ०प्र० शासन लखनऊ को पत्र प्रेषित करते हुये नगर राजस्व हित में प्रस्तावित दरों को लागू किये जाने हेतु प्रस्ताव प्रस्तुत किया गया जिस पर शासन के द्वारा **अपने पत्र** सं०-2143/नौ-9-2023-87ज/22 दिनांक 27.10.2023 स्वस्तर से सम्पत्तिकर की न्यूनतम मासिक किराया की **वर्गफुट** की दरों को निर्धारित करने हेतु अनुमोदन प्रदान किया गया, जिसे अन्तिम रूप से प्रकाशित करते हुये **वित्तीय वर्ष** 2024-25 के दिनांक 01.04.2024 से लागू किया जाता है।"

54. A bare perusal of the aforesaid tabulated depiction clearly indicates that extensive exercise was undertaken by the Municipal Commissioner covering all the localities in district Ghaziabad spread in 100 wards of the Corporation and the determination was based upon disposal of the objections received by the Corporation after providing opportunity of hearing to the objectors and in consonance with statutory provisions. Therefore, it cannot be said that determination made is cursory or arbitrary in nature.

55. Further, the petitioners have not been able to come out with any specific submission or suggestion as to what better methodology or concrete formula could have been adopted or exercise undertaken by the Municipal Commissioner for such determination. Therefore, we are of the view that the determination of 'MMRR' cannot be said to be excessive, rather in accordance with the categorization/classification of the properties, as provided under the Rules.

56. Now, to deal with the rival submissions made with reference to the words 'street' and 'road', it would be necessary to refer the definition of 'street' as contained in Section 2(74) of the Act. The same reads as under:-

"2(74)- **"street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, foot-way, sub-way, court, alley or riding path or passage, whether a throughfare or not,** over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years; and, when there is a footway as well as a carriage way in any street, the said term includes both;"

57. A bare perusal of the definition of 'street' clearly indicates the legislative intent so as to include therein not only the road but also highway, causeway, bridge, viaduct, arch, lane, foot-way, sub-way, court, alley or riding path or passage. The definition being inclusive in nature, submission that the Commissioner is competent to take any decision only qua 'street' and not qua 'road' and, therefore, determination of 'MMRR' based upon the width of road is contrary to the provisions of the Act, has no substance at all and is discarded.

58. In this regard, we may also refer to Agenda No. 139 taken up in the Board meeting dated 07.03.2025 wherein the issue of determination of 'MMRR' based upon width of road was taken up. For a ready reference the said Agenda, which was unanimously approved, is reproduced as under:-

"प्रस्ताव संख्या 139

नगर निगम अधिनियम 1959 की धारा 174 तथा उ०प्र० नगर निगम (सम्पत्तिकर) नियमावली 2000 के नियम 4 (1) के अनुसार सड़क की चौड़ाई को तीन भागों में वर्गीकृत किया गया है।

A. 24 मी0 से अधिक चौड़ी सड़क

8. 12 से 24 मी0 के मध्य चौड़ी सड़क

C. 12 मी0 से कम चौड़ी सड़क

उक्तानुसार सम्पत्तिकर निर्धारण हेतु मासिक किराया दरों का भवन की प्रकृति के अनुसार निर्धारण होता है, परन्तु सड़क की चौड़ाई के सम्बन्ध में मत-भिन्नता रहती है। उक्त को स्पष्ट करने हेतु सड़क की चौड़ाई नियत करने का मार्गदर्शक सिद्धान्त प्रतिपादित होना आवश्यक है। यहाँ यह स्पष्ट करना है कि वार्षिक मुल्यांकन निर्धारित करने हेतु सड़क की चौड़ाई का मापदण्ड लेने के पीछे भवन की अव्यस्थिति के अनुसार किराया दरों का निर्धारण है। यदि भवन अधिक चौड़ी सड़क पर स्थित है तो उस भवन का स्थान के अनुसार मूल्य अधिक होगा। इस प्रकार वार्षिक मूल्यांकन भी अधिक होगा। उपरोक्त अवधारणा के अनुसार भवन के मुख्य द्वार के सामने स्थित सड़क की चौड़ाई का निर्धारण करते समय सड़क के विन्यास, जिसमें आवागमन हेतु निर्धारित सड़क, फुटपाथ, डिवाईडर, सैन्ट्रल वर्ण, ग्रीन बेल्ट, पार्किंग स्थान (यदि सड़क से संलग्न है), सर्विस रोड और आवागमन हेतु निर्धारित सडक के बीच का नाला नाली, मुख्य सड़क से भवनों में प्रवेश हेतु संलग्न सर्विस रोड आदि को समवेत मानते हुये सड़क की चौड़ाई नियत करना समीचीन होगा। यहाँ यह भी स्पष्ट करना है कि महा योजना में सड़क की चौड़ाई में यह सभी घटक सम्मिलित होते है। सड़क के चौड़ाई के निर्धारण में स्पष्टता हेतु महायोजना में दर्शायी गयी सड़क की चौड़ाई ही मानक होगी।

जहाँ पर महायोजना में सड़क की चौड़ाई का विवरण उपलब्ध नहीं है ऐसी स्थिति में विकास प्राधिकरण द्वारा स्वीकृत नक्शे में प्रदर्शित सड़क की चौड़ाई या सार्वजनिक स्थान पर फुटपाथ समेत सड़क की चौड़ाई होगी। साथ ही गाजियाबाद नगर निगम सीमान्तर्गत स्थित समस्त हाईराईज्ड बिल्डिंग/सोसायटी, टाउनशिप में स्थित फ्लैटों के कर निर्धारण हेतु सड़क की चौड़ाई का निर्धारण उक्त आवासीय योजना के स्वीकृत मानचित्र, जिसे विकास प्राधिकरण अथवा आवास विकास के द्वारा स्वीकृत किया गया है, में दर्शायी गयी सड़क की चौड़ाई के आधार पर किया जायेगा। अतः उक्त प्रस्ताव मा० सदन के समक्ष सादर विचारार्थ एवं अनुमोदनार्थ प्रस्तुत है।"

59. The challenge laid by the petitioners to the determination of 'MMRR' corresponding to width of road is essentially a challenge to a part of the proceedings of Board meeting dated 07.03.2025 and though we cannot approve challenge in part to any Board meeting or decision taken therein, even if, for the sake of challenge, we examine the contents of Agenda No. 139, we find that no independent decision qua the road was taken in the said Board meeting. Rather, the discussion was made with reference to width of the road described in the master plan and, in case the details of width were not available in the master plan, aid was decided to be taken based upon the width shown in the maps sanctioned by the Development Authority. Therefore, in our opinion, the decision was to standardise the component of width of road while determining 'MMRR' so as to keep it in consonance with the already decided parameters, either as per the master plan of the city or as per the record of the Development Authority. Therefore, we do not find any error in Agenda No. 139 on this score. Consequently, the challenge to the same stands discarded.

60. One of the main contentions raised on behalf of the petitioners is that since Section 174(1)(b) read with Rule 4-A obliges the Municipal Commissioner to determine/work out the 'MMRR' **'once in every two years'**, the impugned decision to enforce revised taxes based upon the determination of 'MMRR' made before expiry of two years, is unsustainable. The said contention, when critically examined based upon the record position, reveals that the exercise as per Section 174(1)(b) read with Rule 4-A was previously undertaken by the respondents in the year 2001 only. Thereafter, whatever revision in 'MMRR' was made from time to time, the same was not based upon any such exercise which has now been undertaken in consonance with the provisions of law, rather the documents reflect that 'MMRR' was revised from time to time based upon percentage increase therein. For example, in the year 2015-16, for RCC buildings situated on roads having less than 12 metres width, 'MMRR' was increased as Rs.1.10, in the year 2018, it was increased to Rs.1.27, in the year 2021, the said figure reached to Rs.1.46 and, lastly, w.e.f. 01.04.2023, the 'MMRR' was indicated as Rs.1.61.

61. In view of the above, whatever revisions were made from time to time, the same cannot be said to be strictly in consonance with the statutory requirements of Section 174(1)(b) read with Rule 4-A, rather such periodical revision/enhancement was based upon the wisdom of Municipal Commissioner or periodic decisions taken by the Board. There is nothing on record to show that, at any point in time, any such decision providing 5% increase in 'MMRR' was ever challenged or objected to by anyone; probably for the reason that such enhancement/revision being insignificant

in nature, was not adversely affecting either the Corporators or even the public at large. The exercise in accordance with the provisions of the Act and the Rules having been undertaken after a passage of over 20 years, the challenge laid has no substance.

62. Now we proceed to deal with the contention raised on behalf of the petitioners that vide Agenda No. 54 in the Board meeting dated 09.10.2024, the decision to enhance property tax as per circle rate was turned down and, vide Agenda No. 113 placed in the Board meeting dated 07.03.2025, the previous Agenda No. 54 was approved and, therefore, no revision/enhancement could be done.

63. On perusal of record, we find that though there was an agenda to the aforesaid effect, a contrary decision was taken in the meeting dated 07.03.2025 wherein it was resolved that whatever decision was taken by the State Government, the same would be unanimously accepted. Even otherwise, when the matter was forwarded by the State Government to the Financial Resources Development Board, the said Board, vide communication dated 28.01.2025, with reference to Section 537 of the Act, held that the Agenda No. 54 passed on 09.10.2024 does not appear to be as per law. Accordingly, the said agenda did not survive further and, ultimately, it was the State Government whose directions/guidelines issued to the Municipal Commissioner vide communication dated 06.03.2025 had to prevail, whereby the Commissioner was left at his own wisdom to proceed in accordance with the provisions of Section 174 of the Act read with Rules 4-A and 4-B of the Rules.

64. Now while dealing with the submissions made on behalf of the State that as per Section 116(2) of the Act, in the event any doubt or dispute arises as to which Coropration Authority in a particular function belongs, the Municipal Commissioner may refer the doubt or dispute to the State Government whose decision shall be final, we find that as per Section 5 of the Act 'Corporation Authorities' include the Corporation, the ward committees, an executive committee, the Mayor, a Development Committee and a Municipal Commissioner and one or more Additional Municipal Commissioners. Therefore, when the dispute had arisen in the mind of the Municipal Commissioner being a Corporation Authority, in decision making qua revision in tax based upon the determination of 'MMRR', the matter was rightly referred to the State Government. For reference, we may reproduce Sections 116 and 5 of the Act to examine the action of the State in this matter.

"116. Division of functions between Corporation authorities.- *(1) The respective functions of the several Corporation authorities shall be such as are specifically prescribed by or under this Act.*

(2) In the event of any doubt or dispute arising as to which Corporation authority any particular function belongs, the Municipal Commissioner may, and if the Mayor so requires shall, refer the doubt or dispute to the State Government whose decision shall be final and not open to question in any court of law.

5. Corporation authorities.- *The Corporation authorities charged with carrying out the provisions of this Act for each City shall be-*

(a) the Corporation;
(aa) the Ward Committees];
(b) an Executive Committee of the Corporation;
(bb) The [Mayor];
(c) a Development Committee of the Corporation;
[(d) a Municipal Commissioner and one or more Additional Municipal Commissioner appointed for the Corporation under this Act]; and
(e) in the event of the Corporation establishing or acquiring electricity supply or public transport undertaking or other public utility services, such other committee or committees of the Corporation as the Corporation may with the previous sanction of the State Government establish with respect thereto.″

65. It is, therefore, apparent that the State Government, on a reference made to it, had required the Municipal Commissioner to take a decision on his own as per statutory mandate contained under Section 174(1)(b) and Rule 4-A and reference made to the State Government and its decision received by the Municipal Commissioner, being in consonance with Section 116(2) of the Act, we do not find any error in such decision and, therefore, as the State is not objecting to revision in the property taxes as a result of determination of 'MMRR′ or even otherwise, there appears to be no substance in the challenge laid by the Corporators.

66. As far as relief regarding rebate is concerned, we do not find any such foundation in the petition or even the provision whereunder rebate is granted except as per Rule 4-C(3) of the Rules which indicates that rebates shall be admissible in annual value and payable tax in accordance with the provisions prescribed in the Act. The petitioners have, though referred to Section 174(2)(a) of the Act so as to claim relief extending the benefit of rebate on property tax, we do not find any such stipulation in the said provision. Nevertheless, considering the arguments advanced that vide earlier resolution dated 07.06.2016, the Board had decided to grant certain rebates, we find that the same was only with respect to deposit of house tax based upon a time schedule. Therefore, we do not find any ground to issue a mandamus directing the respondents to extend the benefit of rebate and infact the relief of extending the rebate is tangent to the frame of the writ petition and the same stands discarded.

Sanctity of challenge laid by Corporators

67. We also find from various letters and correspondences on record that the petitioners and one or other Corporator(s) was having clash of interest with the decisions taken by the Mayor in one or the other meeting or the proceedings thereof. The resentment and displeasure shown by them over a period of time wherein, on the one hand, the Municipal Commissioner was undertaking the exercise qua determination of 'MMRR′ in furtherance of the guidelines issued by the State Government in exercise of powers under Section 116 of the Act, the petitioners, on the other hand, were acting in such a manner so that the proceedings may not be finalized and even when the Mayor proceeded to take up the matter, all kind of opposition was raised.

68. We need not go into the details of communications, letters and correspondences made in between petitioners, Mayor and the Municipal Commissioner as discussion on that line would

unnecessarily overstretch this judgment; however, one thing is apparent on the face of record that the petitioners never wanted any exercise to be undertaken, rather they were somehow interested in either maintaining the property tax rates as it were or its revision/enhancement not based upon any fresh exercise according to law but as per previous arrangement like 5% per year increase which was almost negligible.

69. Very recently, the Hon′ble Supreme Court, in the case of **Akola Municipal Corporation (supra)** dealt with an identical matter arising from a Division Bench judgment of the High Court of Judicature at Bombay, passed in a pubic interest litigation, wherein revision of property tax of the concerned Municipal Corporation for the year 2017-18 to 2021-22 was challenged. The said petition was filed by a Corporator in the said Corporation. The High Court interfered with the policy decision of the Corporation and granted reliefs as claimed. On challenge laid by the Municipal Corporation before the Hon′ble Supreme Court, not only the nature of relief claimed by a Corporator through a PIL was examined by the Hon′ble Supreme Court from the point of view of his locus, but also the scope of judicial review in economic policy matters was extensively dealt with.

70. The Hon′ble Supreme Court, in paragraph 12 of the report, referred to the averment made by the respondent-petitioner wherein he had stated that he was a practising doctor having M.D. (medicine) degree, a social worker and Corporator of the Akola Municipal Corporation. The Hon′ble Supreme Court observed that the petitioner had not claimed that he was representing the entire populous of Akola city and, in paragraph 14 of the judgment, it was observed that the petitioner had never claimed that he had been authorized or acting on behalf of the citizens of the Akola city for challenging the action of the Corporation in revising the tax structure and, apparently, he had raised his individual grievance against the action of increase of tax by filing writ petition under the garb of a public interest litigation.

71. Though, in the present case, learned Senior Counsel appearing for the petitioners has referred to the plea raised in rejoinder affidavit that the writ petition has been filed in ‘representative capacity′, a bare perusal of 4th paragraph of the rejoinder affidavit indicates that as to whom the three petitioners (Corporators) were representing, has not been indicated; that is to say as to whether they are representing the entire city of Ghaziabad or have been authorized by the residents to lay a challenge to the revision in property taxes. Therefore, the reasoning recorded by the Hon′ble Supreme Court in the case of **Akola Municipal Corporation (supra)** as regards the locus of a Corporator to lay such a challenge, applies in full force in the present case also and it is held that the challenge laid by three Corporators in purported public interest, cannot be said to be actually laid in public interest, rather the record reflects that there was conflict of interests between the Corporators, Municipal Commissioner and Mayor and, repeatedly, one or the other resolution passed in one or other meeting of the Board was either opposed or not permitted to take effect.

72. We also find that in the case of **Akola Municipal Corporation (supra)** also, the taxes had remained at a stagnant rates for almost 16 years and when statutory exercise was undertaken by the Corporation concerned for revision of tax rates after such a long period of time and the High Court interfered with the decision, the Hon′ble Supreme Court upset the decision of the High Court by observing that the High Court had transgressed the permissible limits of judicial review in economic policy decision taken by the Corporation. It was further observed by the Hon′ble

Supreme Court that in absence of any challenge to the substantive authority of the Corporation to revise municipal taxes, the scope of scrutiny before the High Court stood confined solely to examine as to whether the statutory procedure had been complied with and the High Court ought not to have embarked upon a roving inquiry into the merits or wisdom of the decision to revise tax rates.

73. Though learned Senior Counsel for the petitioners tried to contend that even the Hon'ble Supreme Court had, in the case of **Akola Municipal Corporation (supra)**, observed that unless the procedure adopted by the Corporation was ex-facie arbitrary, perverse, unreasonable or in derogation of the governing statutory provisions, interference could not be made and in the present case, since the procedure adopted by the Municipal Commissioner is dehors the provisions of the Act and the Rules, the ratio laid down in the case of **Akola Municipal Corporation (supra)** has to be seen in that light, we are not inclined to accept the said submissions as we have already found that the exercise undertaken by the Municipal Commissioner was strictly in consonance with the statutory provisions.

74. In the case of **Shiv Sewak Singh (supra)**, a coordinate Bench of this Court extensively dealt with challenge laid by the elected Corporators, Ex-Officio Corporators and Ex-Corporators of Nagar Nigam, Allahabad to increase in the property tax levied on the properties for the year 2011-12. Though the challenge was confined to adoption of Geographical Information System (GIS) in identifying and calculating the property tax, fixation of annual value of the properties, enhancement of monthly rate of rent and assessment of house tax coupled with resolutions passed by the Corporation, the matter was extensively dealt with by this Court. It was found that monthly rates of rent notified by the Municipal Commissioner were valid and assessment lists were treated to be final and conclusive under Section 212 of the Act. The resolutions passed by the Corporation and also exercise of powers of the State Government in that matter was also found not faulty as is the situation in the present case also.

75. The judgment relied on in the case of **Anjum M.H. Ghaswala (supra)** is of no assistance to the petitioners as the same was passed totally on different context arising out of Income Tax Act where subject matter was the powers of Settlement Commission to grant relief under CBDT Circulars and though submissions were made that powers vested in any authority have to be exercised in a particular manner as prescribed in the statute, since we have not found any flaw or illegality in exercise of powers by the Municipal Commissioner in revising/enhancing the property taxes based upon determination of 'MMRR', the judgment cited has no application in the facts of the case. Similar is the position with regard to the other decision cited on the same lines in the case of **Dipak Babaria (supra)** and the same is also of no help to the petitioners.

CONCLUSION

76. In view of the detailed discussion made above, we neither find any error in determination of 'MMRR' based upon categorization/classification of the properties nor any illegality in the impugned decision of the respondents to revise/enhance the property taxes based upon 'MMRR'. The exercise undertaken by the respondents is found to be fully in consonance with the statutory provisions requiring no interference by this Court.

77. The petition has no substance and the same is, therefore, **dismissed**.

(2026) 2 ILRA 419
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.02.2026

BEFORE

THE HON'BLE PRASHANT KUMAR, J.

Second Appeal Defective No. 87 of 2017

State of U.P. & Ors. ...Appellant
Versus
Vinod Kumar Chopra & Ors. ...Respondents

Issue for Consideration

Matter pertains to whether the appellants/State have demonstrated "sufficient cause" within the meaning of s. 5 of Limitation Act, 1963, so as to justify the condonation of an inordinate and unexplained delay of 4957 days (or substantially reduced delay even after exclusion of time u/s 14), in filing the instant second appeal against the impugned judgment and decree, thereby warranting adjudication of the appeal on merits by the High Court.

Headnotes

Code of Civil Procedure, 1908 - s.96 - Limitation Act, 1963 - ss.5, 14 - Condonation of delay - Sufficient cause - Maintainability - The instant matter arises out of a suit for recovery instituted by the plaintiffs (respondent nos. 1 and 2), who were engaged in the business of manufacturing and supplying bricks, against the State authorities - Pursuant to an order dated 07.03.1992, the plaintiffs supplied 35,000 bricks at the agreed rate of Rs. 875 per thousand, and additionally supplied 8,000 bricks on further directions, out of the total supply, 15,024 bricks were returned as substandard, while 28,476 bricks were retained by the defendants, valued at Rs. 24,966.50, payable within three months, i.e., by 27.06.1992 - Upon failure of defendants to make payment, the plaintiffs instituted Regular Suit No. 108 of 1995, which was decreed on 15.05.2000 - The defendants preferred a delayed first appeal, which was dismissed on 23.07.2003 on the ground of limitation as well as on merits, thereafter, a civil revision filed before the High Court was also dismissed on 18.09.2015 as not maintainable with liberty to approach the appropriate forum - Subsequently, the State filed the instant second appeal on 16.02.2017, accompanied by an application for condonation of an inordinate delay of 4957 days.

Held: While dealing with an application for condonation of delay, the vital test is whether "sufficient cause" has been made out - However, in cases involving bureaucratic inefficiency, the Court must examine whether there is a valid explanation for the delay or merely an excuse has been set up - Though the two concepts may sometimes overlap, there is a fine distinction between a genuine explanation and a mere excuse, which the appellant is required to establish satisfactorily - Since the rule of limitation are based on principle of sound public policy, hence it cannot be contended in a mechanical manner - The appellant has been pursuing a trivial issue of Rs.24,966/- upto this Court - All the proceedings initiated after the dismissal of the civil suit have been filed with the delay - In view of the facts and circumstances of the case, since sufficient cause is not made out for condonation of delay in filing second appeal, the application for condonation of delay is rejected - **Accordingly, the second appeal also dismissed with costs.** [Paras 56, 59 to 61] (E-13)

Case Law Cited

State of Haryana v. Chandra Mani and Ors., Reported in **(1996) 3 SCC 132;** *N. Balakrishnan v. M. Krishnamurthy, Reported in* **(1998) 7 SCC 123;** *Sridevi Datla v. Union of India and Ors, Reported in* **(2021) 5 SCC 321;** *Inder Singh v. The State of Madhya Pradesh, reported in* **2025 INSC 382;** *G. Ramegowda, Major & Ors. v. Special Land Acquisition Officer, Bangalore, reported in* **(1988) 2 SCC 142;** *Special Tehsildar, Land Acquisition v. K.V. Ayisumma, reported in* **(1996) 10 SCC 634;** *State of Nagaland v. Lipok AO, reported in* **(2005) 3 SCC 752;** *Postmaster General and others v. Living Media India Limited and another, reported in* **(2012) 3 SCC 563;** *State of West Bengal v. The Administrator, Howrah Municipality, reported in* **[1972] 2 SCR 874;** *Lanka Venkateswarlu v. State of A.P., reported in* **(2011) 4 SCC 363;** *State of Madhya Pradesh & Ors. v. Bherulal, reported in* **(2020) 10 SCC 654;** *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Pvt. Ltd., reported in* **(2021) 6 SCC 460;** *State of Odisha & Ors. v. Sunanda Mahakuda, reported in* **(2021) 11 SCC 560;** *State of U.P. v. Sabha Narain, reported in* **(2022) 9 SCC 266;** *Union of India v. Jahangir Byramji Jeejeebhoy, reported in* **2024 SCC OnLine SC 489;** *Shivamma (Dead) by L.Rs. v. Karnataka Housing Board and Ors., reported in* **MANU/SC/1262/2025;** *Dilbagh Rai Jerry v. Union of India, reported in* **(1974) 3 SCC 554;** *Mundrika Prasad Singh v. State of Bihar, reported in* **(1979) 4 SCC 701;** *Urban Improvement Trust, Bikaner v. Mohan Lal, reported in* **(2010) 1 SCC 512;** *Gurgaon Gramin Bank v. Khajani, reported in* **(2012) 8 SCC 781;** *Punjab State Power Corporation Limited Patiala and others v. Atma Singh Grewal, reported in* **(2014) 13 SCC 666;** *Pandurang Vithal Kevne v. Bharat Sanchar Nigam Limited and another;* **Special Leave Petition (Civil) Diary No.56230 of 2024 - referred to**

List of Acts

Code of Civil Procedure, 1908; Limitation Act, 1963

List of Keywords

Second appeal defective; Condonation of delay; Delay of 4957 days; Sufficient cause; ss. 5, 14 Limitation Act; Prescribed period; Explanation of delay; Procedural delay; Bona fide; Negligence; Laches; Deliberate inaction; Casual and lethargic; Burden of proof; Maintainability; Civil revision; Liberty to approach appropriate forum; Recovery suit; Dismissal on merits and limitation; Ex parte (not applicable); Sanction/approval process; Impersonal machinery; Public interest; Justice-oriented approach; Technicalities of limitation; Finality of litigation; Conduct of party; Rejection of appeal on ground of limitation.

Case Arising From

APPELLATE JURISDICTION: Second Appeal Defective No. - 87 of 2017

From the Judgment and Decree dated 23.07.2003 passed by learned Additional District Judge, Court No.5, Lakhimpur Kheri in Civil Appeal No.230 of 2001

Appearances for Parties

Adv. for the Appellant:
Standing Counsel

Adv. for the Respondent:
Sushil Kumar Rastogi

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

C.M. Application No.20593 of 2017

1. Heard Shri Anuj Kudesia, Additional Advocate General as well as Senior Advocate assisted by Shri Hemant Kumar Pandey, learned Additional Chief Standing Counsel appearing for the appellant/State.

2. The second appeal has been preferred against the judgment and decree dated 23.07.2003 passed by learned Additional District Judge, Court No.5, Lakhimpur Kheri in Civil Appeal No.230 of 2001 (Prabhagiya Van Adhikari and others v. Dev Kumar Chopra and others), whereby the application for condonation of delay in filing the appeal under Section 96 of the Civil Procedure Code against the judgement and decree dated 15.05.2000 passed by learned Additional Civil Judge (S.D.), Lakhimpur Kheri in Regular Suit No.108 of 1995 (Dev Kumar Chopra v. Prabhagiya Van Adhikari and others) moved by the appellants under Section 5 of the Limitation Act has been rejected. This appeal was filed with the delay of 4957 days.

3. This is an application for condonation of delay under Section 5 read with Section 14 of the Limitation Act.

Factual matrix of the case are as follows:

4. The respondent nos.1 and 2 (plaintiffs) owned a brick-kiln and was in a business of manufacturing bricks. The respondents supplied bricks to the Government and other government agencies from time to time and whenever quotation was called for, they used to give quotation for the same. In the year 1992, the defendant no.1/appellant no.2 sought for a quotation for 35,000 best quality bricks. The same was given by the plaintiffs/respondent nos.1 and 2. On 07.03.1992 an order was placed to provide 35,000 best quality bricks and to be delivered in the office of the defendant no.1/appellant no.2. The agreed rate was Rs.875/- per thousand, which included transportation, unloading and stacking. As per order the plaintiffs/respondent nos.1 and 2 supplied 35,000 bricks. The defendant no.1/appellant no.2 further directed him to provide additional 8,000 bricks, which were also supplied and transported, unloaded and stacked in the office of the defendant no.2/appellant no.3. At that point of time, defendant no.1/appellant no.2 returned 15024 bricks, which were not upto the mark, however, the defendant no.1/appellant no.2 retained 28,476 bricks, which according to the agreement were valued Rs.24,966.50/-. All the bricks were supplied on 27.03.1992. As per agreement the payment was to be made within three months. Accordingly, the payment became due on 27.06.1992. After getting the bricks, the defendant no.1/appellant no.2 did not pay the amount. Hence, plaintiff preferred a suit for recovery of the amount. In this suit, written statement was filed by the appellants. After hearing the parties, the civil court framed issues and ultimately decreed the suit vide order dated 15.05.2000.

5. The appellants herein assailed this decree and judgement dated 15.05.2000 passed by the civil court by preferring appeal bearing Civil Appeal No.230 of 2001 before the appellate court i.e. Additional District Judge, Lakhimpur Kheri. This appeal was filed after **a delay of 1 year and 4 months** and the same was rejected vide order dated 23.07.2003 on the ground of delay and on merits.

6. Further after a delay of almost **about 9 months**, on an advice given by the counsel for the appellants, a civil revision bearing Civil Revision No.61 of 2004 was filed before this Court on 21.04.2004, which got rejected vide order dated 18.09.2015, which is quoted below:

"Sri Adnan Ahmad, State Law Officer candidly states that this revision is not maintainable in view of the decision of this Court in the case of Smt. Prem Wati and Anr. vs. Smt. Munni Devi [2009(27)LCD 508].

Accordingly, revision is dismissed as not maintainable.

It will be open for the revisionist to approach appropriate forum in accordance with law, if so advised."

7. After rejection of the civil revision, instant second appeal along with application for condonation of delay has been filed on 16.02.2017 challenging the order dated 23.07.2003. The Registry of this Court pointed out a delay of **13 years, 3 months and 26 days (4957 days)**. The reasons for the delay mentioned in the affidavit filed in support of the delay condonation application was that, the impugned order was passed on 23.07.2003, but due to some legal advice, a civil revision was filed before this Court on 21.04.2004, which ultimately got dismissed on 18.09.2015 on the ground that the revision is not maintainable. However, this Court granted a permission to the revisionist to approach any forum in accordance with law. This order was passed on 18.09.2015 and after that the appellants sought permission from the Legal Department of the State for filing the appeal. The permission was accorded on 04.11.2016. Thereafter the District Forest Officer, Lakhimpur Kheri wrote a letter on 17.11.2016 and requested the Chief Standing Counsel to file instant second appeal, who in turn advised the officer to bring documents along with certified copy of the impugned decree and order. Certified copy was applied on 21.11.2016 and the same was made available on 24.12.2016. Somehow the certified copy was not given to the counsel and hence the certified copy of the decree was applied, which was made available on the same day. Thereafter the instant second appeal was filed on 16.02.2017.

8. Since the reasons for condonation of delay were not properly explained, a supplementary affidavit was filed, wherein it has been stated that against the impugned order dated 23.07.2003 passed by the civil court, the appellant had preferred a civil revision before this Court on 21.04.2004 and the same was dismissed on 18.09.2015. After passing the aforesaid order by the High Court on 18.09.2015, the Regional Forest Officer, Sharda Nagar informed the same to the Divisional Forest Officer, South Kheri vide letter dated 30.09.2015. On 15.10.2015, the Divisional Forest Officer, Kheri requested the Chief Standing Counsel for obtaining the certified copy of the order dated 18.09.2015 and to furnish legal opinion regarding future course. The Regional Forest Officer, Sharda Nagar vide his letter dated 12.01.2016 sent certified copy of the order dated 18.09.2015 to the Divisional Forest Officer, South Kheri for his guidance, who sought for the legal opinion and the same was submitted on 14.01.2016 by the State Law officer to the Divisional Forest Officer on 18.01.2016. The Divisional Forest Officer on 26.01.2016 requested the District Government Counsel (Civil), Lakhimpur Kheri to prepare short history of the case and submit his legal opinion on the subject. The Regional Forest Officer, Sharda Nagar vide his letter dated 24.09.2016 submitted his synopsis of the case and his opinion to the District Government Counsel (Civil) Lakhimpur Kheri. The Divisional Forest Officer, South Kheri vide his letter dated 01.03.2016 requested the Chief Forest Conservator, Lucknow Division, Lucknow for filing instant second appeal. The Chief Forest Conservator, Lucknow Division, Lucknow vide his letter dated 04.03.2016 sought further report on certain subject from the Divisional Forest Officer, South Kheri, who in turn submitted his report to the Chief Forest Conservator, Lucknow Division, Lucknow on 15.03.2016. The Chief Forest Conservator, Lucknow Division, Lucknow vide his letter dated

21.03.2016 requested the Principal Secretary, Forest and Forest Animal, U.P. to accord permission to file second appeal, but the matter was kept pending before the Principal Secretary, Forest. The Chief Forest Conservator, Lucknow Division, Lucknow, he again on 28.07.2016 requested the Principal Secretary, Forest to accord permission. Similar requests were also made on 12.09.2016 and 15.09.2016. The Divisional Forest Officer again asked the Regional Forest Officer to personally contact the State Government for obtaining necessary approval for filing second appeal. It is on 14.10.2016, the Chief Forest Conservator, Lucknow Division, Lucknow directed the Divisional Forest Officer, South Kheri to proceed for filing of the instant second appeal. The Additional Legal Remembrancer accorded the approval for filing of the instant second appeal on 04.11.2016. Thereafter on 17.11.2016, the Divisional Forest Officer, South Kheri requested the Chief Standing Counsel for filing of instant second appeal and thereafter instant second appeal was filed on 16.02.2017.

Submissions

9. Learned Senior Advocate appearing for the appellant/State further submits that the delay so occasioned in filing the appeal is a procedural delay and further the benefit of period for which the civil revision was pending, may be granted to them as per the Limitation Act.

10. He further submits that in view of above, any delay so occasioned is not because of the laches or laxity, but because of the procedure adopted by the State, wherein approval has to be taken at various levels and accordingly, the delay may be condoned.

11. He also submits that the sufficient cause has been shown in the delay condonation application and the delay, so occasioned, is purely a procedural. He further submits that while condoning the delay, the Court should take liberal view looking into the facts that some delay do happen as the file has to move at different levels before permission is granted and the appeal is filed and hence a lenient view should be taken for the State and its instrumentalities as has been laid down in various judgements passed by the Apex Court.

12. To buttress his arguments, he placed reliance on the judgement passed by Hon′ble Supreme Court in the matter of **State of Haryana v. Chandra Mani and Ors., Reported in (1996) 3 SCC 132**, wherein it has been held as under:

"In G. Ramegowda, Major & Ors, v. Spl, Land Acquisition Officer, Bangalore; [(1988) 2 SCR 198], it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the 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 delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decision of private individuals. The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government,

like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have a little play at the joints'. Due recognition of these limitations on Governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process. The delay of over one year was accordingly condoned.″

(emphasis supplied)

13. He further placed reliance upon a judgement of Hon′ble Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123**, wherein it has been held as under:

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

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12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari; [1969] 1 SCR 1006 and State of West Bengal Vs. The Administrator, Howrah Municipality; [1972] 2 SCR 874.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. ...″

(emphasis supplied)

14. Further he placed reliance on a judgement passed by Hon'ble Supreme Court in the matter of **Sridevi Datla v. Union of India and Ors, reported in (2021) 5 SCC 321**, wherein it has been held as under:

"27. It is evident that the term sufficient cause is relative, fact dependant, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.

28. Keeping these principles in mind, it is relevant to consider whether the NGT's refusal to exercise discretion, in the facts and circumstances of this case, was erroneous. The court is conscious of the fact that exercise of discretion, per se, is a fact dependent one, and considerable latitude should be given to the court or tribunal of the first instance, in the performance of that task. Nevertheless, as decided, cases and judgments have shown that the exercise of discretion does at times, call for appellate scrutiny by this court. This is one such. The appellant pleaded that since the documentation attendant to the clearance granted to the Project Applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach the NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay.

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30. In view of the foregoing findings, this court is of the opinion that the impugned order of NGT has to be and is, therefore set aside. The delay in filing the appeal before the NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law. The appeal is allowed. There shall be no order on costs.

(emphasis supplied)

15. He also placed reliance upon a judgement of Hon'ble Supreme Court in the matter of **Inder Singh v. The State of Madhya Pradesh, reported in 2025 INSC 382**, wherein it has been held as under:

"14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.

15. In the present case, the filing of the Review Petition before the First Appellate Court was with a delay of two years and four months and the Second Appeal before the High Court was delayed by about a year from the date of the dismissal of the Review Petition i.e., 30.09.2019. Pausing for a moment, it is necessary to indicate that in the present case, the dispute over title of a land is not between private parties, but rather between the private party and the State. Moreover, when the land in question was taken possession of by the State and allotted for public purpose to

the Youth Welfare Department and the Collectorate and has continued in the possession of the State, the claim of the State that it is government land cannot be summarily discarded. We find, upon a perusal of the record, that the appellant had, in fact, filed an execution case for taking over possession of the land, which would demonstrate clearly the admitted position that he was not in possession thereof. Thus, the matter would, in our considered view, require adjudication on its own merits due to various reasons, inter alia, the fact that a new district has been formed after the initial claim of the appellant of being allotted the land in the years 1975-1976/1977-1978. Therefore, the delay of 1537 days reckoned from 01.10.2015 i.e. when the First Appellate Court decreed the suit, includes two years and four months delay in filing a Review Petition (which was itself dismissed on the ground of delay by the First Appellate Court) and of about a year thereafter for filing the Second Appeal before the High Court, in the peculiar facts and circumstances of the case, which, at the cost of repetition relate to land claimed by the State as government land and in its possession, persuade us to not interfere with the Impugned Order. Relevantly, initially the suit was dismissed by the Trial Court, which decision was reversed by the First Appellate Court.

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18. Considering the above pronouncements and on an overall circumspection, we are of the opinion that the Second Appeal deserves to be heard, contested and decided on merits. However, a note of caution is sounded to the respondent to exhibit promptitude in like matters henceforth and in futuro, failing which the Court may not be as liberal.

(emphasis supplied)

16. Hence, in view of the ratio laid down by Hon′ble Supreme Court, a lenient view should be taken against the State and its intrumentalities, and owing to the genuine problem, which they face, the Court should take a lenient view while dealing with the condonation the delay. He further submits that in this matter sincere efforts were made by the revenue authorities to avoid the delay but in spite of that, the delay could not be avoided and the same is bona fide and that there is no deliberate lapse on the part of the authorities.

17. Learned counsel, Shri Hemant Kumar Pandey, further submitted that, though sincere efforts were made by the revenue authorities to avoid delay but in spite of that, the delay could not be avoided and the same is bonafide. There is no deliberate lapse on the part of authorities but due to procedures involved, the delay was caused. He further submits that the State is a multi-functioning body and it has to follow the rules of obtaining sanction etc. for filing an appeal, therefore, it took some time for the State to obtain sanction etc. from the highest authorities of the State for preferring this appeal. The delay caused in filing the instant appeal may kindly be condoned on the basis of ratio as laid down in various judgments of the Hon'ble Supreme Court.

18. Learned counsel for the appellant submits that if the delay is not condoned, as the delay was because of reasons beyond the control of the appellant, then it would be very harsh upon the appellant and it will have far-reaching consequences. He further submits that the delay, which has so occasioned in preferring the instant appeal was procedural and unintentional, hence the same may be condoned and the instant appeal may be heard on merit.

Analysis

19. Looking into the facts of this case, it is apparent that the plaintiffs (respondents) were in a business of manufacturing bricks and used to supply to the defendants. An order was placed by the defendants to supply 35,000 best quality bricks at the rate of Rs.875/- per thousand. As per order the plaintiff supplied 35,000 bricks, however, the defendant no.4 further directed him to provide additional 8,000 bricks and all the bricks were provided and transported, unloaded and stacked in the office of the defendant no.2 on 07.03.1992. At that point of time, defendant no.1 returned 15,024 bricks, which were not upto the mark, however, the defendant retained 28,476 bricks, which according to the agreement were valued Rs.24,966.50/-and as per agreement entire payment has to be made within three months. Accordingly the last date of payment is 27.06.1992, but the defendants chose not to pay the same. Since the payment was not made, the plaintiff preferred a suit for recovery against defendants being Civil Suit No.108 of 1995, which was decreed vide order dated 15.05.2000.

20. This order was assailed by the appellants by filing civil appeal before the Additional District Judge, Lakhimpur Kheri and the appeal was filed with the **delay of more than about 16 months** and the appellate court vide order dated 23.07.2003 was pleased to dismissed the appeal on the ground of delay as well as on merits.

21. This appellate order was challenged after a **delay of about 11 months** by preferring a civil revision before this Court being Civil Revision No.61 of 2004, which was dismissed on the ground of maintainability, however, a liberty was granted to the appellants to approach any other forum. Thereafter the appellants have assailed the order passed by the appellate authority by means of the instant second appeal.

22. The Registry of this Court has pointed **out a delay of 13 years, 3 months and 26 days (4957 days)** in filing this appeal.

23. It was contended, because of wrong advice, a civil revision was filed on 21.04.2004 and the same was kept pending and was dismissed on 18.09.2015. Hence the benefit of this period may be given to the appellants and the delay, because of the pendency of the civil revision, may not be included in the delay as the delay so occasioned was purely technical. The details of the delay in filing the respective cases is as follows :

Case Number	**Filed on**	**Decided on**	**Gap in filing case**	**Gap in filing second appeal from decision of first appeal**	**Days lapse during the period of revision**
Regular Suit No.108 of 1995		15.05.2000	N.A.	4957 days	4167 days
Civil Appeal No.230 of 2001	19.12.2001	23.07.2003	583 days		
Civil Revision No.61 of 2004	21.04.2004	18.09.2015	273 days		
Second Appeal Defective No.87 of 2017	16.02.2017	N.A.	517 days		

Days left after reduction of revision period:

Gap in filing Second Appeal after first appeal is: 4957 days

minus delay during pendency of civil revision: - 4167 days

Total gap left in filing second appeal is: = 790 days

minus statutory period of 90 days for filing second appeal:= **700 days**

24. Even after granting the benefit the actual delay to condone will be 700 days. Even if this Court do not consider the entire period lapse before final decision of civil revision still there is a delay of 517 days, which requires sufficient explanation for condonation of delay.

25. The aforesaid chart showing the date of filing of various proceedings in the matter shows that throughout the appellant had been casual, lethargic in safeguarding his interest. The application for condonation of delay filed along with this appeal does not show any sufficient cause. However, even an affidavit so filed by the appellant is nothing, but an eye wash. An attempt has been made to explain the delay. The contents of the affidavit cannot be relied on as it is apparent that the same is tailor made just to overcome the delay. In the affidavit, it has been pointed out that Divisional Forest Officer had issued a letter on 26.01.2016.

The date had been filled without applying the mind and realizing that 26.01.2016 happened to be Republic day and all the offices are mandatorily closed on that date. No offices are open or can be opened on the Republic Day.

It is apparent that the reasons given in the affidavit are all fabricated.

Even keeping this issue aside, the original suit was decreed on 15.05.2000 on the basis of some compromise. If the appellants were adversely affect by the order, they ought to have challenged the same within time, but this order was challenged after a gap/lapse of about 583 days and the appeal was also dismissed on the ground of delay. Still the appellant did not get up from slumber and, challenged the same by filing a civil revision against after a further gap/lapse of about **273 days**. The matter kept pending in the High Court for about **4167 days** and thereafter it was dismissed. Even after dismissal of the revision, which was well within the knowledge of the lawyers of the appellants, instant second appeal has been filed with the gap/lapse of about **517 days**. It is not a case that any of the order was passed ex parte. The counsel for the appellants were present before the courts below on each and every proceedings.

The reasons given in the delay condonation application and along with supplementary affidavit are not sufficient. The reasons are engineered. There has been inordinate delay in challenging the civil court′s order, challenging the appellate court′s order and further rejection of the civil revision assailing the civil court′s order in this second appeal, which had not been sufficiently explained in the delay condonation application.

26. Before delving into the law laid down by Hon'ble Supreme Court on limitation, this Court would like to look into **Section 5 of the Limitation Act**, which reads as under:

*"**5. Extension of prescribed period in certain cases**.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

(emphasis added)

27. A plain reading of Section 5 of the Limitation Act clearly shows that an appeal may be admitted after the prescribed period, if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such time.

28. The burden to prove 'sufficient cause' lies on the appellant, who is seeking condonation of delay and he has to prove sufficient cause that the reasons for not approaching the court are real and bonafide and free of negligence. No doubt this expression has been constituted with justice-oriented approach so as to not punish an innocent litigant for circumstances beyond the control. However, the Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so would undermine the maxim **interest reipublicae ut sit finis litium** and destabilise the certainty that limitation law seeks to secure.

29. The length of delay normally is not a deciding factor while condoning the delay rather the conduct of the party seeking condonation of delay should be seen while doing so it should be seen and the court should see whether the party had any reasonable deliberations during the prescribed period. A long delay naturally casts a heavier burden on the applicant to furnish cogent, credible, and convincing explanations. The proof required becomes stricter in proportion to the delay. The longer time elapsed, the stronger the justification must be put forth.

30. Earlier the view of Hon'ble Supreme Court in the matter of **G. Ramegowda, Major & Ors. v. Special Land Acquisition Officer, Bangalore, reported in (1988) 2 SCC 142** was that a certain degree of latitude must be extended to the State and its instrumentalities in matters concerning the condonation of delay, lest the rigidity of limitation operate to the detriment of public interest. A certain degree of leeway ought to be accorded to the Government and Public Authorities owing to the innate complexities in the way the State apparatus functions. Since the way inherent bureaucracy moves certain laxity should be provided to them.

31. Hon'ble Supreme Court in the matter of **Chandra Mani (supra)** reiterated that some latitude must be shown to the State and its instrumentalities in matters of condonation of delay. It observed that 'the State represents the collective cause of the community' and so a pragmatic view

ought to be adopted while dealing with applications for condonation of delay filed by public authorities. It further emphasised that technicalities of limitation should not result in grave injustice to the public interest, especially where the delay was not tainted by mala fides. The relevant observations read as under: -

"11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice- oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

(Emphasis added)

32. Thereafter, Hon'ble Supreme Court in the matter of **Special Tehsildar, Land Acquisition v. K.V. Ayisumma, reported in (1996) 10 SCC 634** held that since the State represents the collective cause of the public, any delay on its part ought not to be viewed through the same lens as that of a private party. It observed that adoption of a strict standard of proof in respect of the State or its instrumentalities, where no one takes personal responsibility in processing the matters

expeditiously, would lead to grave miscarriage of public justice. Thus, it held that in such circumstances, the correct approach to be adopted is to be pragmatic and condone the delay without insisting upon explaining every day's delay. The relevant observations read as under: -

"2. It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

(Emphasis added)

33. Then in the matter of **State of Nagaland v. Lipok AO, reported in (2005) 3 SCC 752**, Hon'ble Supreme Court acknowledged the bureaucratic realities that on account of delay in governmental decision-making. It held that deference must be shown to the fact that governmental actions are "conducted by officers who cannot act on their own but must obtain approvals at different levels," and thus, the element of delay is almost "inbuilt in the governmental decision-making process." Accordingly, it held that factors which are peculiar to and characteristic of the functioning of the governmental conditions requires adoption of pragmatic and justice-oriented approach by the courts in matters pertaining to condonation of delay. The relevant observations read as under: -

"*13. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Prabha v. Ram Parkash Kalra [1987 Supp SCC 339] this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was*

allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

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15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed ***prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any.*** *Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.*

(Emphasis added)

34. Hon'ble Supreme Court in **Chandra Mani (supra)** and **Lipok AO (supra)** explicitly held that the State or any of its instrumentalities cannot be put on the same footing as that of a private party for the purposes of condonation of delay under Section 5 of the Limitation Act. It observed that an individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants, bound by bureaucratic methodology. Thus, it held that although equality before law is sacrosanct, equality does not mandate a refusal to recognise institutional realities.

35. However, what is equally significant to note is that the aforesaid observations of this Court in **Chandra Mani (supra)** and **Lipok AO (supra)** were accompanied by a clear message to the State and all its instrumentalities, that a leisurely and lethargic approach cannot continue for all times to come. The State and all public authorities were directed to constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts, if not then the endeavour should be made towards arriving at a settlement instead, rather than reagitating the belated causes before the courts. It further observed that where the case requires an appeal or

application to be filed, despite the delay, then prompt action should be taken by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any.

36. For a long period, the Court has noticed the lethargic and apathetic manner in which appeals are filed by the State and its instrumentalities. Such conduct of dilatory tactics and a bureaucratic approach has become the order of the day. Almost every second matter filed by the State is accompanied by an application for condonation of delay. It is then the Apex court took a divergent stand then what was taken earlier.

37. The Hon'ble Supreme Court in **Postmaster General and others v. Living Media India Limited and another, reported in (2012) 3 SCC 563** has held as under:

"*27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

(Emphasis added)

38. In this judgement, the Hon'ble Supreme Court has clearly held that no delay can be condoned mechanically. The delay on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The Hon'ble Supreme Court has also clearly held that the law of limitation undoubtedly binds everybody including the Government equally. Condonation of delay is an exception and should not be used as a benefit for the government departments.

39. From the aforesaid, it is manifest that prior to the decision of Hon′ble Supreme Court in **Postmaster General (supra)**, the approach was characterised by judicial sympathy towards the State and its instrumentalities in matters of condonation of delay, owing to the peculiar nature of their functioning. At the same time, there also existed contrary views such as **State of West Bengal Vs. The Administrator, Howrah Municipality, reported in [1972] 2 SCR 874. and Lanka Venkateswarlu v. State of A.P., reported in (2011) 4 SCC 363** which held that, irrespective of whether the litigant is a Government entity or a private individual, the provisions of limitation would apply uniformly, and any leeway shown by the courts would also remain the same.

40. In **State of Madhya Pradesh & Ors. v. Bherulal, reported in (2020) 10 SCC 654**, Hon′ble Supreme Court expressed its deep anguish over the routine manner in which the State and its instrumentalities continue to seek condonation of delay on the pretext of bureaucratic inefficiencies. It held that the earlier decisions that had afforded a degree of leeway for such inefficiencies no longer reflects the correct position of law insofar as condonation of delay is concerned. It was further held that in view of the decision of **Postmaster General (supra)**, any delay as a result of unavailability of the documents or the process of arranging them through bureaucratic process is no longer an acceptable "reason or excuse" to condone such delay.

41. A similar view was reiterated by Hon′ble Supreme Court in **Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Pvt. Ltd., reported in (2021) 6 SCC 460**, wherein the Court placing reliance on **Postmaster General (supra)** held that a different yardstick for condonation of delay cannot be laid down merely because the Government is involved. The relevant observations read as under: -

"59. Likewise, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in Postmaster General v. Living Media (India) Ltd."

(Emphasis added)

42. In **State of Odisha & Ors. v. Sunanda Mahakuda, reported in (2021) 11 SCC 560**, Hon′ble Supreme Court held that the leeway which was earlier enjoyed by the State and its instrumentalities on account of bureaucratic inefficiencies in matters of condonation of delay is no longer available in view of the technological advancement and the shift in jurisprudence as elucidated in **Postmaster General (supra)**. It observed that no case under Section 5 of the Limitation Act could be said to be made out where there is no reason or excuse given in respect of the period for which condonation is sought.

43. Similarly, in **State of U.P. v. Sabha Narain**, reported in (2022) 9 SCC 266, Hon′ble Supreme Court once again deprecated the tendency of State and its instrumentalities to proceed on the assumption that they may approach the courts at their own convenience and sweet will, disregarding the period of limitation prescribed by statute, as though the Limitation statute does not apply to them. It held that the leeway which was at one point extended to the Government/public

authorities on account of innate functional inefficiencies is no more the norm, particularly in the wake of the decision of **Postmaster General (supra)**. The relevant observations read as under: -

"3. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgments in State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (L&S) 84] and State of Odisha v. Sunanda Mahakuda [State of Odisha v. Sunanda Mahakuda, (2021) 11 SCC 560 : (2022) 1 SCC (Cri) 300 : (2022) 2 SCC (L&S) 393] . The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Postmaster General v. Living Media India Ltd. [Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] Despite this, there seems to be little change in the approach of the Government and public authorities."

(Emphasis added)

44. In **Union of India v. Jahangir Byramji Jeejeebhoy, reported in 2024 SCC OnLine SC 489**, Hon'ble Supreme Court held that it hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning a gross delay in filing of an appeal or application, as the case may be. It held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The relevant observations read as under: -

"25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

xxx xxx xxx

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

xxx xxx xxx

30. In Postmaster General v. Living Media India Limited, (2012) 3 SCC 563, this Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held that condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments. In that case, this Court held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted. [...]

(Emphasis added)

45. In this judgement the Apex court had further held that when it comes to Section 5 of the Limitation Act, delay should not be excused as a matter of generosity. Rendering substantial justice is not a free-pass to cause prejudice to the opposite party. The vital test for condoning the delay is for the party that is praying for such condonation to prove that it was reasonably diligent in prosecuting the matter.

46. Once the State chooses to litigate, it must shoulder the same responsibilities and abide by the same limitations that bind every litigant. To permit the State to evade the consequences of delay on the ostensible plea that the fault lay with individual officers would amount to diluting the rigour of limitation statutes and undermining their very object. Such an approach would not only privilege the State unjustly over private parties but would also perpetuate a culture of indifference and irresponsibility within the administration.

47. The Hon'ble Supreme Court in the latest judgement passed in the matter of **Shivamma (Dead) by L.Rs. vs. Karnataka Housing Board and Ors., reported in MANU/SC/1262/2025** has held as under:

"261. Thus, for the reasons aforesaid, the impugned order of the High Court deserves to be set aside. Before we proceed to close this judgment, we deem it appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State-machinery is able to establish that it acted with bona fides and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigations due to its own lackadaisical attitude.

262. The High Courts ought not give a legitimizing effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State-authority. They should not become surrogates for State laxity and lethargy. The constitutional courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate

delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the Code of Civil Procedure, wherein its jurisdiction is already limited to questions of law.

263. Limitation periods are prescribed to maintain a sweeping scope for the lis to attain for finality. More than the importance of judicial time, what worries us is the plight of a litigant with limited means, who is to contest against an enormous State, and its elaborate and never-exhausting paraphernalia. Such litigations deserve to be disposed of at the very threshold, because, say if a party litigating against the State, for whatever reason, is unable to contest the condonation of delay in appeal, unlike the present case, it reopens the lis for another round of litigation, and leaves such litigant listless yet again. As courts of conscience, it is our obligation that we assure that a litigant is not sent from pillar to post to seek justice.

264. No litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law."

(Emphasis added)

48. The Hon'ble Supreme Court in this judgement has clearly stated that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and it shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State-machinery is able to prove that they have acted with bona fides and remained vigilant in pursuing the lis throughout and for some unforeseen reason, the appeal could not be filed then only the delay can be condoned.

49. In this judgement the Apex Court has further held that, no court, especially a constitutional court, shall obviate the procedure applicable to a litigating State and its instrumentalities, which must be placed on the same footing as other litigants when it comes to applications under the Limitation Act.

50. In light of the ratio laid down by latest judgement passed Hon'ble Supreme Court in the matter of **Shivamma (Dead) by LRs (supra)**, it is clear that limitation laws are themselves grounded in public policy, as already discussed in the preceding paragraphs of this judgment, it is based on the maxim **'interest reipublicae ut sit finis litium'** i.e., "it is for the general welfare that a period be put to litigation". Therefore, public interest is better served by timely governmental action than by condoning repeated lapses. State cannot simultaneously seek to represent the interest of the public and yet consistently fail to protect that very interest by allowing limitation periods to lapse.

51. Public interest is best served by ensuring efficiency and diligence in governmental functioning, rather than by condoning its lapses as a matter of course. Thus, a liberal inclination towards the State or any of its instrumentalities, in matters of condonation of delay, cannot be adopted. Merely on the presumption that, if the delay is not condoned, public interest runs the risk of a meritorious matter being thrown out. Public interest lies not in condoning governmental indifference, but in compelling efficiency, responsibility, and timely action.

52. To allow condonation of delay as a matter of course, for the Government would have the deleterious effect of institutionalising inefficiency. It would, in substance, incentivise indolence and foster a culture where accountability for delay is eroded. If the State is assured that its lapses will invariably be excused under the rubric of "public interest," there would remain little incentive for its officers to act with vigilance or for its instrumentalities to streamline procedures for timely action. The consequence would not be the advancement of public interest but rather its betrayal.

53. The Hon'ble Supreme Court earlier had laid down that the lenient view should be taken for condonation of delay, if the same is filed on behalf of the State and its instrumentalities on the ground that refusal might affect a meritorious matter. Public interest is not synonymous with the cause of the Government; it is, instead, synonymous with the enforcement of rule of law, certainty in legal rights, and an administrative machinery that functions with diligence and accountability. Hence, refusal to entertain meritorious matter, would not be a touchstone for the condonation of delay.

54. The Hon'ble Supreme Court in the matter of **Shivamma (Dead) by LRs (supra)** has held that the guiding principle is not the protection of governmental indifference but the promotion of responsible governance. The State is under a higher duty to act in time, for in every matter it litigates, it does so not in its private capacity, but as the trustee of the people's interest. Hence, repeated indulgence in condoning delays on grounds of bureaucratic inefficiency would amount to eroding the very object of limitation statutes, which are enacted in every civilised jurisdiction for the sake of finality, certainty, and public order.

55. If the State is granted a special treatment when he comes for condonation of delay then it will deviate the object of the Limitation Act and would further encourage the State and its officers' inaction and casual behaviour. The earlier ratio if followed would give the officer a "carte blanche" power to act against the public. Hon'ble Supreme Court has further held that the delay cannot be condoned, merely because, not doing so would result in non-suiting the State and thereby run the ostensible risk of public interest suffering. Such by no stretch can be the sole consideration for the purpose of Section 5 of the Limitation Act, as to do so would be to ignore the provision of Section 3 and the overarching public policy of giving "quietus to lis", that forms the bedrock of the Limitation Act.

56. While dealing with an application for condonation of delay, the vital test is whether "sufficient cause" has been made out. However, in cases involving bureaucratic inefficiency, the Court must examine whether there is a valid explanation for the delay or merely an excuse has been set up. Though the two concepts may sometimes overlap, there is a fine distinction between a genuine explanation and a mere excuse, which the appellant is required to establish satisfactorily.

57. Whenever an explanation in an application for condonation of delay refers to bureaucratic delay and the inherent complexities of governmental decision-making, the same would, in most cases, fall within the ambit of an "excuse. Hon'ble Supreme Court, in **Postmaster General (supra) and Shivamma (Dead) by LRs (supra)** as well as in several other judgments has held that where there is bureaucratic lethargy or red-tapism, the Court must examine whether there exists a genuine

reason and whether there was due promptitude in the conduct of the officers. However, where the Court finds that the explanation is merely an excuse to cover up the delay, or that the delay is attributable to gross negligence, deliberate inaction, lack of bona fides, or a casual approach, the Court ought to adopt a strict view while dealing with an application for condonation of delay.

58. In the present case, the appeal arose out of a very trivial matter. The appellants placed an order for supply of bricks, which plaintiffs/respondent had supplied, but when the money was not paid, the plaintiff/respondent filed a suit for recovery, which was allowed and a **decree of Rs.24,966/-** was passed. Subsequently a civil appeal was filed with the **delay of almost 16 months** and the same was dismissed on 23.07.2003 and again a civil revision was wrongly filed that too with a gap/lapse of about **273 days** on 21.04.2004, which was dismissed as not maintainable and then again instant second appeal has been filed on 16.02.2017 **with a delay of almost 517 days** challenging the order dated 23.07.2003. Apparently there was a gap/lapse of about **4957 days** in filing instant second appeal. Even giving benefit to the appellant for challenging the same before wrong a forum, still the present appeal is delayed by about 700 days and the reasons for condonation of delay are not sufficient rather the reasons shown is nothing but an eye wash and present appeal has been filed after thought. The affidavit filed in support of the application for condonation of delay shows that the Divisional Forest Officer written a letter on 26.01.2016 is not sufficient. Rather it seems a subsequent efforts has been done to fill in the lacuna by filing Supplementary Affidavit and while doing so the reasons stated cannot be trusted.

The date had been filled without applying the mind and realizing that 26.01.2016 had happened Republic day and all the offices are mandatorily closed on that date. No offices are open or can be opened on the Republic Day.

59. Since the rule of limitation are based on principle of sound public policy, hence it cannot be contended in a mechanical manner. The appellant has been pursuing a trivial issue of Rs.24,966/- upto this Court. All the proceedings initiated after the dismissal of the civil suit have been filed with the **delay**.

60. In view of the aforesaid facts and circumstances of the case, since sufficient cause is not made out for condonation of delay in filing second appeal, the application for condonation of delay is **rejected.**

61. Consequently, this second appeal is also **dismissed**.

Filing of Trivial & Frivolous cases

62. Apparently, present appeal is a perfect example of delay, callous approach of the appellant on trivial issue a decree of Rs.24,966/- had been challenged by the appellant in three various forums. It would not be incorrect to say that the State Government may have incurred litigation expenses exceeding the decretal amount awarded against it. This case has also been argued at length before this Court. It is high time until and unless an exemplary cost is imposed on the State, nothing is going to change.

63. Filing of trivial and frivolous litigation is a menace, which the Court had been facing, to curb the problem of legal pendency and to curb the filing of trivial and frivolous cases, the National Litigation Policy for the Centre and States was evolved at All India Law Ministers Conference in the year 1972, this was followed by the report of the Law Commission of India, which in its 54th had reported that, there should not be unnecessary litigation or appeals.

64. Thereafter Hon'ble Supreme Court in **Dilbagh Rai Jerry v. Union of India, reported in (1974) 3 SCC 554** considered as to what should be the approach of Government in litigation to curb this problem and observed as under:

"The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negatived in the judgment just pronounced. Instances of this type are legion as is evidenced by the fact that the Law Commission of India in a recent report on amendments to the Civil Procedure Code has suggested the deletion of Section 80, finding that wholesome provision hardly ever utilised by Government, and has gone further to provide a special procedure for government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not right for a welfare' State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision which I may usefully excerpt here "The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move, private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy."

(Emphasis added)

65. Thereafter in the case of **Mundrika Prasad Singh v. State of Bihar, reported in (1979) 4 SCC 701**, Hon'ble Supreme Court held as under:

"5. The State of Bihar, like many other States in the country, has an enormous volume of litigation. Government litigation policy is vital for any State if resources are to be husbanded to reduce rather than increase its involvement in court proceedings. It is lamentable that despite a national litigation policy for the States having been evolved at an all-India Law Ministers' Conference way back in 1957 and despite the recommendations of the Central Law Commission to promote settlement of disputes where Government is a party what we find in actual practice is a proliferation of government cases in courts uninformed by any such policy. Indeed, in this country where government litigation constitutes a sizeable bulk of the total volume, it is important that the State should be a model litigant with accent on settlement. The Central Law Commission, recalling a Kerala decision, emphasised this aspect in 1973 and went to the extent of recommending a new provision to be read as Order 27 Rule 5B."

(Emphasis added)

66. However, the litigation policy was not followed, the **Law Commission of India in its 126th Report (1988)** adversely commented upon the reckless manner in which appeals are filed routinely. The relevant paragraphs of the law Commission Report is as follows:

"2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the cesti que trust. Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy of do nothingness evidenced by blindly following litigation from court to court. Dismissing a Special Leave Petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The court then suggested effective remedial measures. It may be extracted:

We would like to emphasize that Government must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 CPC is intended to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more

responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to."

(Emphasis added)

67. Decades have passed, but nothing moved time and again, the constitutional courts lamented about the frivolous appeals/petitions being filed by the Government agencies. However, there was no affect on the bureaucratic psyche. It was not that there is no realization at the level of policy makers to curtail unwanted Government litigation, but the ground reality is completely contrary. Appeals after appeals have been filed by the Government agencies on trivial issues. It should not even succeed on the test of legality, but still were filed for various reasons.

68. It was only in 2010 the Central Government formulated National Litigation Policy, with the "vision/mission" to transform the Government into an efficient and responsible litigant. This policy formulated by the Central Government is based on the recognition that it was its primary responsibility to protect the rights of citizens, and to respect their fundamental rights and in the process it should become "responsible litigant". The policy even defines the expression 'responsible litigant' as under:

"Responsible litigant" means-

(i) That litigation will not be resorted to for the sake of litigating.

(ii) That false pleas and technical points will not be taken and shall be discouraged.

(iii) Ensuring that the correct facts and all relevant documents will be placed before the Court.

(iv) That nothing will be suppressed from the Court and there will not attempt to mislead any court or tribunal.

2. That Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the Court decide", must be eschewed and condemned.

3. The purpose underlying this policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the national legal mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the national mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary government cases.

Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority."

(Emphasis added)

69. This policy recognises the fact that its success will depend upon its strict implementation. Pertinently there is even a provision of accountability on the part of the officers who have to take requisite steps in this behalf.

70. In the matter of **Urban Improvement Trust, Bikaner v. Mohan Lal, reported in (2010) 1 SCC 512**, Hon'ble Supreme Court took notice of unwarranted litigation by Governments and State authorities and held as under:

"10. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government/ statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision-making to courts and Tribunals.

11. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigations have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants."

(Emphasis added)

71. Hon'ble Supreme Court in the matter case of **Gurgaon Gramin Bank v. Khajani, reported in (2012) 8 SCC 781**, considered the approach of Government to litigate in small and trivial matters and held as under:

"2. Number of litigations in our country is on the rise, for small and trivial matters, people and sometimes Central and State Governments and their instrumentalities Banks, nationalized or private, come to courts may be due to ego clash or to save the Officers' skin. ***Judicial system is over-burdened, naturally causes delay in adjudication of disputes.*** *Mediation centers opened in various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion, this Court has reminded the Central Government, State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless, serious questions of law of general importance arise for consideration or a question which affects a large number of persons or the stakes are* ***very high, courts' jurisdiction cannot be invoked for resolution of small and trivial matters****."*

(Emphasis added)

72. Hon'ble Supreme Court in the matter of **Punjab State Power Corporation Limited Patiala and others v. Atma Singh Grewal, reported in (2014) 13 SCC 666** held as under:

"13. Alas, inspite of the Government's own policy and reprimand from this Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals. It imposes unnecessary burden on the Courts. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the judgment rendered by the Court below.

14. No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See Rameshwari Devi and Ors. v. Nirmala Devi and Ors.; (2011) 8 SCC 249]. However, the moot question is as to ***whether imposition of costs alone will prove deterrent?*** *We don't think so. We are of the* ***firm opinion that imposition of cost*** *on the State/ PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers.* ***Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these*** *are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the concerned officer be passed only in those cases where appeal is found to be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for."*

(Emphasis added)

73. Hon'ble Supreme Court in the matter of **Pandurang Vithal Kevne v. Bharat Sanchar Nigam Limited and another**; Special Leave Petition (Civil) Diary No.56230 of 2024 held as under:

"18. The petitioner's repeated and frivolous litigation has wasted the court's valuable time and resources. It is in interest of justice that genuine and timely claims are addressed efficiently, without being hindered by such unscrupulous litigation. We may refer here an observation given by this Court in Subrata Roy Sahara Vs Union of India5: "150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part."

***

20. Time and again, this Court has raised deterrence against frivolous appeals and petitions by imposition of costs on the litigating parties. This court in the case of K.C. Tharakan Vs State Bank of India & Ors.7 held the following: "No legal system can have a scenario where a person keeps on raking up the issue again and again once it is resolved at highest level. This is complete wastage of judicial time. We, thus, dismiss this petition with costs, though we limit the amount of costs considering the petitioner is a dismissed person. The writ petition is dismissed with costs of Rs.10,000/- to be deposited with the Supreme Court Advocates-on-Record Welfare Fund to be utilized for the SCBA library."

***

22. Considering that precious time of this Court and the High Court was wasted by the petitioner, in our opinion the petitioner deserves to be burdened with heavy cost, to give clear message to the unscrupulous litigants like the petitioner for not daring to play with the Judicial System. Such type of litigants are not only polluting the stream of justice but putting hurdles in its dispensation to others. The precious judicial time which the petitioner has wasted, could very well be used for taking up the cases of other litigants who are waiting for justice. In fact these types of litigants are choking the system of the court, which is resulting in delays in decision of other cases. It is also the duty of the Courts at different levels to curb such type of litigation so that more time is available for dealing with genuine litigation."

(Emphasis added)

74. Even the State of U.P. came out with a National Litigation Policy, but the same has not been followed.

75. In spite of the Government's own policy and reprimand from the Apex Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file trivial, frivolous and vexatious appeals. It imposes unnecessary burden on the Courts.

76. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the judgment rendered by the Court below.

77. It is a classic case where small money decree, which is less than Rs.25,000/-, the State had filed an appeal and thereafter preferred a revision before this Court and after dismissal of the same, instant second appeal has been filed before this Court. On the whole, the State appears to have spent more money than the decreed amount in pursuing the present litigation. Apart from this, valuable time of this Court has also been consumed.

78. The Government of India has taken a policy decision not to pursue appeals in trivial matters relating to income tax and other taxes. However, the State is still sleeping and no serious decision has been taken nor any serious litigation policy has been made and followed.

79. Looking into the period of delay and casual manner in which the appellant had proceeded to file the appeal, such kind of trivial and frivolous litigation clogs the wheel of justice and the poor genuine litigant do not get chance of hearing, this practice has to be stopped. This Court find it a fit case to impose a cost on the appellants, to curb this practice.

80. Accordingly, a cost of Rs.50,000/- (Rupees Fifty Thousand Only) is imposed on the appellants. The amount of cost will be paid to the widows of C.R.P.F. personnel, who had lost their lives fighting with Naxalites. Accordingly, the cost shall be paid to the "C.R.P.F. Family Welfare Association", Block-I, CGO Complex, Lodhi Road, New Delhi.

81. Since putting a cost on the State will not solve the problem, the only way to push the officers to get out the slumber is, if the cost so imposed may be recovered from them. Hence, it is open for the appellant, if they so desire, to recover the said amount of cost from the officers, who were responsible for the delay in filing the proceedings before different courts.

82. Before parting, I would like to appreciate my Research Associate, Mr. Utkarsh Shukla, for his in-depth research and valuable assistance rendered by him in the preparation of this judgment.

(2026) 2 ILRA 446
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.02.2026

BEFORE

THE HON'BLE DR. AJAY KUMAR-II, J.

Matters Under Article 227 No. 11887 of 2025

Akash Kumar & Ors. **...Petitioners**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

Whether the impugned orders are passed without considering the evidence and documents placed on record

Head Notes

The Constitution of India, 1950-Article 227- Power under article 227 of the Constitution is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. This Power is not in the nature of power of appellate authority enabling re-appreciation of evidence- Both the courts have passed reasoned and speaking orders, which reflect due application of judicial mind- Trial Court has discharged the opposite party No.5, from the case, which is indicative of the fact that trial Court has applied it's judicial mind on the facts and evidence available before it- Appellate Court has specifically recorded that summons which were issued by Additional Chief Judicial Magistrate, Court No.2, Aligarh to opposite parties, were received by the father of appellants- It cannot be said that appellants were not aware of the case in question.

Held- No prima facie perversity or illegality is found in the impugned judgment and order of Revisional Court, as well as in the impugned summoning order of trial Court- **Petition dismissed**. (E-15)

(Para 5, 9, 10 & 11)

Case Law Cited

Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171); Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245; Jasbir Singh Vs. State of Punjab (2006) 8 SCC 294;

List of Acts

The Constitution of India, 1950

List of Keywords

Powers U/A 227; exercised sparingly; not to enable re-appreciation of evidence; keep the subordinate courts within the bounds of their authority.

Case Arising From

The impugned order dated 02.12.2024, passed by the Additional Session Judge, Court No.2, Aligarh in Criminal Appeal No.90 of 2024, (Under Section 29 of the Protection of Women from Domestic Violence Act, 2005) by means of which the appeal of the petitioner rejected and ex-parte order dated 26.07.2022 was affirmed and the impugned order 27.07.2022, passed by the Judicial Magistrate/ Civil Judge (Junior Division), F.T.C.-01, Aligarh in Case No.408 of 2021, under Section 12,18,19,20,21 and 22 of the Protection of Women from Domestic Violence Act, 2005.

Appearances for Parties

Counsel for Petitioner(s) : Byas Kumar Prasad, Pradeep Kumar Keshri
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard learned counsel for the petitioners and learned A.G.A. for the State-respondent and perused the material available on record.

2. The present petition under Article 227 of the Constitution of India has been filed with the following prayers:

" I) Issue order or direction and set-aside the impugned order dated 02.12.2024, passed by the Additional Session Judge, Court No.2, Aligarh in Criminal Appeal No.90 of 2024, Dharmendra Kumar and others Vs. State of U.P. and another (Under Section 29 of the Protection of Women from Domestic Violence Act, 2005) by means of which the appeal of the petitioner rejected and ex-parte order dated 26.07.2022 was affirmed.

II) Issue order or direction and set-aside the impugned order 27.07.2022, passed by the Judicial Magistrate/ Civil Judge (Junior Division), F.T.C.-01, Aligarh in Case No.408 of 2021, Smt. Sangeeta Vs. Dharmendra Kumar and others, under Section 12,18,19,20,21 and 22 of the Protection of Women from Domestic Violence Act, 2005.

III. Issue any other order or direction as this Hon'ble Court may deem fit and proper to meet ends of justice.

IV. Award the cost of this petition to the petitioners"

3. Learned counsel for the petitioners submits that opposite party No.2 filed a false and frivolous First Information Report dated 03.05.2024, which was registered as Case

Crime No.0111 of 2021, under Sections 147, 323 and 506 IPC, Police Station Dando, District Aligarh against petitioners and others. Thereafter she filed an application under Section 12 of Domestic Violence Act, in which ex-parte order was passed on 26.07.2022 on the same allegation, in which sister of petitioner No.1was discharged. The aforesaid impugned order dated 26.07.2022 was challenged by petitioners by way of filing first appeal before Sessions Judge, Aligarh. Appellate Court was informed that total 5 cases were pending before the parties, but without considering the pendency of those five cases as well as evidence and documents placed on record, their revision has been rejected vide impugned order dated 22.10.2024. It was lastly urged that both impugned orders are bad in law and are liable to be set-aside.

4. Per contra, learned A.G.A. has opposed the above submissions of the learned counsel for the petitioner by contending that the impugned orders are well reasoned and have been passed in accordance with law. Learned A.G.A. thus, urges for dismissal of the present petition.

5. It is well settled that power under Article 227 is of the judicial superintendence, which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. **(Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171).**

6. In Indian **Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245**, the Apex Court observed that it is impermissible for the Writ Court to re-appreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose, no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

7. In case of **Jasbir Singh Vs. State of Punjab (2006) 8 SCC 294**, it was held that while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions.

8. Thus, it is apparent that the power under article 227 of the Constitution is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of

their authority. This Power is not in the nature of power of appellate authority enabling re-appreciation of evidence.

9. In the light of above well settled principles of law and after having considered the rival submissions advanced by learned counsel for the petitioner, as well as upon careful perusal of the record, this Court finds that both the learned Additional Chief Judicial Magistrate and Additional Session Judge have passed reasoned and speaking orders, which reflect due application of judicial mind.

10. A perusal of impugned order of the Court of Judicial Magistrate/ Civil Judge (JD) F.T.C. -01 Aligarh dated 26.07.2022 reveals that trial Court considered the statement of father of petitioners No.1 and 2 Geetam Singh, which was recorded in the report of D.P.O. that marriage of Dharmendra was solemnized with opposite party No.2 without any dowry. Opposite parties of Case No.408 of 2021 were proceeded ex-parte on the service report of District Probation Officer, Aligarh as well as on the strength of delivery report that summons were sent to opposite parties through registered post. Trial Court has discharged the opposite party No.5, Jai Lalita from the said case, which is indicative of the fact that trial Court has applied it's judicial mind on the facts and evidence available before it. Thereafter the aforesaid ex-parte judgment dated 26.07.2022 was challenged by petitioners as well as Dharmendra Kumar by way of filing an appeal, which was registered as Case Crime No. 90 of 2024. The appellant Court in it's impugned judgment and order dated 02.12.2024, has specifically recorded that summons which were issued by Additional Chief Judicial Magistrate, Court No.2, Aligarh to opposite parties, were received by Geetam Singh, who is the father of appellants and even in the report of District Probation Officer, it is specifically mentioned that said Geetam Singh met on spot and his statement was also recorded by District Probation Officer. It is in this background, the Appellate Court recorded its finding that it cannot be said that appellants were not aware of the case in question. It is important that original domestic violence complaint was filed against Dharmendra Kumar, Geetam Singh, Shesh Kumar, Akash Kumar, Jai Lalita and Smt. Vineeta. Trial Court discharged opposite party No.5 Jai Lalita. Thereafter appeal was filed by Dharmendra Kumar, Shesh Kumar, Akash Kumar and Vineeta. Now present petition has been filed by Akash Kumar, Shesh Kumar and Vineeta. At the stage of filing appeal, the appellants left their father Geetam Singh. At the stage of present petition, even the husband of opposite party No.2 i.e. Dharmendra Kumar has been intentionally left. It is not the case of petitioners that father of petitioner Nos. 1 and 2 and father-in-law of petitioner No.3 namely Geetam Singh resides separately and they have no concern with him. On every stage, an effort has been made just to defeat the finding of fact that notices of opposite parties were received by said Geetam Singh.

11. In the aforesaid circumstances, no prima facie perversity or illegality is found in the impugned judgment and order of Revisional Court, as well as in the impugned summoning order of trial Court. Therefore, no ground for interference by this Court in exercise of it's writ jurisdiction under Article 227 of the Constitution of India is made out.

12. Accordingly, the writ petition is found to be devoid of merit and is hereby **dismissed**.

(2026) 2 ILRA 450
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 179 of 2026 & other connected cases

Arun Pratap Singh & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Validity of the Government Order dated 14.11.2025 issued for deployment of teachers to maintain the pupil-teacher ratio in basic educational institution.
(2) Scope of judicial review in the matter of transfer.
(3) Applicability of principle of natural justice in the matter of transfer.

Headnotes

(A) Service law – Head master/Assistant Teacher – Redeployment – Government Order dated 14.11.2025 was issued to maintain the pupil-teacher ratio – Validity of GO dated 14.11.2025 was challenged on the ground of its being discriminatory and violative of Article 14 of the Constitution – GO dated 14.11.2025 was also attacked on the ground of its being tending to alter the statutory provision – Permissibility :

Held : The obligation of the State to ensure uninterrupted education and compliance with the student–teacher ratio is a continuing one. If subsequent developments, such as change in enrolment, closure of schools, or acute shortage of teachers, necessitate intervention, the State cannot be rendered powerless merely on account of the passage of the month of July **–** The issuance of the Government Order in November 2025, therefore, cannot be said to be illegal or without jurisdiction, as it seeks to address pressing administrative exigencies and to safeguard the larger interest of students **–** The Government Order dated 14.11.2025, issued for implementation of the Right of Children to Free and Compulsory Education Act, 2009, cannot be held to be arbitrary. [Para 88, 89 and 103]

Further held : The impugned Government Order neither amends nor overrides the statutory rules. On the contrary, it supplements the Rules by facilitating their effective implementation. It is settled law that executive instructions may validly fill in gaps where the rules are silent, provided they are not inconsistent with the statutory framework. [Para 90]

(B) Service law – Constitution of India – Article 226 – Writ – Scope of judicial review –Transfer – Interference, when not warranted :

Held : Transfer and adjustment of teachers is an incidence of service, and no employee can claim a vested right to continue at a particular place of posting. In the absence of any pleading or proof of *mala fides*, arbitrariness, or violation of statutory provisions, the Court finds no ground to interfere **–** The power to transfer is ordinarily exercised in public interest and to meet administrative exigencies, and the courts, while exercising jurisdiction under Articles 226 and 227 of the Constitution, do not sit in appeal over such decisions. [Para 93 and 95]

(C) Service law – Constitution of India – Article 14 – Principle of natural justice – Transfer – Doctrine of adopting fairness in administrative action – Applicability :

Held : Even in matters of transfer, though an incidence of service, an opportunity of representation ought to be afforded where the action results in civil consequences or appears to operate arbitrarily. The doctrine of

fairness in administrative action mandates that affected teachers be made aware of the basis of their proposed displacement, particularly when such transfers are undertaken *en masse* pursuant to executive instructions – Each petitioner shall submit a separate and comprehensive representation/objection before the District Level Committee constituted under the chairmanship of the District Magistrate within a period of one week from today. Upon receipt of such objections, the Committee shall examine the same in light of the applicable rules, the mandate of the Right of Children to Free and Compulsory Education Act, 2009, and the relevant Government Orders, and shall pass a reasoned and speaking order in accordance with law within one month thereafter. [Para 118 and 145]

(D) Jurisprudence – Principle – Government Order/Executive Instruction vis-à-vis Statutory framework – Held, Executive Instructions may validly fill in gaps where the rules are silent, provided they are not inconsistent with the statutory framework. [Para 90] (E-1)

Case Law Cited

Smt. Reena Singh and others vs. State of U.P. and others, 2019 (1) ADJ 319 (LB); Pushkar Singh Chandel and others vs. State of U.P. and others, 2024 (12) ADJ 375 (LB); Civil Appeal Nos. 4347-4375 of 2014, State of U.P. and others vs. Shiv Kumar Pathak and others (SC); Union of India and others vs. S.L. Abbas, 1993 AIR 2444 : (1993) 4 SCC 357; Sri Pubi Lombi vs. The State of Arunachal Pradesh and Others, 2024 INSC 200; Shilpi Bose vs. State of Bihar, 1991 Supp. (2) SCC 659; State of U.P. and others vs. Gobardhan Lal; (2004) 11 SCC 402; Somesh Tiwari vs. Union of India, (2009) 2 SCC 592; State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402; E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3; Federation of Railway Officers Association and Others vs. Union of India, (2003) 4 SCC 289; State of Punjab and Others vs. Ram Lubhaya Bagga and Others, (1998) 4 SCC 117; Balco Employees' Union (Regd.) vs. Union of India and Others, (2002) 2 SCC 333; Kirloskar Ferrous Industries Limited and another vs. Union of India and others, 2024 INSC 848; State of U.P. and another vs. Johri Mal, (2004) 4 SCC 714; Census Commissioner and others vs. R. Krishnamurthy, (2015) 2 SCC 796; Rajendra Singh vs. State of U.P., (2009) 15 SCC 178; Major General J.K. Bansal vs. Union of India, (2005) 7 SCC 227 **– referred to.**

List of Acts

Constitution of India – Article 21-A and Article 309; The Right of Children to Free and Compulsory Education Act, 2009 – S. 25; Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 – Rule 21(2); National Education Policy, 2020.

List of Keywords

Redeployment, Pupil-students ratio, Surplus teacher, Deficient institution, Opportunity of hearing, Statutory norms, Service jurisprudence, Policy for rationalization of teachers, Adjustment, Transfer, Procedural irregularity, Education of adequate quality, Elementary education, mala fide, Fundamental rights, Administrative need, Judicial review, Educational interest of children, Shortage of teachers, Arbitrary, Discriminatory, Statutory obligation, Individual hardship, Uninterrupted education, Administrative exigency, Punitive, Stigmatic, Administrative discretion of the employer, Inconvenience, Hardship, Judicial scrutiny, Misapplication of the procedure, Doctrine of fairness, Opportunity of representation, Civil consequences, Principle of natural justice, Procedural impropriety, Incident of service, Statutory infirmity, Factual infirmity.

Case Arising From

The Government Order dated 14.11.2025 and subsequent orders issued for the redeployment of teachers in order to maintain the pupil-teacher ratio.

Appearances for Parties

Advs. for the Petitioner : Ashok Khare, Sr. Adv.; Nipun Singh, Sr. Adv.; Tarun Agrawal, Sr. Adv.; Siddharth Khare, Mohd. Yaseen, Navin Kumar Sharma, Shashank Shekhar Mishra, Prashant Mishra.

Advs. for the Respondents : Abhishek Srivastava, C.S.C., Rishi Kumar, A.C.S.C.; Shailendra Singh, S.C.; R. P. Srivastava, S.C. Ashish Kumar Nagvanshi.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Written submissions provided by learned counsel for the parties are taken on record.

2. As a common cause of action has been agitated in all the writ petitions, the same are being decided by a common judgment.

3. A composite counter affidavit has been filed in Writ-A No. 179 of 2026, addressing legal issues rather than factual ones. Learned counsel for the petitioners does not propose to file a rejoinder affidavit to the same, as the petitions are being decided solely on the legal issues.

4. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Siddharth Khare, Mr. Mohd. Yaseen and Mr. Navin Kumar Sharma, Mr. Nipun Singh, learned Senior Advocate assisted by Mr. Shashank Shekhar Mishra, Mr. Tarun Agrawal, learned Senior Advocate assisted by Mr. Prashant Mishra, learned counsels for the petitioners in the present case as well as connected petitions, Mr. Abhishek Srivastava, learned Chief Standing Counsel-VII assisted by Mr. Rishi Kumar, learned Additional Chief Standing Counsel, Mr. Shailendra Singh, learned Standing Counsel, Mr. R. P. Srivastava, learned Standing Counsel for the State and Mr. Ashish Kumar Nagvanshi, learned counsel for the respondent and perused the records.

5. The aforesaid writ petitions have been filed challenging the Government Order dated 14.11.2025, as well as the subsequent orders issued pursuant thereto.

6. The petitioners are working either as Assistant Teachers or Headmasters in all the writ petitions. Since the petitions are being decided on legal issues, the details of the petitioners in this batch of petitions are not being mentioned, except for the fact that the petitioners are either Assistant Teachers in Junior Basic Schools or Senior Basic Schools, or Headmasters in Junior Basic Schools and Senior Basic Schools.

7. The Government Order dated 14.11.2025 and the proceedings consequent thereto purport to be for the redeployment of teachers in order to maintain the pupil-teacher ratio, in accordance with the provisions of The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the '2009 Act').

8. In Writ-A Nos. 179 of 2026, 568 of 2026, and 787 of 2026, learned counsel for the petitioners submits that Section 19 of the 2009 Act specifies the norms and standards for a school as mentioned in the Schedule to the said Act.

9. A perusal of the Schedule demonstrates that there is a minimum requirement of two teachers in every institution, with additional teachers based on the student strength as specified in the Schedule. In the case of a Junior Basic School having more than 150 students, there is a requirement for one Headmaster, and for a Senior Basic School with a student strength of more than 100, there is a requirement for one Headmaster.

10. Learned counsel for the petitioners submits that Section 38 of the 2009 Act confers power upon the appropriate Government to frame rules for carrying out the provisions of the Act. In exercise of such powers, the Government of Uttar Pradesh has framed the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as the 'Rules of 2011'). To effectuate the norms and standards specified under the 2009 Act, there is a requirement for provisions to be made for the redeployment to be conducted every year in the month of July. Rule 21(2) of the Rules of 2011 is extracted below:-

(21) Maintaining of Pupil-Teacher Ratio in each school (section-25)-

(1) The sanctioned strength of teachers in every school shall be notified by the District Magistrate of the respective district. Such notification shall be displayed on the district website; the sanctioned strength of teachers in a school shall be informed to the respective school and local authority:

Provided that the District Magistrate, shall, within two months of such notification, redeploy teachers of schools having strength in excess of the sanctioned strength prior to the notification referred to in sub-rule (1).

(2) In order to maintain the specified pupil-teacher ratio, the District Magistrate shall review the sanctioned strength of teacher in every school every year before the month of July and redeploy the teachers as per requirement.

(3) For the purpose of maintaining the pupil-teacher ratio, no teacher posted in a school shall be made to serve in any other school or office or deployed for any noneducational purpose, other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament.

(4) If any teacher found to be engaged in private tuition or private teaching, disciplinary action will be taken under the service rules applicable to him or her."

11. The aforesaid Rule does not envisage a repeated exercise of the powers of redeployment under Rule 21(2) for maintaining the specified pupil-teacher ratio. The District Magistrate is required to review the sanctioned strength of teachers in every school each year before the month of July and redeploy the teachers as per the requirement.

12. For the purpose of such annual redeployment, the exercise was conducted pursuant to the Government Order dated 23.05.2025, followed by the orders of the concerned Basic Shiksha Adhikari dated 01.07.2025. Thus, the exercise was carried out as required under Rule 21 of the Rules of 2011 for maintaining the pupil-teacher ratio in each school.

13. Learned counsel for the petitioners submits that a few teachers have already joined at their transferred places pursuant to the order dated 01.07.2025. Similar exercise should also be completed in all other districts of the State, including Chitrakoot.

14. Surprisingly, a fresh exercise has been initiated by the Government Order dated 14.11.2025, under the pretext of implementing the provisions of the 2009 Act and the Rules of 2011 framed thereunder.

15. Learned counsel for the petitioners submits that the two Government Orders, i.e. G.O. dated 23.05.2025 and 14.11.2025, are contrasting. The Government Order dated 23.05.2025 contained detailed guidelines requiring full details to be uploaded on the option website, thereafter, it called for the options from all surplus teachers willing to opt for institutions found to be deficient, and on the basis of such information, the final orders were to be passed. In contrast, the present Government Order dated 14.11.2025 is in a skeletal form, not specifying any procedure as set out in the earlier Government Order. However, it indicates that the redeployment exercise was intended to be undertaken for the academic session 2025-26.

16. Learned counsel for the petitioners further submits that the Government Order dated 14.11.2025 has been construed in contrast to the Government Order dated 23.05.2025. The procedure specified under the Government Order dated 23.05.2025 necessarily involved the publication of a list of surplus institutions, a list of surplus teachers, a seniority list of teachers treated as surplus, and a list of deficient institutions. It also provided that surplus teachers would have the option to choose an institution of their preference from the list of deficient institutions. Such options were to be exercised by the surplus teachers, and the same were to be scrutinized accordingly. However, no such procedure has been specified in the Government Order dated 14.11.2025, which renders it unreasonable and arbitrary.

17. On account of the non-specification of any norms in the Government Order dated 14.11.2025, each district has, therefore, adopted its own procedure or norms for identifying surplus teachers. The computation of surplus teachers may be based either on the persons who have put in the longest length of stay in a given institution or on those who have most recently joined. There is no clarity regarding the procedure followed by each district.

18. Learned counsel for the petitioners further submits that no proceedings were undertaken in any of the districts for nearly one and a half months following the issuance of the Government Order dated 14.11.2025, and the impugned orders have been passed in each district on different dates. There is no justification for such complete inaction on the part of the respondents during the aforesaid period.

19. Learned counsel for the petitioners further submits that Section 25 of the 2009 Act specifies the provisions for maintaining the pupil-teacher ratio. It requires the appropriate Government and local authorities to ensure that the pupil-teacher ratio, as specified in the Schedule, is maintained in each school within three years from the date of commencement of the Act.

20. For the purpose of maintaining the pupil-teacher ratio, no teacher posted in schools shall be transferred to any other school or deployed for any purpose other than those specified in Section 27 of the 2009 Act.

21. Learned counsel for the petitioners further submits that there was no justification for issuing the fresh Government Order dated 14.11.2025 and the consequential orders, when, pursuant to the earlier Government Order dated 23.05.2025, the entire exercise for the session 2025-26 had already been concluded, following the joining of Assistant Teachers and Headmasters, as the case may be, on 01.07.2025 in all the districts.

22. He further submits that there existed no justification for conducting any such redeployment exercise in the middle of the academic session, as the students' strength, which existed at the commencement of the academic session, had substantially remained the same in December 2025. Therefore, there existed no justification for issuing of the Government Order dated 14.11.2025 and the consequential orders. It is a settled principle of law that actions must be taken in accordance with the prescribed procedure, and any deviation therefrom vitiates the action itself.

23. Learned counsel for the petitioners further submits that the Government Order dated 14.11.2025, which was skeletal in nature and did not specify the details of the procedure to be followed, created a chaotic situation in each district, as each district followed its own procedure.

24. Another aspect of the controversy is that a large number of Headmasters have been treated as surplus in Junior Basic Schools and Senior Basic Schools where the students' strength is less than 150 and 100, respectively. However, such reasoning is illogical and contrary to departmental circulars as well as the orders previously passed by this Court. Learned counsel for the petitioners has drawn the attention of the Court to the order dated 04.09.2024 passed by the Lucknow Bench of this Court in Writ-A No. 7241 of 2024 (Seema Jaiswal and others vs. State of U.P. and others).

25. Learned counsel for the petitioners further submits that these are individual grievances of the petitioners, which have not been addressed, as no notice or opportunity of hearing was provided and no option was made available, as required, prior to the passing of the impugned orders and the consequential orders.

26. As no detailed counter affidavit has been filed in response to the individual grievances mentioned in the bunch of petitions, the same have not been addressed before this Court. However, an opportunity of hearing is required to be afforded to the petitioners to present their individual grievances, which affect them in any manner, rendering the impugned orders unreasonable and arbitrary.

27. Learned counsel for the petitioners in Writ-A No. 564 of 2026 has challenged the illegality and validity of the impugned posting order dated 13.12.2025. The impugned exercise constitutes the third round of adjustment undertaken by the respondents during the same academic session. The earlier two rounds have already resulted in a spate of writ petitions; therefore, the present case should be examined in the backdrop of this continuing administrative history.

28. The passing of the impugned order demonstrates a systemic administrative failure in implementing the statutory norms governing the deployment of teachers, which has persisted despite repeated judicial intervention.

29. The petitioners, who are duly appointed as Assistant Teachers working in Primary and Upper Primary Schools, belong to a district-level cadre, and their service conditions are governed by the U.P. Education (Teachers) Service Rules, 1981, read with the U.P. Basic Education (Teachers) (Posting) Rules, 2008.

30. It is a settled principle of service jurisprudence that, once service conditions are governed by statutory rules framed under Article 309 of the Constitution of India, the same cannot be altered, supplanted, or overridden by executive instructions or administrative convenience. This means that any transfer or adjustment dehors the statutory framework is liable to be interdicted.

31. The controversy arose when the Government Order dated 23.05.2025 was issued, whereby the State-respondents initiated a policy for the rationalization of teachers to ensure compliance with Section 25 of the 2009 Act. The policy was followed by guidelines dated 13.06.2025 and 16.06.2025, and a list of surplus and deficit schools was published on 24.06.2025.

32. While undertaking the aforesaid exercise, the respondents failed to adhere to the statutory mechanism prescribed under Section 25 of the 2009 Act read with Rule 21 of the Rules of 2011. The said rule mandates that the District Magistrate shall annually determine the sanctioned strength of teachers in each school, having regard to the pupil-teacher ratio prescribed in the Schedule to the Act. Thus, the entire exercise was in violation of the statutory requirement and is therefore bad in law.

33. The first round of transfer orders culminated in the list dated 30.06.2025, which was prepared without regard to the statutory norms, resulting in several schools being rendered as solitary-teacher schools. This was in direct violation of Section 25 of the 2009 Act, which mandates the maintenance of minimum teacher strength, and also defeated the very object sought to be achieved by the policy.

34. Aggrieved by the aforesaid actions, two distinct sets of teachers approached this Court: (i) teachers whose schools were rendered solitary as a result of the impugned adjustments; and (ii) teachers who were transferred pursuant to the said list and were subsequently sought to be reverted.

35. A batch of writ petitions, including Writ-A No. 16303 of 2025, is pending adjudication. The present Government Order dated 14.11.2025 has given rise to the third round of litigation.

36. By the aforesaid Government Order, the State Government directed a fresh exercise based on U-DISE+ data through a District-Level Committee. While the said Government Order sought to correct earlier mistakes, it conspicuously failed to prescribe any policy or guideline for the identification of surplus teachers within a school. Thus, the absence of such a policy is not a mere procedural irregularity but constitutes substantive illegality, as it confers unguided discretion upon subordinate authorities.

37. Pursuant to the letter dated 19.11.2025 issued by the concerned respondents, they proceeded to determine surplus schools in the District, which was illegal as no proper procedure was followed.

38. In the aforesaid procedure, the Shiksha Mitras and contractual instructors were included as regular teachers while determining surplus schools in the districts. As already submitted, there was no criteria for the selection of surplus teachers; consequently, each district followed its own procedure, which created a chaotic situation.

39. Learned counsel for the petitioners further submits that, in the absence of any guidelines to be followed for the implementation of the 2009 Act to maintain the student-teacher ratio, the earlier principle of treating the junior-most teacher as surplus, i.e., 'Last Come, First Go,' was also not to be followed, as it has been held to have no statutory backing. The aforesaid has been held in the case of **Smt. Reena Singh and others vs. State of U.P. and others, reported in 2019 (1) ADJ 319 (LB)**."

40. The said position has been reiterated in the case of **Pushkar Singh Chandel and others vs. State of U.P. and others, reported in 2024 (12) ADJ 375 (LB)**, wherein this Court held that the inclusion of Shiksha Mitras for determining surplus strength of the teachers and the mechanical displacement of junior teachers is constitutionally impermissible. Thus, the impugned posting order dated 31.12.2025 is directly in the teeth of the aforesaid binding precedents.

41. The issuance of the Government Order dated 14.11.2025, instead of rectifying the errors committed in the earlier rounds, has created a more precarious situation, which cannot be addressed without inviting objections from the petitioners. Such selective action amounts to hostile discrimination and is violative of Article 14 of the Constitution of India. Being in contravention of statutory provisions, binding judicial precedents, and constitutional guarantees, it cannot be sustained in law and warrants interference by this Court.

42. Learned counsel for the petitioners in Writ-A No.707 of 2026 submits that the petitioners are Assistant Teachers serving in Primary, Upper Primary and Composite Schools and have challenged the Government Order dated 14.11.2025 as well as transfer order dated 31.12.2025 with the following grounds:-

(a) Transfers effected without counseling, without inviting options or preferences and without publication of any consolidated list of surplus or transferred teachers. Settled policy of transfers based on seniority abandoned.

(b) New criterion of length of stay introduced and applied mechanically.

(c) Teachers appointed in English Medium Schools after undergoing a rigorous selection process displaced solely on the basis of length of stay.

(d) Senior teachers transferred to far-off locations despite availability of nearby schools.

(e) Objections invited only after transfer orders had already been finalized and uploaded, rendering the opportunity illusory.

(f) Thus the impugned exercise suffers from complete non-application of mind and is ex-facie arbitrary.

(g) The transfers are in violation of 2009 Act as well as Rules of 2011 as mandatory pupil-teacher ratio and subject-teacher ratios have been disturbed.

(h) Mechanical reliance on length of stay as the sole criterion in irrational and contrary to statutory staffing requirements.

(i) Displacement of trained English Medium teachers defeats the very object of establishing English Medium Schools and adversely affects educational standards.

(j) Entire process lacks transparency, with no public disclosure of criteria or consolidated date, violating principles of fairness and equality under Article 14 of the Constitution of India.

(k) Post-decisional invitation of objections does not cure the illegality and amounts to a mere formality.

43. On the cumulative strength of the aforesaid submissions, learned counsel for the petitioners submits that the impugned government order dated 14.11.2025 as well as consequential transfer order dated 31.12.2025 are liable to be quashed.

44. On the other hand, Mr. Abhishek Srivastava, learned Chief Standing Counsel VIIth assisted by Mr. Ashish Kumar Nagwanshi, learned Additional Chief Standing Counsel for the State-respondents submits that the 2009 Act itself provides that the said Act has been enacted by the Parliament to provide for free and compulsory education to all children of the age of 6 to 14 years.

45. Article 21A of the Constitution of India guarantees the fundamental right to free and compulsory education for all children aged 6 to 14 years, and this right is further reinforced by the 2009 Act. Specifically, Section 25 of the Act places an obligation on the State to ensure an adequate Pupil-Teacher Ratio (PTR), thus mandating that the government not only to provide access to education but also guarantees the quality of education by ensuring sufficient and trained teachers. As such, the State is constitutionally and statutorily bound to fulfill its duty by addressing teacher shortages, maintaining infrastructure, and ensuring that every child receives an education of adequate quality, with the judiciary playing a key role in enforcing these rights when the state fails to do so.

46. It would be appropriate to refer to Sections 3 and 8 of the 2009 Act, which provides as follows:-

"3. Right of child to free and compulsory education.- [(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

[(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons

with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.]

8. Duties of appropriate Government.-The appropriate Government shall-

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.-The term "compulsory education" means obligation of the appropriate Government to-

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers.

47. It would also be appropriate to refer to Sections 25 of the 2009 Act, which provides as follows:-

"25. Pupil-Teacher Ratio.--(1) [Within three years] from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27."

48. Under Section 3 of the Right to Education Act, 2009, every child between the ages of 6 to 14 years has the right to free and compulsory education. This right ensures that all children in this age group are entitled to access quality elementary education. The Pupil-Teacher Ratio has been specified in the Schedule, which has been annexed at Page 43 of the writ petition.

49. Any rule, regulation, or government order that obstructs or hampers the implementation of the Right to Education Act, 2009, or the constitutional mandate under Article 21A of the Constitution of India, shall not be given effect to by the State Government, as laid down by the Hon'ble Supreme Court in **Civil Appeal Nos. 4347-4375 of 2014 (State of U.P. and others vs. Shiv Kumar Pathak and others)**. Paragraph 16 of the aforesaid judgment reads as under:-

"16. There is no manner of doubt that the NCTE, acting as an 'academic authority' under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as under Sections 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23 rd August, 2010 and 11th February, 2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11 th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15 th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement."

50. Therefore, any claim of the teachers which comes in the way of maintaining pupil teacher ratio of at least two teachers in every school would be hit by Section 25 of the RTE Act, 2009.

51. He further submits that if the State Government in order to maintain pupil teacher ratio in terms of Section 25 of the RTE Act of 2009 had issued a Government Order dated 14.11.2025 whereby in School where either there is no Teacher or a single Teacher then in that case, the only option which is left with the District Level Committee is to transfer/adjust the (surplus or higher in numbers) Teachers available in one Institution/School to a School where either there is no Teacher or there is only one Teacher as in case the only teacher suffers from any aliment and unable to attend the School then the students should not suffer due to unavailability of teachers.

52. He further submits that the State Government vide Government Order dated 14.11.2025 has given power to a District Level Committee to examine time to time the necessity of a school and to provide teachers in a school where there is no teacher or there is only one teacher as there may be a situation throughout the year that some of the Teachers may retire, promoted, go on leave, suspended due to any misconduct etc., therefore, to deal with all such situations, the District Level Committee would be the competent authority to deal with the said situation and in order to achieve the goal of pupil teacher ratio, they may transfer a teacher from a school that has surplus teachers to a school where there is either no teacher or only one teacher, therefore, such transfer would be based on an administrative decision and the same being exigency of service, it is not proper to challenge any such decision of District Level Committee unless the Hon'ble Court finds that the order is based on a mala fide and since all these transfer orders are issued by the District Level Committee for maintaining pupil teacher ratio in schools in terms of Section 25 of the RTE Act, 2009 then any Rule, Regulation, Government Order or circular which would come in the way of said transfer orders shall be hit by Section 25 of the RTE Act, 2009 and the fundamental right of children as enshrined under Article 21A of the Constitution of India.

53. He further submits that if under said transfer/adjustment, a Teacher is posted within the same District then in that case they cannot claim that they have got an indefeasible right to continue in one School because the purpose of appointment of Teachers in Primary and Upper Primary Schools is to maintain pupil teacher ratio for achieving the aim and object of the RTE Act, 2009 i.e. to provide free and compulsory education to all children of the age of 6 to 14 years.

54. He further submits that the State Government in the Government Order dated 14.11.2025 has put no conditions upon the District Level Committee regarding teacher who will be transferred because there may be a circumstance where Science and Mathematics Teacher may be senior in Upper Primary School but there are two teacher for teaching Languages and are junior to the Science Teacher in that case the District Level Committee will obviously transfer Teacher teaching Languages, therefore, there cannot be a universal formula to deal with those situations and as per administrative grounds/needs of the children, the District Level Committee is the best authority to determine/examine these issues before making transfers and therefore, the State Government in its wisdom has given a discretion to the District Level Committee to examine the ground situations and pass appropriate orders.

55. So far as any ground of resistance by the Teachers taking plea of mid-session is concerned, it is most respectfully submitted that if a pupil teacher ratio is not maintained in a school where there is no teacher or there is only one teacher then it will adversely affect the rights of the children to get free and compulsory education under the Act, 2009 and it would be a violation of fundamental right of the children as enshrined under Article 21A of the Constitution of India, therefore, any restrictions which come in the way of maintaining pupil teacher ratio would be hit by Article 21A read with Section 25 of the Act of 2009 and the right children of getting free and compulsory education would always supersede the rights of the Teachers to remain posted in a School and hence the Government Order dated 14.11.2205 issued by the State Government in order to achieve the aim of maintaining the pupil teacher ratio cannot be challenged by the Teachers on artificial grounds. The seniority of the Teachers shall not get affected by any transfer/adjustment which will made in terms of government order dated 14.11.2025.

56. He further submits that the Committee which has been constituted in terms of Government Order dated 14.11.2025 is to be headed by District Magistrate along with three other members who will take care of the interest of the Teachers also and in absence of any allegations of mala fide against the said committee, a transfer which is an incidence of service cannot be challenged by the petitioners on artificial grounds, therefore, claim of the petitioners against the said transfer/posting is in teeth of Section-25 of the Act, 2009 read with Article 21A of the Constitution of India and the same is liable to be rejected by this Court.

57. He further submits that the petitioners have failed to show as to how the Government Order dated 14.11.2025 is contrary to the provisions of RTE Act, 2009 as the same has been issued in order to maintain pupil teacher ratio and even in case there are some discrepancies in transfer of posting the same would be rectified accordingly but for such minor discrepancies would not be a ground of challenge the validity of government order dated 14.11.2025.

58. He further submits that as per the National Education Policy, 2020, the Central Government through Ministry of HRD, in Para - 4.11 provided as follows:-

"बहुभाषावाद और भाषा की शक्ति

4.11 यह सर्वविदित है कि छोटे बच्चे अपनी घर की भाषा / मातृभाषा में सार्थक अवधारणाओं को अधिक तेजी से सीखते हैं और समझ लेते हैं। घर की भाषा आमतौर पर मातृभाषा या स्थानीय समुदायों द्वारा बोली जाने वाली भाषा है। हालांकि, कई बार बहुभाषी परिवारों में, परिवार के अन्य सदस्यों द्वारा बोली जाने वाली एक घरेलू भाषा हो सकती है, जो कभी-कभी मातृभाषा या स्थानीय भाषा से भिन्न हो सकती है। जहाँ तक संभव हो, कम से कम ग्रेड 5 तक लेकिन बेहतर यह होगा कि यह ग्रेड 8 और उससे आगे तक भी हो, शिक्षा का माध्यम, घर की भाषा / मातृभाषा / स्थानीय भाषा / क्षेत्रीय भाषा होगी। इसके बाद, घर / स्थानीय भाषा को जहाँ भी संभव हो भाषा के रूप में पढ़ाया जाता रहेगा। सार्वजनिक और निजी दोनों तरह के स्कूल इसकी अनुपालना करेंगे। विज्ञान सहित सभी विषयों में उच्चतर गुणवत्ता वाली पाठ्यपुस्तकों को घरेलू भाषाओं/मातृ-भाषा में उपलब्ध कराया जाएगा। यह सुनिश्चित करने के लिए सभी प्रयास जल्दी किए जाएंगे कि बच्चे द्वारा बोली जाने वाली भाषा और शिक्षण के माध्यम के बीच यदि कोई अंतराल मौजूद हो तो उसे समाप्त किया जा सके। ऐसे मामलों में जहाँ घर की भाषा की पाठ्य सामग्री उपलब्ध नहीं है, शिक्षकों और छात्रों के बीच संवाद की भाषा भी जहाँ संभव हो, वहाँ घर की भाषा बनी रहेगी। शिक्षकों को उन छात्रों के साथ जिनके घर की भाषा/मातृ-भाषा शिक्षा के माध्यम से भिन्न है, द्विभाषी शिक्षण अधिगम सामग्री सहित द्विभाषी एप्रोच का उपयोग करने के लिए प्रोत्साहित किया जाएगा। सभी भाषाओं को सभी छात्रों को उच्चतर गुणवत्ता के साथ पढ़ाया जाएगा; एक भाषा को अच्छी तरह से सिखाने और सीखने के लिए इसे शिक्षा का माध्यम होने की आवश्यकता नहीं है।

59. That after the N.E.P., 2020 the medium of teaching is emphasized in Native Language (Matra Bhasha) as there is only one cadre of Assistant Teacher in Service Rules for teaching in School run by Basic Education Board and there is no separate cadre of teacher (English Medium) in Primary School and therefore, a Teacher cannot request to create a Class within a Class more importantly when at least two Teachers are required to be posted in every School run by the Basic Education Board and there is no infirmity in the government order dated 14.11.2025 and for any individual grievances, the candidate can always represent before the District Level Committee raising their objection, if any.

60. Any notification issued under a Central Act shall prevail over conflicting State Rules, in accordance with the principle of federal supremacy. In case of inconsistency, the provisions of the Central Act shall take precedence over those of the State legislation or subordinate rules.

61. If an employee is engaged by the employer under specific service conditions that include a provision for transfer, such conditions must be upheld, even in exceptional circumstances. The fact that certain service rules exist does not negate the possibility of transfer. Furthermore, an employee

cannot claim exemption from transfer on the basis of Section 25 of the Right to Education Act, 2009, which mandates the maintenance of an appropriate teacher-student ratio. The objective of ensuring an adequate teacher-student ratio as stipulated under the Act supersedes any individual claim to non-transferability, provided such transfers are consistent with the service conditions agreed upon at the time of employment.

62. If a general transfer is implemented in June across departments or schools, and no specific rule or regulation mandates it, such transfers may still be valid if justified by administrative needs. In the absence of a governing rule, transfers must be based on reasonable grounds and conducted with fairness and transparency.

63. The transfers in question are within the same district, aimed at minimizing hardship in normal circumstances. The argument against transfer pertaining to inter-district transfers, which is not applicable here, as the transfers are confined to the same district.

64. To maintain the pupil-teacher ratio as mandated under Section 25 of the Right to Education Act, 2009, the State Government issued a Government Order dated 14.11.2025. The Order provides that in cases where a school has no teacher or only one teacher, the District Level Committee may transfer or adjust surplus teachers from other institutions or schools. This measure ensures that, even in the event of a teacher′s illness or absence, students are not deprived of education due to the unavailability of teachers.

65. In support of his contention, he has relied upon the judgment of the Apex Court in the case of **Union of India and others vs. S.L. Abbas reported in 1993 AIR 2444.**

66. He has also relied upon the judgment of the Apex Court in the case of **Sri Pubi Lombi vs. The State of Arunachal Pradesh and Others reported in 2024 INSC 200.**

67. In the matters of transfer, scope of judicial review is limited, only when such transfer is in violation of the statutory provisions or due to mala fide reasons.

68. In the counter-affidavit filed on behalf of the respondent no.1, it has been specifically averred that the Government Order dated 14.11.2025 was issued transferring the teachers in the larger interest of children and in compliance with Section 25 of the Right to Education Act, 2009.

69. The Government Order dated 14.11.2025 has been issued to ensure that all schools maintain the required teacher-student ratio and that no school remains without a teacher, thereby safeguarding the educational interests of children.

70. Heard learned counsel for the parties and perused the record. With the consent of learned counsel appearing on behalf of the respective parties, the present matter is being decided on the legal issues alone, which have been duly addressed before this Court.

71. The controversy raised in the present bunch of petitions centres around the issuance of the Government Order dated 14.11.2025, providing for adjustment and redeployment of Basic School

teachers. The said Government Order has been issued in furtherance of the statutory mandate of the Right of Children to Free and Compulsory Education Act, 2009, with the specific object of maintaining the prescribed teacher′student ratio, which is fundamental for ensuring quality education and protecting the larger interest of students.

72. The policy underlying the impugned Government Order seeks to achieve a rational and equitable distribution of teaching staff across institutions. It aims to prevent a situation where certain schools are overstaffed while others suffer from acute shortage of teachers, a circumstance which would otherwise defeat the very object of the 2009 Act.

73. It is well settled that formulation and implementation of policy falls within the exclusive domain of the executive, and the Courts, while exercising powers of judicial review, does not sit in appeal over such policy decisions. Interference is warranted only where the policy is shown to be arbitrary, discriminatory, or in violation of statutory provisions or constitutional mandates. In the absence of any such infirmity, particularly when the policy is demonstrably framed in public interest and to fulfill a statutory obligation, the Court would be slow to interfere with the same.

74. While issuing a Government Order for implementation of the Right of Children to Free and Compulsory Education Act, 2009, particularly with regard to adjustment and redeployment of teachers in primary schools to maintain the prescribed teacher student ratio, the State is required to be guided by the statutory mandate contained in Section 25 of the 2009 Act read with the Schedule appended thereto. The paramount consideration must be the larger interest of students and the effective enforcement of Article 21A of the Constitution of India. The policy must ensure rational, equitable and non-discriminatory distribution of teachers on the basis of objective criteria such as student strength, sanctioned posts and availability of teaching staff, so that no institution remains understaffed while others are overstaffed. The process of adjustment should be transparent, reasonable and administratively feasible, without adversely affecting the service conditions of teachers except as permissible under law. So long as the Government Order is framed in public interest, founded on intelligible criteria, and aimed at achieving compliance with the teache-student ratio prescribed under the Act of 2009, the same would fall within the domain of policy and ordinarily would not invite judicial interference.

75. A careful examination of the Government Orders dated 23.05.2025 and 14.11.2025 reveals that though both were issued with the common objective of implementing the Right of Children to Free and Compulsory Education Act, 2009 and ensuring adherence to the prescribed teacher-student ratio, they differ substantially in scope, operative mechanism, and degree of enforceability.

76. The Government Order dated 23.05.2025 was essentially an enabling and facilitative measure. It contemplated adjustment of teachers primarily on the basis of options or willingness, thereby attempting to achieve rationalisation without causing large-scale disruption. The emphasis under the said order was on administrative convenience and consensual redeployment, with limited discretion vested in the authorities.

77. In contrast, the Government Order dated 14.11.2025 is comprehensive, mandatory and corrective in character. It was issued upon noticing that despite earlier option-based measures,

several institutions continued to suffer from either surplus or acute shortage of teachers, resulting in non-compliance with the statutory teacher-student ratio. The later Government Order, therefore, accords primacy to strict statutory compliance and vests wider authority in the administration to undertake compulsory adjustment wherever necessary to fulfill the mandate of Section 25 of the 2009 Act read with the Schedule appended thereto.

78. Whereas the earlier Government Order sought to balance institutional requirements with individual convenience of teachers, the subsequent Government Order unmistakably prioritises the larger public interest and the welfare of students. It proceeds on the well-recognised principle that individual hardship or preference must yield to constitutional and statutory obligations flowing from Article 21A of the Constitution of India.

79. Thus, the Government Order dated 14.11.2025 cannot be construed as inconsistent with or repugnant to the Government Order dated 23.05.2025. Rather, it is supplemental and curative in nature, issued to remedy deficiencies that persisted under the earlier regime and to ensure effective and meaningful implementation of the Right of Children to Free and Compulsory Education Act, 2009.

80. The learned Senior Counsel, Mr. Ashok Khare, for the petitioners in few writ petitions has raised the principal objections to the Government Order dated 14.11.2025 at the very outset.

81. Firstly, it is contended that the said Government Order suffers from a fundamental infirmity inasmuch as it does not specify the procedure to be followed for adjustment of teachers. In the absence of any prescribed mechanism, guidelines, or safeguards, the process of adjustment is left unguided and open to arbitrariness.

82. Secondly, the timing of the issuance of the Government Order is assailed as being wholly improper and contrary to the statutory scheme. Rule 21 of the Rules of 2011 mandates that the District Magistrate shall review the sanctioned strength of teachers in every school annually before the month of July and thereafter re-deploy teachers strictly in accordance with the assessed requirement. Once the statutory exercise is required to be completed prior to July of each year, there was no occasion or justification for issuing a Government Order in November 2025 for the purpose of adjusting teachers in December 2025.

83. Thirdly, it is submitted that the impugned Government Order is in clear violation of the Rules of 2011, which occupy the field and have statutory force. Any executive instruction issued in derogation of the statutory rules cannot be sustained in law.

84. On the aforesaid grounds, the learned Senior Counsel submits that the Government Order dated 14.11.2025 is arbitrary, dehors the statutory framework, and liable to be struck down.

85. This Court has given anxious consideration to the submissions advanced on behalf of the petitioners. However, upon a careful examination of the statutory framework and the object sought to be achieved by the impugned Government Order dated 14.11.2025, this Court finds no merit in the challenge laid thereto.

86. As regards the contention relating to non-specification of procedure, it is to be noted that the Government Order does not operate in isolation. The adjustment of teachers is governed by the Rules of 2011 and other executive instructions issued from time to time. The impugned Government Order is merely an enabling and facilitative measure intended to give effect to the statutory mandate of maintaining the prescribed student-teacher ratio. Absence of a detailed procedure in the Government Order itself does not render it arbitrary, particularly when the field is already occupied by statutory rules and administrative practice.

87. However, in the present case, while issuing the impugned Government Order, a District-Level Committee under the chairmanship of the District Magistrate has been constituted. The said Committee has been duly empowered to periodically assess and review the ground realities with a view to maintaining the prescribed student-teacher ratio throughout the academic session. Such empowerment has been conferred to meet administrative exigencies and to ensure that the welfare of students is not compromised, thereby effectuating and advancing the object and purpose of the Right of Children to Free and Compulsory Education Act, 2009.

88. With respect to the objection concerning timing, Rule 21 of the Rules of 2011 no doubt contemplates an annual review of sanctioned strength before the month of July. However, the said provision cannot be read as placing an absolute embargo on the State from taking corrective or emergent measures thereafter. The obligation of the State to ensure uninterrupted education and compliance with the student-teacher ratio is a continuing one. If subsequent developments, such as change in enrolment, closure of schools, or acute shortage of teachers, necessitate intervention, the State cannot be rendered powerless merely on account of the passage of the month of July.

89. The issuance of the Government Order in November 2025, therefore, cannot be said to be illegal or without jurisdiction, as it seeks to address pressing administrative exigencies and to safeguard the larger interest of students. The power of the State to issue executive instructions to meet unforeseen situations is well recognised, so long as such instructions do not directly contravene any statutory provision.

90. As regards the alleged violation of the Rules of 2011, this Court finds that the impugned Government Order neither amends nor overrides the statutory rules. On the contrary, it supplements the Rules by facilitating their effective implementation. It is settled law that executive instructions may validly fill in gaps where the rules are silent, provided they are not inconsistent with the statutory framework.

91. The submission advanced by learned counsel for certain petitioners alleging inaction on the part of the respondents on the ground that the transfer orders were issued after a gap of about one and a half months from the issuance of the Government Order is misconceived. Mere passage of time in implementing a policy decision, by itself, does not vitiate the action, particularly when the delay is attributable to administrative exigencies such as assessment of vacancies and compliance with the student-teacher ratio.

92. The grievance that teachers, who had joined pursuant to earlier order dated 17.07.2025, are being repatriated without assigning reasons is equally devoid of substance. The impugned action is

neither punitive nor stigmatic but is a consequence of a general policy decision taken in public interest. In such circumstances, individual notice or assignment of personal reasons is not a legal requirement.

93. It is well settled that transfer and adjustment of teachers is an incidence of service, and no employee can claim a vested right to continue at a particular place of posting. In the absence of any pleading or proof of mala fides, arbitrariness, or violation of statutory provisions, the Court finds no ground to interfere.

94. In matters of policy and administrative adjustment, particularly in the field of education, the scope of judicial review is limited. Unless the policy is shown to be manifestly arbitrary, mala fide, or in clear violation of statutory provisions, this Court would be slow to interfere. No such infirmity has been demonstrated in the present case.

95. It is a settled principle of service jurisprudence that transfer of an employee is an incident and condition of service, falling squarely within the administrative discretion of the employer. The power to transfer is ordinarily exercised in public interest and to meet administrative exigencies, and the courts, while exercising jurisdiction under Articles 226 and 227 of the Constitution, do not sit in appeal over such decisions. Judicial review in transfer matters is, therefore, exceptional and not routine.

96. The Hon′ble Supreme Court in **Shilpi Bose v. State of Bihar reported in 1991 Supp(2) SCC 659**, has authoritatively held that courts should not interfere with transfer orders unless the same are shown to be vitiated by mala fides or are in clear violation of statutory provisions. Mere inconvenience, hardship, or personal difficulty of the employee does not furnish a legally sustainable ground for interference.

97. However, the rule of non-interference is not absolute. A transfer order becomes amenable to judicial scrutiny where it is established that the same has been passed with mala fide intent, by way of victimisation, or as a colourable exercise of power. Likewise, where the order is issued in contravention of statutory rules governing service conditions, or by an authority lacking competence or jurisdiction, the court would be justified in exercising its power of judicial review. In **State of U.P. and others vs. Gobardhan Lal reported in (2004) 11 SCC 402**, the Hon′ble Supreme Court observed that violation of statutory rules or proven mala fides alone can warrant interference in transfer matters.

98. The court may also interfere where a transfer, though innocuously worded, is in substance punitive or stigmatic and has been resorted to as a substitute for disciplinary proceedings, without following the procedure prescribed in law. Such an action would be arbitrary and violative of Articles 14 and 16 of the Constitution, as held in **Somesh Tiwari v. Union of India reported in (2009) 2 SCC 592.**

99. Conversely, deviation from executive guidelines or transfer policies, which do not have statutory force, does not confer any legally enforceable right upon an employee. In **S.L. Abbas**

(Supra), it was clearly held that administrative guidelines are meant for internal governance and their breach, by itself, does not justify judicial interference.

100. In conclusion, judicial intervention in transfer matters is confined to cases where the impugned order is shown to be mala fide, arbitrary, punitive in disguise, without jurisdiction, or in clear breach of statutory provisions. In absence of these grounds, the court must exercise judicial restraint, recognising that administrative authorities are best positioned to assess institutional requirements and public interest. Such restraint is essential to maintain the delicate balance between constitutional oversight and administrative autonomy.

101. In the present case, neither the Government Order dated 14.11.2025 nor the consequential transfer orders issued pursuant thereto are shown to be in contravention of any statutory provision. There is also no material on record to establish that the same suffer from mala fides or have been issued with any oblique motive.

102. However, insofar as the grievance of arbitrariness is concerned, the same cannot be adjudicated in abstract. Whether the impugned action is arbitrary or not must necessarily be examined on the touchstone of the individual facts and circumstances of each case.

103. The Government Order dated 14.11.2025, issued for implementation of the Right of Children to Free and Compulsory Education Act, 2009, cannot be held to be arbitrary.

104. It is pertinent to note that under the Government Order dated 14.11.2025, a Committee has been constituted at the district level under the Chairmanship of the concerned District Magistrate, who is the competent authority to oversee and supervise the implementation of the said Government Order. The Committee has been empowered to consider factual aspects on the basis of relevant data, particularly with a view to maintaining the prescribed student-teacher ratio and ensuring effective implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

105. The Act of 2009 being a Central enactment enacted to secure the fundamental right to education under Article 21-A of the Constitution, its mandate shall prevail and must guide administrative action in the matter of deployment and adjustment of teachers.

106. In view thereof, any individual grievance regarding hardship or alleged arbitrariness may appropriately be placed before the competent Committee, which shall examine the same objectively on the basis of available data and in accordance with law.

107. The Act of 2009, particularly Sections 19 and 25 read with the Schedule, mandates maintenance of the prescribed student-teacher ratio. The impugned Government Order has been issued to rationalise and adjust teaching staff so as to ensure compliance with the statutory requirement and to effectuate the mandate of Article 21-A of the Constitution. A policy framed to implement a legislative command and to advance the larger public interest of students cannot, by its very nature, be termed arbitrary.

108. Judicial review of policy decisions is limited. In **Union of India v. S.L. Abbas, (1993) 4 SCC 357, and State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402**, the Supreme Court held that transfer is an incident of service and courts should not interfere unless the action is vitiated by mala fides or contravention of statutory provisions. Further, as observed in **E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3**, arbitrariness is antithetical to equality; however, arbitrariness must be demonstrable and not presumed.

109. In the absence of any pleading or proof of mala fides, hostile discrimination, or violation of statutory rules, and when the Government Order is founded upon objective criteria to maintain the statutory student-teacher ratio, it cannot be characterised as arbitrary but is a bona fide policy measure in furtherance of the constitutional and statutory mandate.

110. A transfer policy can be said to be arbitrary when it lacks a rational basis, confers unguided discretion, or operates in a discriminatory or unreasonable manner, thereby offending Articles 14 and 16 of the Constitution.

111. Though transfer is an incident of service and policy matters ordinarily lie outside judicial review, the Court may interfere where the policy is manifestly unreasonable, capricious, mala fide, or violative of statutory provisions. As held in **E.P. Royappa (Supra)**, arbitrariness is antithetical to equality; hence, any policy that is irrational or unfair is liable to be struck down.

112. The contention raised by the petitioners cannot be brushed aside on the premise that the Government Order dated 14.11.2025 is bereft of any procedural framework. On the contrary, the Government Order does contemplate a definite procedure for rationalization of teachers so as to maintain the prescribed student-teacher ratio in terms of the Right to Education Act, 2009. However, the grievance which merits consideration is not about absence of procedure, but about its improper and inconsistent implementation.

113. Once a procedure is prescribed, whether expressly in the Government Order or by necessary implication, it is incumbent upon the authorities to adhere to the same in letter and spirit. Administrative discretion, howsoever wide, cannot transgress the bounds of procedural fairness. If the record reveals that no consolidated and verified list was prepared prior to effecting transfers, or that the exercise was undertaken without transparent consideration of relevant data, the action would suffer from arbitrariness.

114. Further, the inclusion of Shiksha Mitras and contractual instructors in the process of identifying surplus teachers, if done contrary to the governing statutory framework or settled legal principles, would amount to a misapplication of the procedure itself. The doctrine of fairness in administrative action mandates that similarly situated persons be treated alike and that distinct categories not be amalgamated in a manner inconsistent with law.

115. Thus, the issue is not of non-existence of procedure, but of non-compliance therewith. Where a prescribed mechanism exists but is not scrupulously followed, the resulting action becomes vulnerable to judicial scrutiny on the ground of arbitrariness and violation of Article 14 of

the Constitution of India. Administrative expediency cannot be permitted to override procedural discipline.

116. The State Government, in exercise of its statutory and administrative powers, has consistently issued Government Orders and circulars from time to time for the purpose of implementing the provisions of the Right of Children to Free and Compulsory Education Act, 2009, with due regard to the larger public interest and the overarching objective of safeguarding the educational rights and welfare of students.

117. It is also required to be noticed that, from time to time, several Government Orders have been issued for the implementation of the Right of Children to Free and Compulsory Education Act, 2009. However, the frequent issuance and modification of such Government Orders, in the absence of reliable and updated data regarding surplus and deficit teachers in primary schools, has led to an administrative disarray. The resultant uncertainty has compelled the petitioners to approach this Court repeatedly, thereby giving rise to avoidable rounds of litigation.

118. It is a settled principle of law that even in matters of transfer, though an incidence of service, an opportunity of representation ought to be afforded where the action results in civil consequences or appears to operate arbitrarily. The doctrine of fairness in administrative action mandates that affected teachers be made aware of the basis of their proposed displacement, particularly when such transfers are undertaken en masse pursuant to executive instructions.

119. The Court cannot remain oblivious to the fact that frequent transfers and readjustments, carried out without a transparent and data-driven exercise, have the potential to disrupt the academic environment and adversely impact the education of students, which is the paramount consideration under the Act of 2009.

120. In order to bring quietus to the prevailing controversy and to restore administrative stability, it would be appropriate that objections be invited from the affected teachers within a stipulated time. Upon receipt of such objections, the Committee already constituted under the chairmanship of the concerned District Magistrate may examine the same in light of verified data relating to student strength and teacher availability, and thereafter pass reasoned and speaking orders in accordance with law.

121. Such a course would not only uphold the principles of natural justice but would also ensure that the larger interest of students remains protected while maintaining administrative discipline.

122. This being the situation, how much interference is permissible is to be seen, as the scope of judicial review in policy matters is limited. Any policy or action of the Government, unless inconsistent with the Constitution and the laws, or arbitrary, irrational, or an abuse of power, is not subject to judicial review. In the case of **Federation of Railway Officers Association and Others vs. Union of India, reported in (2003) 4 SCC 289**, the Hon′ble Apex Court, observing the aforesaid principles, held as follows:-

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."

123. The right of the Government to change its policy from time to time, under changing circumstances, cannot be questioned. While holding the aforesaid, the Hon'ble Apex Court in the case of **State of Punjab and Others vs. Ram Lubhaya Bagga and Others, reported in (1998) 4 SCC 117**, observed as follows:-

"25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. **So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law.** When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints."

124. In the case of **Union of India and others vs. S.L. Abbas reported in (1993) 4 SCC 357**, the Hon'ble Apex Court has held that an order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it.

125. In the case of **Balco Employees' Union (Regd.) vs. Union of India and Others, reported in (2002) 2 SCC 333**, the Hon'ble Apex Court held that the scope of judicial review is limited in policy decisions. Unless the decision is contrary to any statutory provision or the Constitution, the Court cannot interfere with it and cannot examine the relative merits of different policies merely on the ground that another policy might have been fairer or better. Relevant paragraphs 45, 46, and 87 of the aforesaid judgment are as under:-

45. In Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664 there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p. 762 as follows: (SCC para 229)

"229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

87. Lastly, we need only to refer to the following observations in the majority decision in Narmada Bachao Andolan case (2000) 10 SCC 664 at p. 763: (SCC paras 232-34)

*232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has ought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. **The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere.** When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.

234. **In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive.** For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

126. The Hon'ble Supreme Court has time and again opined that projects of public importance should not be halted as the same would be against the larger public interest and the constitutional courts should weigh public interest vis-a-vis private interest, while exercising its discretion. The courts are not equipped to comment upon the viability and feasibility of a particular project and whether a particular alignment is good or there can be better option. In such matters, the scope of judicial review is very limited.

127. The Hon'ble Apex Court recently in a case of **Kirloskar Ferrous Industries Limited and another vs. Union of India and others reported in 2024 INSC 848** , has held as under:-

"54. The doctrine of judicial restraint, which is central to this discussion, emphasizes that courts should exercise caution and avoid involvement in policy decisions, as these are complex judgments that require a balancing of diverse and often competing interests. Policies are crafted based on thorough analysis of social, economic, and political factors, considerations beyond the court's purview. The court is tasked with ensuring that policies do not breach constitutional provisions or statutory limits; however, they should not replace policymakers' judgments with their own unless absolutely necessary.

56. While courts have the power of judicial review to ensure that executive actions and legislative enactments comply with the Constitution, this power is not absolute. Judicial review is meant to act as a safeguard against actions that overstep legal boundaries or infringe on fundamental rights, but it does not entail a comprehensive re-evaluation of the policy's wisdom. The judicial review of policy decisions is limited to assessing the legality of the decision-making process rather than the substantive merits of the policy itself. For example, if a government policy infringes on fundamental rights or discriminates against a particular group, the courts have a duty to strike down such policies. **However, in the absence of constitutional or legal violations, the courts should respect the policy choices made by the executive or legislature.**

57. The duty of the court in policy-related cases is primarily to determine whether the policy falls within the scope of the authority granted to the relevant body. If the policy decision is within the executive's legal authority and has been made following proper procedures, the courts should defer to the expertise and discretion of the policy-makers, even if the policy appears unwise or imprudent. This restraint ensures that the courts do not impose its own perspective on policy matters that are rightly the responsibility of other branches.

128. The Hon'ble Apex Court in the case of **State of U.P. and another vs. Johri Mal reported in (2004) 4 SCC 714** has observed that the power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The courts while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies. An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal. The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. While examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural

impropriety. Thus, to a limited extent of scrutinizing the decision making process, it is always open to the court to review the evaluation of facts by the decision maker.

129. In the case of **Census Commissioner and others vs. R. Krishnamurthy reported in (2015) 2 SCC 796**, the Apex Court has observed as under:-

"33. From the aforesaid pronouncement of law, it is clear as noon day that **it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution.** In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

130. Further, in **Rajendra Singh v. State of U.P., (2009) 15 SCC 178**, the Hon'ble Supreme Court observed that a transfer policy is not enforceable as a statute and deviation therefrom does not ipso facto render a transfer order illegal. Judicial review is confined to examining the decision-making process and not the merits of the decision itself.

131. In **Major General J.K. Bansal v. Union of India, (2005) 7 SCC 227**, the Apex Court held that in matters involving organizational requirements and administrative exigencies, courts must exercise greater restraint, as the employer is the best judge of where an employee's services are required.

132. In view of the foregoing discussion, the challenge to the Government Order dated 14.11.2025 fails and is accordingly rejected. The said Government Order, having been issued in furtherance of the statutory mandate of the Right of Children to Free and Compulsory Education Act, 2009 and with the object of maintaining the prescribed teacher-student ratio, is hereby upheld.

133. The respondent authorities are directed to ensure expeditious and effective implementation of the Government Order dated 14.11.2025 in a fair, transparent and non-discriminatory manner. While undertaking adjustment and redeployment of teachers, due regard shall be had to objective criteria such as student strength (on the basis of Mid-Day Meal) and sanctioned posts, and unnecessary hardship shall be avoided, as far as practicable, without compromising the larger public interest.

134. It is further observed that the process of adjustment shall not be used as a tool for punitive transfer or victimisation of teachers and shall remain confined to the purpose for which the policy has been framed. Any grievance arising out of implementation may be considered by the competent authority strictly in accordance with law.

135. This Court is of the opinion that transfers must conform to the applicable Service Rules and Government Orders issued for implementation of the Right of Children to Free and Compulsory Education Act, 2009. Any action contrary thereto is legally unsustainable. The following should be kept in mind while passing transfer orders.

(i) Maintenance of the prescribed student-teacher ratio is the dominant and overriding factor. Transfers must be based on verified data identifying surplus and deficit schools.

(ii) A rational exercise founded on consolidated district-level data regarding sanctioned strength, working strength, and enrolment is mandatory. Absence of such data renders the process arbitrary.

(iii) Transfers must be justified by genuine administrative necessity and the larger interest of students. Courts ordinarily do not interfere unless statutory violation or mala fides is established, as held in **Shilpi Bose (Supra)**.

(iv) Transfer cannot be punitive, discriminatory, or whimsical. Judicial interference is permissible only when the order is vitiated by mala fides or breach of statutory rules, as reiterated in **Gobardhan Lal (Supra)**.

(v) Accordingly, transfers of Assistant Teachers must be data-driven, policy-compliant, and guided solely by administrative exigency and educational welfare. In the absence of arbitrariness, mala fides, or statutory violation, such transfers do not warrant judicial interference.

136. It is a settled proposition of service jurisprudence that a writ petition challenging a transfer order ordinarily ought not to be entertained unless the employee first complies with the order and joins at the transferred place. Transfer being an incidence of service, courts refrain from interdicting such orders at the threshold. The Supreme Court in **S.L. Abbas (Supra)** authoritatively held that who should be transferred and where is a matter for the employer to decide, and judicial review is confined to cases of mala fides or violation of statutory provisions. A similar principle was reiterated in **Shilpi Bose (Supra)**, wherein it was observed that courts should not interfere with transfer orders made in public interest and for administrative reasons.

137. However, the rule is one of prudence and self-imposed restraint, not an absolute bar. In exceptional circumstances, where the action is shown to be arbitrary, based on non-existent or unverified data, or likely to seriously prejudice public interest, constitutional courts are not powerless. As elucidated in **Gobardhan Lal (Supra)**, interference is warranted where the transfer order is vitiated by mala fides or contravenes statutory provisions.

138. Upon perusal of the material placed on record, particularly the data available on the UDISE portal, it is not discernible whether, while effecting transfers pursuant to the Government Order dated 14.11.2025, the prescribed criteria, namely, maintenance of pupil-teacher ratio, identification of surplus and deficit institutions, and objective district-level assessment have been scrupulously adhered to.

139. It is further noticed that each writ petition comprises more than one petitioner, however, the individual factual matrices, including the particulars of posting, sanctioned strength, and institutional requirement, have neither been specifically pleaded nor substantiated by cogent material. Since this Court has confined itself to adjudication of the legal validity of the Government

Order and finds no statutory infirmity or manifest arbitrariness therein, the individual grievances require factual examination at the administrative level.

140. The Court is confronted with considerable difficulty in adjudicating upon the factual matrix of the present matter. A multitude of writ petitions have been instituted, wherein numerous petitioners have been arrayed in a single proceeding. However, the pleadings are conspicuously silent with regard to the foundational facts necessary for effective judicial scrutiny, particularly the specific data reflecting surplus or deficit of teachers in the respective institutions concerned.

141. In the absence of such essential particulars, this Court is deprived of the requisite factual substratum to meaningfully examine the legality, arbitrariness, or propriety of the impugned action. It is well settled that in proceedings under Article 226 of the Constitution of India, the burden lies upon the petitioners to place complete and cogent material before the Court so as to enable an informed adjudication. Vague, omnibus, and generalized pleadings cannot form the basis for issuance of a writ.

142. Accordingly, unless the petitioners furnish institution-wise details indicating the sanctioned strength, working strength, and the extent of surplus or deficiency of teachers, this Court would be constrained to decline interference for want of necessary factual foundation.

143. However, in the peculiar facts of the present case, a disturbing situation has emerged owing to the apparent non-availability or non-verification of accurate institutional data, particularly concerning sanctioned strength of teacher and pupil-teacher ratio. Such uncertainty has the potential to adversely affect the educational framework and the larger interest of students. When administrative action, though ostensibly lawful, results in systemic imbalance due to factual infirmities, limited judicial scrutiny becomes imperative to ensure adherence to fairness and reasonableness under Article 14 of the Constitution of India.

144. Therefore, while conscious of the restricted scope of judicial review in transfer matters, this Court finds that the present circumstances constitute an exception warranting calibrated interference, not to supplant administrative discretion, but to ensure that such discretion is exercised on the basis of correct, verified, and objective data so as to safeguard the larger public interest.

145. Accordingly, without expressing any opinion on the merits of the individual claims, and in the interest of justice, it is directed that each petitioner shall submit a separate and comprehensive representation/objection before the District Level Committee constituted under the chairmanship of the District Magistrate within a period of one week from today. Upon receipt of such objections, the Committee shall examine the same in light of the applicable rules, the mandate of the Right of Children to Free and Compulsory Education Act, 2009, and the relevant Government Orders, and shall pass a reasoned and speaking order in accordance with law within one month thereafter.

146. For a period of one month from today or until the passing of a final order by the competent authority, whichever is earlier, status quo as existing today shall be maintained.

147. The concerned authority is further directed to forthwith verify, rectify, and update the correct and authentic data on the UDISE portal and, on the basis of such updated data, to undertake posting and deployment of teachers strictly in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009, so as to ensure and maintain the prescribed pupil-teacher ratio in its true letter and spirit.

148. With the aforesaid observations/directions, these writ petitions are disposed of.

149. The Court records its appreciation for the diligent efforts and valuable assistance rendered by Ms. Vaishanavi Kesarwani, Research Associate. The precision and clarity reflected in the legal research and analysis submitted by her demonstrate commendable attention to detail. The Court acknowledges her contribution in aiding the adjudication of the matter.

(2026) 2 ILRA 477
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.02.2026
BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Special Appeal No. 191 of 2026 and other cases

State of U.P. & Ors. **...Appellants**
Versus
Sakshi & Ors. **...Respondents**

Issue for Consideration

(1) Binding nature of Regulations of 2014 requiring the candidates to complete the Diploma course within two years' time, subject to a maximum time of three years.
(2) Validity of the orders of Secretary providing additional chance to the failed students, which consequently extend the maximum three years time period of Diploma course as provided under the statute.
(3) Permissibility of claiming parity of negative equality under Article 14 of the Constitution.
(4) Entitlement of right to appear for an additional chance in the examination in contravention of right of children to get quality education guaranteed under Article 21-A and directed under Article 45 of the Constitution of India.

Headnotes

(A) Education law – Diploma Course – Maximum time limit of passing the course – Regulations of 2014 framed under the Act of 1993 require the candidates to complete the course in two years' time, subject to a maximum time of three years – Binding nature :

Held : NCTE Act and the Regulations framed in pursuance of the powers given in Section 32 have binding effect in relation to norms and qualifications of teachers. Thus, it is patently obvious that the norms laid down in Regulation 2 to Appendix-2 of Regulations 2014 have a binding effect, and the time period prescribed under Regulation 2 of Appendix-2 is binding and mandatory in nature leading to the irresistible conclusion that the maximum time limit for passing a Diploma in Elementary Education course is three years. [Para 32]

(B) Education law – Diploma Course – Students failed in one subjects three times – Additional chance sought – Relaxation – Secretary issued an order dated 11.09.2021 to give additional chance to the students failed in one subjects of their first semester, and further another order

dated 19.04.2022 to the students failed in any subjects in any of the semester – Permissibility : (E-1)

Held : The orders dated 11.09.2021 and 19.04.2022 are only executive orders. They are subordinate to the Regulations, 2014. The executive order would not in any way override the Regulations having statutory force **–** The Examination Regulatory Authority would have powers to issue executive orders to deal with issues as described in the Government order dated 27.02.2004, but the Authority could not issue any executive order that transgressed upon the norms and qualifications imposed by the Regulations, 2014. [Para 36]

(C) Constitution of India – Article 14 – Right to Equality – Negative equality – Scope – Additional chance was claimed by the students of Diploma course failed in one subjects three times – Entitlement – Secretary passed the orders granting additional chances to those students who had filed representation – Similar opportunity was sought by the petitioners-respondent, who had not filed representation and whose name was not in the list – Plea of right to equality under Article 14 was taken – Permissibility – Writ court found the action of the respondent of not granting the petitioners additional chance as discriminatory – Validity challenged : (E-1)

Held : Article 14 of the Constitution of India guarantees equal protection to similarly situated persons. The intention of the Article is in a positive sense as it seeks to eliminate discrimination between persons who are similarly situated **–** Article 14 protects the rights in a positive manner meaning thereby that any rights based on an illegality cannot be claimed under Article 14 **–** Moreover, the petitioners (respondents herein) have admittedly not filed any representation before the Secretary. Therefore, even otherwise, they cannot claim any parity with the candidates, who have filed representations before the Secretary and consequently, their names were found placed in all the lists issued thereafter by the Secretary **–** Once it is the opinion of this Court that the executive orders dated 11.09.2021 and 19.04.2022 were in contravention of the Regulations, 2014, then there would be no question with regard to granting a similar benefit to the respondents herein, as no rights can be claimed based on the illegal orders. [Para 42, 43 and 45]

(D) Constitution of India – Article 21-A and 45 – Fundamental right of Education – Scope – Right of children to get quality education vis-à-vis Right of Diploma-student to appear for an additional chance in the examination – Superseding effect – Regulation was framed with the object to provide quality education – Enforceability – In contravention of the constitutional guarantee, the order were passed by the State or the authorized officer – Permissibility : (E-1)

Held : The power to lay down norms and qualifications by Regulations is to ensure quality education to the children of age 6-14 years. These young formative minds will shape the future of the country, therefore the persons to be recruited as teachers should be of utmost quality and standards – The Constitutional Court owe a duty to protect the rights of the children, it would be apt to reinforce that the actions of the State must align with the constitutional guarantees provided to the children, keeping in mind the directive principles as enshrined in Article 45 of the Constitution of India. The Constitution has cast a permanent obligation on the State to fulfill the right to education of children. Besides this the State under the Constitution and various statutes is also a guarantor of rights and guardian of the children therefore before taking any executive action, the State must ensure that any order/direction/circular issued by the State or any authorized officer under any delegation of power under the Act, 2009 must be in compliance with the constitutional guarantees towards the children. [Para 52 and 55] (E-1)

Case Law Cited

Employees' State Insurance Corporation vs. Union of India and others, (2022) 11 SCC 392; Jyotsana Mayee Mishra vs. State of Odisha and others, SLP (C) 13984 of 2023; State of Haryana vs. Ram Kumar Mann, 1997 AIR SCW 1574; Harshad Chima Lal Modi vs. DLF Universal Ltd, (2005) 7 SCC 791; Director of Elementary education vs. Pramod Kumar Sahu, (2019) 10 SCC 674; Shiv Kumar Sharma and others vs. State of U.P. and others, 2013(6) ADJ 310 (FB); Ram Surat Yadav and others vs. State of U.P. and others, 2013 SCC Online ALL 14351; Syed Shakeb Ashraf and 3 others vs. State of U.P. and others, AIR ONLINE 2019 ALL 1069; State of U.P. and others vs, Shiv Kumar Pathak and others, 2017 INSC 666; Ram Kishore Yadav vs. M.P. Board of Secondary Education, 2016 (4) MPLJ 658; Poonam Pattaya and others vs. Board of Secondary Education and others, 2017 (3) MPLJ 711; Vijay Singh and others vs. State of U.P. and others, 2004 SCC OnLine All 1656; Ram Ganesh Tripathi vs. State of U.P., AIR 1997 SC 1446; Chandigarh Administration vs. Jagjit Singh, (1995) 1 SCC 745; State of Odisha vs. Anup Kumar Senapati, (2019) 19 SCC 626; R. Muthukumar vs. The Chairman

and Managing Director TANGEDCO, 2022 INSC 157; Rajasthan Public Service Commission, Ajmer vs. Yati Jain and others, 2026 INSC 64; Mahendra Dev vs. Radhey Shaym Pandey, Special Leave to Appeal (C) No. 2713 of 2025; The State of U.P. and others vs. Association of Retired Supreme Court and High Court Judges at Allahabad and others, 2024 INSC 4; Shailendra Kumar vs. State of U.P. And others, 2025 (4) ADJ 462; Avinash Nagra vs. Navodaya Vidyalaya Samiti and others, (1997) 2 SCC 534; State of Maharashtra vs. Vikas Sahebrao Roundale and others, (1992) 4 SCC 435; Ram Sharan Maurya and others vs. State of U.P. and others, (2021) 15 SCC 401; Devesh Sharma vs. Union of India and others, (2023) 18 SCC 339; Sharda vs. Dharmpal, (2003) 4 SCC 493; Modern Dental College & Research Centre and others vs. State of M.P. and others, (2016) 7 SCC 353 – **referred to.**

List of Acts

Constitution of India – Article 14 and Article 21-A; National Council for Teachers Education Act, 1993 – Ss. 2(l), 12, 12-A, 27 and 32; Right of Children to Free and Compulsory Education Act, 2009; Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 – Part VII, Clause 19 and 20; National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014 – Clause 2.1.

List of Keywords

Additional chance, Similar opportunity, Pick-and-choose policy, Examination, Relaxation, Concession, Discrimination, Binding Precedent, Time limit, Representation, Approbate and reprobate, Norms and standards, Elementary education, Binding nature of the Act, Delegated power, Essential condition of the syllabus, Course duration, Parity, Rights in a positive manner, Rights based on an illegality, Negative equality, Illegal exercise of power, Fundamental right of children, Quality education, Right to quality education.

Case Arising From

Judgment and order dated 06.07.2023 and other orders passed by the writ court.

Appearances for Parties

Advs. for the Appellant : Anoop Trivedi, AAG; Ratan Deep Mishra
Advs. for the Respondents : Ravindra Singh, Kauntey Singh, Alok Tripathi, Jahnavi Singh, Siddharth Khare

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.
&
Hon'ble Kunal Ravi Singh, J.)

[1] Heard Sri Anoop Trivedi, learned Additional Advocate General assisted by Sri Ratan Deep Mishra for the State-appellants and Sri Ravindra Singh and Sri Kauntey Singh, learned counsels for the respondents-petitioners.

[2] The present Special Appeal along with other connected appeals arise out of the same controversy and as the facts and controversy are the same, they are being decided by a common judgment. For the purpose of deciding these appeals, the facts of Special Appeal No.191 of 2026 (State of U.P. and 32 others Vs. Sakshi and 77 others) are being treated as the leading case.

[3] In all the connected Special Appeals the appellants have asked for the following reliefs:

Sl.	Petition number & parties' name	Relief claimed
1.	SPLA- 191 of 2026 State of U.P. & 32 Others vs. Sakshi & 77 Others	Set aside the Judgment and Order dated 06.07.2023
2.	SPLA-189 of 2026 State of U.P. & others vs. Seema Yadav and others	Set aside the Judgment and Order dated 23.08.2023

3.	SPLA-188 of 2026 State of Uttar Pradesh & Others vs. Shalini & Others	Set aside the Judgment and Order dated 07.07.2023
4.	SPLA- 186 of 2026 State of U.P. and 4 others vs. Ruvendra Kumar and 45 others	Set aside the Judgment and Order dated 07.07.2023
5.	SPLA-970 of 2024 State of UP & 4 others vs. Deepak Kumar and 29 others	Set aside the Judgment and Order dated 18.09.2023
6.	SPLA-190 of 2026 State of U.P. and 2 others vs. Mayank Yadav	Set aside the Judgment and Order dated 19.07.2023
7.	SPLA-184 of 2026 State of U.P. and 4 others vs. Satakshi Parasari and 45 others	Set aside the Judgment and Order dated 03.08.2023
8.	SPLA-187 of 2026 State of U.P. and 5 others vs. Km. Archana Shukla & 2 others	Set aside the Judgment and Order dated 06.09.2023
9.	SPLA-185 of 2026 State of U.P. and 3 others vs. Divya Dwivedi and others	Set aside the Judgment and Order dated 19.01.2024

FACTS:

[4] The respondents herein (petitioners in the writ petitions) are the students of Diploma in Elementary Education Course of various batches across various Colleges offering the Diploma Course. The common feature with all the respondents herein is that all the respondents herein have failed in one subject three times, thereby cancelling their enrollment as students of the Diploma Course. Upon numerous representations being filed by such failed students before the Secretary, Examination Regulatory Authority, Prayagraj, the Secretary issued an order dated 11.09.2021 by means of which one additional chance was provided to students, who had failed in one subject of their first semester three times and who had represented to the Secretary for an additional chance to clear the course. The order gave one additional chance to students whose names figured in the list enclosed with the order dated 11.09.2021. Thereafter, another order dated 19.04.2022 was issued by the Secretary by which one additional chance was given to the students, who had failed in any subject three times in any of the semesters. The order was issued in respect of students, who had represented to the Secretary, and an additional chance was given to students whose names figured in the enclosed list. As the names of the respondents herein did not figure in the enclosed list of the two orders, the respondents herein preferred several writ petitions claiming that the actions of the State appellants in denying similar opportunity to the respondents were in violation of Article 14 of the Constitution of India. The respondents herein claimed to be similarly situated to the students, who were granted additional chances by the two orders of the Secretary. The respondents herein also claimed that their representations had remained pending, and as such, by adopting a pick-and-choose policy, the State appellants had allowed only selective students to appear in the examination. On the above averments, the respondents herein prayed that the State appellants be directed to permit the respondents herein to appear in the subject in which they had failed after granting them an additional chance in the Diploma Course of their respective year.

[5] The Learned Single Judge, while entertaining the petitions, on 03.05.2023, framed several issues which were required to be answered by the State appellants and National Council for Teacher Education. The order dated 03.05.2023 is hereinafter reproduced below:

"Shri Siddharth Khare, learned counsel for the petitioner, is present.

Shri Bharat Pratap Singh, learned counsel, has entered an appearance on behalf of the NCTE. The NCTE shall file counter affidavit disclosing all relevant facts, including the following:

A. The stand of the NCTE regarding the additional chance given by the State Government to D.El.Ed. candidates who had been admitted in the academic Sessions commencing from 2013, 2014, 2015, 2017 and 2018.

B. Whether the said decision is contrary to standards of the D.El.Ed. course determined by the NCTE?

C. Whether any prior permission was required and taken from the NCTE for relaxing the outer limit of D.El.Ed. examination?

The counter affidavit filed on behalf of the State is not satisfactory. The State shall file a fresh counter affidavit disclosing all relevant facts including:

A. Whether the relaxation granted is consistent with the standards for D.El.Ed. course set by the NCTE?

B. Whether the said standards are binding on the State Government? In case counter affidavits are not forthcoming on behalf of the State as well as NCTE respectively on the next date of listing, the Court may summon concerned officials in person. Name of Shri Bharat Pratap Singh, learned counsel shall be shown in the cause list as counsel for the respondent-NCTE whenever the matter is listed next. Put up this case on 25.05.2023 in the list of fresh cases.″

[6] In pursuance of the queries of the Court, the State appellants and NCTE filed their respective affidavits, which were taken on record. In the affidavit filed by the State appellants, a Government Order dated 27.02.2004 was placed on record, which detailed certain powers given to the Secretary about the conduct of the examinations in the Diploma Course. The State appellants averred that relaxation/additional chance was only given to those students, who had represented to the Secretary before the date of issuance of the orders by the Secretary.

[7] In the affidavit filed by NCTE, it was stated that as per Clause 2.1 of Appendix-2 of the National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014, the Diploma Course shall be of two (2) years however the students shall be permitted to complete the course within a maximum period of three (3) years. Furthermore, it was averred that any decision of the State Government contrary to the norms and standards fixed by NCTE or any concession granted by the State Government for completing the Diploma Course would violate the Regulations 2014.

[8] The Learned Single Judge, after considering the replies of the State appellants and NCTE by means of judgment and order dated 06.07.2023, allowed the writ petitions and held that the respondents herein have been discriminated as they were not granted an additional chance to clear their course. A writ of mandamus was issued to the State appellants to provide one additional chance to the respondents herein to appear in the paper in which the respondents herein had failed in the Course. However, the Learned Single Judge further directed that the judgment and order shall not be treated as a binding precedent in relation to those petitions which shall be filed after the date of the decision, and all arguments shall remain open for the State insofar as the factual background of such petitions would reflect. When several other petitions came to be filed relying upon the judgment and order dated 06.07.2023, the same were allowed in terms of the mandamus issued in Writ C No. 9773 of 2023. The present Special Appeal, along with other connected appeals have been filed challenging the judgment and order dated 06.7.2023 and other orders in the

respective writ petitions by means of which the mandamus issued in Writ C No. 9773 of 2023 (Sakshi and 77 others vs. State of U.P. and 32 others) was extended.

APPELLANTS SUBMISSION:

[9] The State appellants have filed the present Special Appeals challenging the judgment and order dated 06.07.2023 and other orders extending the benefit of the judgment and order dated 06.07.2023 to the other writ petitions on the following grounds:-

(i) The course duration is of two (2) years, with a maximum of three (3) years being allowed to clear the Course. By the time the orders were issued by the Secretary, the course duration was over, and no further chances could be given to the respondents herein.

(ii) As per Clause 2.1 of Appendix-2 of the Regulation, 2014, the maximum duration of the Course is three years; no further relaxation could be given about the number of years required to clear the Course. The bar in the Regulations, 2014 has not been relaxed, and the orders issued by the Secretary could not extend the period of course completion, as the Regulations, 2014 of NCTE are binding upon the State authorities. Statutory Rules prevail over executive orders.

(iii) The power to make regulations is in light of Section 32 of the National Council for Teachers Education Act, 1993, especially Section 32 (2) (d) (ii), which empowers the NCTE to lay down norms/ guidelines and standards in respect of the category of courses or training in Teacher Education. The regulations made under the statutory duty are binding in nature, and their effect cannot be curtailed.

(iv) There is no violation of Article 14 of the Constitution as there cannot be any negative parity. Even though the orders of the Secretary gave benefits to some of the students, the same benefits cannot be given to the respondents herein, as the same would amount to an illegal act being done. Wrong consequences of the orders cannot be extended to the respondents herein.

(v) There cannot be any estoppel against the statute especially because the time limit for the course duration was not extended by NCTE; therefore, the orders of the Secretary would not amount to a valid exercise of jurisdiction, as any executive order/ government order could not dilute the Regulations which have been framed by NCTE and have binding force.

(vi) The Learned Single Judge has been swayed by the fact that some students were given benefits, but the respondents herein were denied the same, thus violating Article 14 of the Constitution. The respondents herein did not file their respective representations before the orders were passed by the Secretary, and as such, no benefits could have extended to the respondents herein.

(vii) The judgment of the learned Single Judge has overlooked the Regulations, 2014, while granting benefits to the respondents herein, which is completely arbitrary and illegal. No benefits contrary to the Regulations, 2014 could be given to the respondents herein. Learned Senior Advocate for the State appellants relied upon the following judgments in support of his arguments:

(a) Employees' State Insurance Corporation vs. Union of India and others;

(b) Jyotsana Mayee Mishra vs. State of Odisha and others;

(c) State of Haryana vs. Ram Kumar Mann

(d) Harshad Chima Lal Modi vs. DLF Universal Ltd

(e) Director of Elementary education vs. Pramod Kumar Sahu

RESPONDENTS SUBMISSIONS:

[10] The counsels for the respondents have refuted the stand of the State appellants and have contended the following:-

(i) The judgment of the learned Single Judge does not suffer from any illegality as the same has addressed an arbitrary action on the part of the respondents in giving benefits to only some of the students.

(ii) Since the representations filed by the petitioners were never addressed, the mandamus issued by the learned Single Judge does not need any interference.

(iii) There is no question of any negative parity as the power to issue executive orders by the Secretary was never questioned; the appellants stated that the orders were issued under special circumstances. Once there is no challenge to the orders, then there is no question of any negative parity, and the respondents herein are entitled to be treated on the same footing as that given to the other students whose names appeared in the two lists attached to the Orders dated 11.09.2021 and 19.04.2022.

(iv) The State cannot approbate and reprobate on the issue as the State has earlier taken the submission that the executive order was valid, and as such, the appellants were stopped from saying otherwise.

(v) The State respondents in the compliance affidavit filed in the contempt application had stated categorically that the State can conduct the examination, and necessary orders have been passed; therefore, now they cannot be permitted to resile from their admission.

LEGISLATIVE MATRIX:

[11] Before delving into the various issues and submissions advanced by the respective learned counsels, it is necessary to keep in mind the legislative provisions that are in play in the controversy at hand. By means of Act no. 73 of 1993, the Parliament enacted the Act, 1993. The aims and objectives of the Act, 1993 are as follows:

"An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system [including qualifications of school teachers] and for matters connected therewith."

The Act sought to provide statutory powers to the NCTE to determine, maintain, and coordinate standards in teacher education, laying down norms and guidelines for various courses, promotion of innovation in the said field and establishment of a suitable system of conducting education of teachers.

[12] Under Section 2(l), Teacher Education is described as following:

"(l) teacher education means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education"

[13] Under Section 12, the functions of the Council are described as follows:

"12. Functions of the Council- It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education, and for the purposes of performing its functions under this Act, the Council may-

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum; …."

[14] Further Section 12-A grants power to the Council to determine minimum standards of education of school teachers: its reads as following :

"12-A. Power of Council to determine minimum standards of education of school teachers.-For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:
….."

[15] Section 27 of the Act, 1993 deals with the delegation of powers, which reads as follows:

"27. Delegation of powers and functions. -The Council may, by general or special order in writing, delegate to the chairperson or to any other member or to any officer of the Regional Committee, subject to such conditions and limitations, if any, as may be specified in the order, such

of its powers and functions under this Act (except the power to make regulations under section 32), as it may deem necessary.″

[16] Section 32 of the Act, 1993 grants power to the Council to make regulations for the effective implementation of the provisions of the Act. The only limitation is that the Regulations cannot be inconsistent with the Act, 1993. It reads as follows:

"32. Power to make regulations. - (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

(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: -

(d) the norms, guidelines and standards in respect of-

(ii) the specified category of courses or training in teacher education under clause (e) of section12.″

[17] In pursuance of the powers given under sub-section (2) of Section 32 of the Act, 1993, the Council promulgated Regulations, 2014 on 28.11.2014. As per Regulation 3, the Regulations shall be applicable to all matters relating to teachers' education programme for preparing norms and standards. The Regulations 2014 further lay down norms for Diploma in Elementary Education in Appendix-2. The preamble to Appendix 2 states as follows:

1.1. The Diploma in Elementary Education (D.El.Ed) is a two-year professional programme of teacher education. It aims to prepare teachers for the elementary stage of education, i.e. classes I to VUI. Elementary education aims to fulfil the basic learning needs of all children in an inclusive school environment, bridging social and gender gaps with the active participation of the community.

1.2. The elementary teacher education programme carries different nomenclatures such as BTC, J.B.T, D.Ed. and (Diploma in Education). Henceforth, the nomenclature of the programme shall be the same across all states and it shall be referred to as the 'Diploma in Elementary Education'(D.El.Ed).″

Furthermore, the course duration is prescribed in Regulation 2 to the appendix which reads as follows:

"2. The D.El.Ed. programme shall be of a duration of two academic years. However, the students shall be permitted to complete the programme within a maximum period of three years from the date of admission to the programme.″

[18] The State Government in pursuance of the Right of Children to Free and Compulsory Education Act, 2009 enacted the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011. Part VII of the Rule 2011 provides as follows:

"Part-VII (1) For Section 29 the State Council of Educational Research and Training shall lay down the curriculum and evaluation procedure for elementary education.

(2) The State Council of Education Research and Training, while laying down the curriculum and evaluation procedure, shall perform the following functions: (a) Formulate the relevant and age-appropriate syllabus and textbooks and other learning material;

(b) Develop in-service teacher training design; and

(c) Prepare guidelines for putting into practice continuous and comprehensive evaluation.″

[19] In light of the above, the Curriculum for Diploma Course was prepared by the District Institute of Education & Training working under the State Council for Educational Research and Training. As per the curriculum prepared by DIET, it is provided that a student will have three attempts to clear any failed subject otherwise, his candidature for training shall come to an end.

Clause-19 of the Rules of Training provides a condition for cancellation of candidature, which is as follows:

"प्रशिक्षु यदि अधिकतम किन्हीं दो विषयों की लिखित परीक्षा में अनुत्तीर्ण होता है तो उसे आगे आने वाले सेमेस्टर में पुनः लिखित परीक्षा में सम्मिलित होने की अनुमति दी जायेगी, किन्तु यदि दो से अधिक विषयों में अनुत्तीर्ण होता है तो उसे पूरा सेमेस्टर दोबारा करना होगा।"

Furthermore, Clause 20 provides for a representation of candidates whose candidature has been cancelled. Clause 20 provides as follows:

"अभ्यर्थन निरस्त होने पर / बी०टी०सी० प्रमाण पत्र रद्द किये जाने पर प्रशिक्षु द्वारा अपीलीय प्राधिकारी के समक्ष आदेश जारी होने की तिथि से तीस दिन के अंदर अपील प्रस्तुत की जा सकती है। अपील के निस्तारण के पूर्व प्रशिक्षु को सुनवाई का अवसर दिया जाएगा। अपीलीय प्राधिकारी, निदेशक, राज्य शैक्षिक अनुसंधान एवं प्रशिक्षण परिषद, उ०प्र० लखनऊ तथा उनके द्वारा अधिकृत प्राधिकारी होंगे। अपीलीय अधिकारी का निर्णय अन्तिम होगा″

Thus, from the aforesaid, it is clear that it is for those candidates, whose candidature has been cancelled, to file an Appeal before the Appellate Authority, which is to be decided after giving a proper opportunity of hearing. The Appellate Authority is the Director, SCERT or an officer authorized by him.

[20] As per the Government Order dated 27.02.2004, Examination Regulatory Authority, U.P. Prayagraj was created, and the Secretary of the said Authority was vested with powers to conduct examinations and the same was made applicable to SCERT and Director, Basic Education.

"प्रेषक,

हरिराज किशोर,

सचिव,

उ०प्र० शासन।

सेवा में,

(1) निदेशक,

राज्य शैक्षिक अनुसंधान और प्रशिक्षण परिषद्,

उ०प्र०, लखनऊ।

(2) निदेशक,

बेसिक शिक्षा,

उ०प्र०, लखनऊ।

शिक्षा अनुभाग-II लखनऊः दिनांकः 27 फरवरी, 2004.

विषयः- परीक्षा नियामक प्राधिकारी के गठन के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक निदेशक, राज्य शैक्षिक अनुसंधान और प्रशिक्षण परिषद्, उ०प्र० शा. पत्रांक-../18150/2003-2004, दिनांक 8-1-2004 के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि राज्यपाल महोदय ने तात्कालिक प्रभाव से रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०, इलाहाबाद द्वारा विभिन्न प्रकार की परीक्षाओं से सम्बन्धित कार्यों को अधिक प्रभावी बनाते हुए अधिक प्राधिकार दिये जाने और व्यवस्था को सुदृढ़ किये जाने के लिए रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०, इलाहाबाद के कार्यालय को परीक्षा नियामक प्राधिकारी, उ०प्र० के रूप में गठित किये जाने की निम्नवत् स्वीकृति प्रदान कर दी हैः-

(1). परीक्षा नियामक प्राधिकारी का कार्यालयाध्यक्ष सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र० के नाम से जाना जायेगा।

(2). रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०, इलाहाबाद के कार्यालय को परीक्षा नियामक प्राधिकारी, उ०प्र० के नाम से जाना जायेगा तथा इसे रजिस्ट्रार विभागीय परीक्षाएं के कार्यालय में ही स्थापित रखा जायेगा।

(3). सचिव, माध्यमिक शिक्षा परिषद् की भांति सचिव, परीक्षा नियामक प्राधिकारी का विभिन्न प्रकार की परीक्षाओं के आयोजन का पूर्ण दायित्व होगा।

(4). परीक्षा नियामक प्राधिकारी निम्नांकित चार सदस्यीय समिति के माध्यम से अपने प्रशासनिक दायित्वों का निर्वहन करेगीः-

(क). सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र० -अध्यक्ष

(ख). प्राचार्य, राज्य शिक्षा संस्थान, उ०प्र०, इलाहाबाद, -सदस्य

(ग). प्राचार्य, ... शिक्षा और प्रशिक्षण संस्थान निदेशक

(घ). रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र० - सदस्य, सचिव।

(5). परीक्षा नियामक प्राधिकारी को किसी भी प्रकार की परीक्षाओं के आयोजन से सम्बन्धित विभिन्न गतिविधियों के सम्बन्ध में निर्णय लेने एवं उसे क्रियान्वित कराने का अधिकार होगा। परीक्षा की तिथियों को निर्धारित करना, परीक्षा केन्द्रों को अन्तिम रूप देना, केन्द्र व्यवस्थापकों तथा कक्ष निरीक्षकों एवं परिवीक्षकों के नियंत्रण आदि के सम्बन्ध में निर्देश देना, निर्धारित समय-सारिणी के अनुसार परीक्षाओं के आयोजन, उत्तर पुस्तिकाओं का संकलन, उनका मूल्यांकन, परीक्षाफल को तैयार तथा परीक्षाफल को घोषित करना (प्रवेश परीक्षा/मुख्य परीक्षा) और आदेशानुसार प्रवेश एवं अपेक्षित अंकपत्रों/प्रमाणपत्रों के निर्गत करने से सम्बन्धित निर्णय उक्त समिति द्वारा लिया जायेगा।

(6). प्रश्न-पत्रों की गोपनीयता को बनाये रखते हुए प्रश्न-पत्रों के संरचना, उनका मुद्रण, परीक्षा केन्द्रों पर पहुंचाने आदि से सम्बन्धित समस्त कार्यवाही का उत्तरदायित्व सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र० का होगा।

परीक्षा नियामक प्राधिकारी तत्काल प्रभाव से सभी अपेक्षित कार्यवाही आरम्भ कर दें और इस सम्बन्ध में शासन को भी सूचित किया जाय।

भवदीय,
(हरिराज किशोर)
सचिव,
बेसिक शिक्षा।"

[21] In pursuance of such powers, the Secretary issued the order dated 11.09.2021, which is as follows:

"प्रेषक,

सेवा में,

सचिव,

परीक्षानियामक प्राधिकारी,

उत्तर प्रदेश, प्रयागराज

उपशिक्षा निदेशक / प्राचार्य, जिला शिक्षा एवं प्रशिक्षण संस्थान उत्तर प्रदेश।

पत्रांकः गोप०/डी०एल०एस०/ 2446-52/2021-22 दिनांक 11 सितम्बर 2021

विषय- डी०एल०एड० (बी०टी०सी०) के विभिन्न बैचों की परीक्षा में अनुत्तीर्ण अभ्यर्थियों द्वारा परिषद कार्यालय में उपलब्ध कराये गये प्रत्यावेदनों के क्रम में एक अन्तिम अतिरिक्त अवसर प्रदान किये गये अभ्यार्थियों की प्रथम सेमेस्टर की परीक्षा में सम्मिलित कराये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अवगत कराना है कि परिषद कार्यालय के पत्र संख्या रा०शै० डी०एल०एड०/17524/2021-22, दिनांक 09.09.2021 एवं पत्र संख्याः रा०शे/डी०एल०एड०/17535/2021-22, दिनांक 09.09.2021 द्वारा डी०एल०एड० (बी०टी०सी०) के विभिन्न बैंचो की परीक्षा में अनुत्तीर्ण अभ्यर्थियों द्वारा उपलब्ध कराये गये प्रत्यावेदनों के क्रम में, सूची संलग्न करते हुए ऐसे अभ्यर्थियों जो किसी सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण है तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर लिया गया है को एक अन्तिम अतिरिक्त अवसर प्रदान किये जाने के निर्देश दिये गये है।

तदक्रम परिषद कार्यालय के पत्र दिनांक 09 सितंबर 2021 के साथ संलग्न सूची का परीक्षण कराते हुए डी०एल०एड० (बी०टी०सी०) प्रशिक्षण बैच 2013, 2014, 2015, 2017, 2018 प्रथम सेमेस्टर के ऐसे परीक्षार्थी जो एक विषय में तीन बार अनुत्तीर्ण है तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर लिये गये है, को एक अन्तिम अतिरिक्त अवसर प्रदान करते हुए प्रवेश पत्र व नामावली सूची बैचवार निर्धारित वेवसाइट/डायट के ई-मेल पर प्रेषित की गयी है।

उक्त के क्रम में मुझे यह कहने का निर्देश हुआ है कि परिषद कार्यालय के पत्र दिनांक 09 सितंबर 2021, के साथ संलग्न सूची के ऐसे अभ्यर्थी जो प्रथम सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण है तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर चुके है, उनके प्रवेश पत्र सम्बन्धित परीक्षार्थी को प्राप्त कराने तथा नामावली सूची सम्बन्धित परीक्षा केन्द्र को प्राप्त कराते हुए कार्यालय के पत्रांकः गोप०/डी.एल.एड./2101-2179/2021-22 दिनांक 06 सितम्बर 2021 में दिये गये निर्देश के अनुसार डी.एल.एड (बी०टी०सी०) प्रथम सेमेस्टर परीक्षा वर्ष 2021 की दिनांक 12.09.2021 से प्रारम्भ होने वाली परीक्षा में परीक्षार्थियों को सम्मिलित कराने हेतु अपने स्तर से प्रभावी कार्यवाही करने का कष्ट करें।

भवदीय
ह०अप०/11.09.2021
कृते सचिव
रजिस्ट्रारपरीक्षा नियामक प्राधिकारी
उत्तर-प्रदेश प्रयागराज।"

(22) Thereafter another order was issued by the Secretary on 19.04.2022, which is as follows:

"प्रेषक,
सचिव, परीक्षा नियामक प्राधिकारी, उत्तर प्रदेश, प्रयागराज
सेवा में,
01 समस्त उपशिक्षा निदेशक/ प्राचार्य जिला शिक्षा एवं प्रशिक्षण संस्थान, उ०प्र०।
02 समस्त प्राचार्य निजी डी०एल०एड० संस्थान उ०प्र०।
पत्रांकः गोप०/परीक्षा/274-371/2022-23 दिनांक 19.04.2022

विषय- डी०एल०एड० (बी०टी०सी०) प्रशिक्षण के अन्तर्गत विभिन्न बैंचो के अनुत्तीर्ण अभ्यर्थियों द्वारा परिषद कार्यालय में उपलब्ध कराये गये प्रत्यावेदन के सापेक्ष निदेशक राज्य शैक्षिक अनुसंधान एवं प्रशिक्षण परिषद, लखनऊ महोदय द्वारा प्रदान की गयी क्रम में-अर्ह पाये गये परीक्षार्थियों के तथा अंकानुसंधान एवं आतरिक गयी अनुमति के मुल्याकंन के अंक पूरित कराये जाने के उपरान्त अर्ह प्रशिक्षुओं के परीक्षा आवेदन पूरित कराये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अवगत कराना है कि परिषद कार्यालय के पत्र संख्या रा०शै०/2597/2022-23 दिनांक 12 अप्रैल 2022 एवं बैच संख्या रा०शै०/3290/2022-23 दिनांक 18 अप्रैल 2022 द्वारा डी०एल०एड० (बी०टी०सी०) प्रशिक्षण के विभिन्न बैचों में अनुत्तीर्ण अभ्यर्थियों द्वारा परिषद कार्यालय में उपलब्ध कराये गये प्रत्यावेदन के सापेक्ष सूची संलग्न करते हुए ऐसे अभ्यर्थी जो किसी सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण है तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर लिये गये है का एक अन्तिम अतिरिक्त अवसर प्रदान करते हुए वर्तमान वर्ष-2023 की परीक्षा में सम्मिलित कराये जाने के निर्णय लिये गये है। इसके साथ ही अंकानुसंधान का परीक्षाफल अंकित किये जाने तथा आंतरिक मूल्याकंन के अंक पूरित कराये जाने के उपरान्त घोषित परीक्षाफल के ऐसे परीक्षार्थी, जो आगामी सेमेस्टर की परीक्षा हेतु अर्ह पाये गये है उनके भी परीक्षा आवेदन पूरित कराते हुए परीक्षा वर्ष 2022 में सम्मिलित कराया जाना है।

उक्त के आलोक में परिषद कार्यालय के पत्र दिनांक 12 अप्रैल 2022 एवं पत्र दिनांक 18.04.2022 के साथ संलग्न सूची के ऐस अभ्यर्थी जो किसी सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण है तथा शेष अन्य सेमेस्टर उत्तीर्ण किये जा चुके है, उनको परीक्षा वर्ष-2022 में सम्मिलित कराये जाने हेतु तथा अनुसंधान एवं आंतरिक मूल्याकंन के अंक पूरित कराये जाने के उपरान्त अर्ह प्रशिक्षुओं के परीक्षा आवेदन निम्नवत कार्यक्रम के अनुसार पूरित कराये जायेगें.

प्रशिक्षण संस्थान द्वारा बैचवार निर्धारित बेवसाइट पर प्रदर्शित अभ्यर्थी के आवेदन पूरित किया जाना।	दिनांक 20.04.2022 को समय प्रातः 8.00 बजे से दिनांक 22.04.2022 को समय सांय 3.00 बजे

सम्बन्धित डायट द्वारा संस्थानों द्वारा पूरित आवेदन स्वीकृत/अस्वीकृत किया जाना।	दिनांक 20.04.2022 को समय प्रातः 8.00 बजे से दिनांक 22.04.2022 को समय सांय 7.00 बजे

उक्तानुसार निर्धारित समयावधि में बेवसाइट पर प्रदर्शित अभ्यर्थियों के आवेदन पूरित किये जाने एवं प्रशिक्षुओं को अपने स्तर से सूचित करने हेतु प्रभावी कार्यवाही अपने स्तर से कराना सुनिश्चित करें, यदि

उक्त निर्धारित अवधि में आवेदन पूरित / स्वीकृत नहीं किये जाते है तो सम्पूर्ण उत्तरदायित्व सम्बन्धित प्रशिक्षण संस्थान एवं सम्बन्धित जनपद के प्राचार्य, जिला शिक्षा एवं प्रशिक्षण संस्थान का होगा।

भवदीय

ह० अप०

सचिव

रजिस्ट्रार

परीक्षा नियामक प्राधिकारी

उत्तर-प्रदेश प्रयागराज।"

[23] The Constitution of India was amended by the Parliament by means of enactment of the 86th Amendment Act in 2002. Article 21-A was added which provided as follows:

"21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

[24] In pursuance of the 86th Amendment, the Parliament enacted Act No.35 of 2009 i.e. The Right of Children to Free and Compulsory Education Act, 2009. The Act, 2009, sought to provide for free and compulsory education to all children of the ages of six to fourteen years. One of the aims of the Act, 2009 is to ensure good quality elementary education conforming to the standards and norms specified in the Schedule of the Act, 2009. The overall purpose of the Act, 2009 is to ensure compliance of Article 21A and to ensure that children of formative years get a good quality education by Teachers, who are fully qualified and trained to teach the young minds.

POINTS OF DETERMINATION:

[25] Heard rival submissions and perused the records of the Special Appeals. To adjudicate the controversy in the present Special Appeal, the following points of determination are framed whose decision would effectively determine the issues at hand:

(I) Whether the NCTE regulations with regard to Diploma in Elementary Education are binding and mandatory on the State appellants?

(II) Whether the non-extension of time period to complete the course within 3 years as per Regulation 2.1 of Appendix-2 to the Regulations, 2014 would invalidate the order dated 11.09.2021 and 19.04.2022 passed by the Secretary?

(III) Whether the respondents herein are entitled to one additional chance as given to students whose name figured in the lists enclosed with orders dated 11.09.2021 and 19.04.2022?

(IV) Whether there is any violation of Article 14 of the Constitution of India?

DISCUSSIONS:

[26] The Act 1993 was enacted to ensure that there is a planned and coordinated development of teachers′ education system throughout the country and the regulation and proper maintenance of norms and standards in the teacher education system. The aim and purpose of the Act was to ensure that a uniform development took place in teacher training so that the best-trained teacher could be employed to teach the future generation of the country. To further the provisions of the Act, 1993 the power was given to frame regulations to ensure quality training and education. Under Section 32 of the Act, 1993, the Council had the power to frame regulations on a variety of topics as stated in Section 32 (2). The power to make regulations to carry out the aims and objects of the Act, 1993 is also clear from Section 12-A of the Act, 1993. Section 12-A gives the power to make regulations for determining the minimum standards of education of school teachers.

[27] In furtherance of the said powers, the Council framed the Regulations 2014, which covered qualifications for teachers and provided various criteria for different diploma qualifications. Regulation 2.1 to Appendix-2 of the Regulations, 2014 stated the time period for obtaining a diploma in Elementary Education. The candidates were required to complete the course in two years' time, subject to a maximum time of three years. In short, the diploma has to be obtained by any candidate in a maximum of three years. No further extension is allowed.

[28] The question with regard to the binding nature of the Act, 1993 and the Regulations that were framed in pursuance of Section 32(2) is no longer res-integra. This Court in the Full Bench judgment of **Shiv Kumar Sharma and others vs. State of U.P. and others**, has clearly held that there is a binding effect of the Act, 1993 and the Regulations framed thereunder. The Court held that after insertion of Section 12-A in the Act, 1993 there is no doubt any more with regard to the authority of the NCTE to fix norms and qualifications that are to be possessed by teachers of all categories of institutions including elementary education. Though in the present case, the question of the qualifications of the teachers is not under consideration but the norms fixed by the Regulations as framed under Section 32(2) of the Act have binding and mandatory effect.

[29] In **Ram Surat Yadav and others vs. State of U.P. Through Secretary and others**, the Full Bench of this Court held that NCTE is duly empowered to prescribe the minimum qualifications for persons who are recruited as teachers from the pre-primary to the intermediate of college level. The Court relied upon **Shiv Kumar Sharma** (supra) to reiterate the binding effect of the provision and Regulations framed under the Act, 1993. Even though the Full Bench was dealing with recruitment process prior to the amending Act of 2011 yet the Full Bench held the binding nature of the provisions and the regulations framed thereunder.

[30] In **Syed Shakeb Ashraf and 3 others vs. State of U.P. Through Principal Secretary, Department of Basic Education, Lucknow and others.**; the Court reiterated the binding and mandatory effect of the provisions and Regulations framed under the Act, 1993. The Court relied upon **Shiv Kumar Sharma** (supra) and **Ram Surat Yadav** (supra) to hold the NCTE Act and its Regulations have binding effect.

[31] Furthermore in **State of U.P. And others vs, Shiv Kumar Pathak and others**; the Supreme Court held that the State Government was under an obligation to act in accordance with the notification issued by NCTE and cannot give effect to any contrary rule.

[32] Thus, from the above precedents, it is clear that the NCTE Act and the Regulations framed in pursuance of the powers given in Section 32 have binding effect in relation to norms and qualifications of teachers. Thus, it is patently obvious that the norms laid down in Regulation 2 to Appendix-2 of Regulations 2014 have a binding effect, and the time period prescribed under Regulation 2 of Appendix-2 is binding and mandatory in nature leading to the irresistible conclusion that the maximum time limit for passing a Diploma in Elementary Education course is three years.

[33] A question now that needs to be answered is whether there is any power to the State to relax the norms as imposed by the Regulations, 2014. Under Section 27 of the Act,1993 the Council may by general or special order in writing delegate to the Chairperson or any other member or to any officer of the Regional Committee subject to such terms and conditions and limitations as may be specified in the said order, such powers or functions as it may deem necessary but the section has specifically excluded the power to make regulations meaning thereby the power to make a regulation prescribing norms and qualifications vests absolutely in the Council. The delegated power to the Regional Committee (the Secretary in the present case) cannot override the norms prescribed in the Regulations. Thus, Regulation 2 of Appendix-2 of the Regulations, 2014 cannot be changed under any power under Section 27. Once no power exists in the Secretary to modify the Regulations then the time period to complete the Diploma Course is fixed at three years maximum as per the Regulations 2014.

[34] The Government order dated 27.02.2004 gives powers to the Examination Regulatory Authority to deal with issues arising out of the conduct of examinations. The powers given under Clause (5) relates to fixation of examination dates, finalization of examination centers, the directions to be issued to the examiners and the center supervisors, holding of examination with the time schedule, collection of the examination booklets, the valuation of the examination booklets, preparation of result and its declaration and the issuance of mark sheets and other certificates. Under Clause (6), the Secretary shall be responsible for secrecy of the examination papers and their safe travel to the examination centers. Thus, the power to issue executive orders is with the Secretary to deal with situations as contemplated under Clause (5) and (6) of the Government order dated 27.02.2004.

[35] In **Ram Kishore Yadav Vs. M.P. Board of Secondary Education**; as well as in **Poonam Pattaya and others vs. Board of Secondary Education and others**; the M.P. High Court while dealing with the power to issue executive orders, held that the Board (in this case, the Examination Regulatory Authority) has the power to issue executive directions but the Board could not issue any such executive directions that are covered by the regulations. In the above-noted cases, the M.P. High Court was dealing with a situation when the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 in Regulation 2 of Appendix-2 did not prescribe any maximum number of years to clear the diploma course and in light of such lacuna the M.P. Secondary Board had issued orders limiting the number of chances available to

clear the exams. Though the Court upheld the executive order, however it held that the executive order was valid as the Regulations were silent on the maximum time period required to clear the course. Regulations, 2009 merely stated that the course duration would be of two years only. But in the Regulations, 2014, the Council prescribed the maximum time period for completion of the Course i.e. three years.

[36] The orders dated 11.09.2021 and 19.04.2022 are only executive orders. They are subordinate to the Regulations, 2014. The executive order would not in any way override the Regulations having statutory force [vide **Employees' State Insurance Corporatio**n (supra)]. Thus, in light of what has been observed above, it is clear that the Examination Regulatory Authority would have powers to issue executive orders to deal with issues as described in the Government order dated 27.02.2004, but the Authority could not issue any executive order that transgressed upon the norms and qualifications imposed by the Regulations, 2014. As long as the Executive orders covered matters which were not specifically stated in the Regulations, 2014, there is no conflict, but if the Executive order transgressed the Regulations, 2014, then the Executive order would be in violation of the Regulations, 2014 and would lose its efficacy to that extent. In simpler terms, the Council has the power to issue a policy in the form of Regulations and the Secretary (Examination Regulatory Authority) has the power to enforce the policy as laid out in the Regulations.

[37] Thus, the finding given by the learned Single Judge that the executive order (Circulars/ Office Memorandum) would have the force of law does not appear to be correct. The Executive orders are supplementary in nature and cannot in any manner erode the norms prescribed by the Regulations, 2014 [vide **Vijay Singh and others v. State of U.P. and others, Ram Ganesh Tripathi v. State of U.P**. By means of the executive order, the Secretary would not have the power to supplant the maximum time period granted to clear the course. Furthermore, as per the syllabus of the Diploma Course, the number of attempts had already been exhausted. Therefore, without corresponding changes in the essential conditions of the syllabus as prescribed by SCRET, no additional chance could be given. In our considered opinion, the finding of the learned Single Judge that the Secretary had the power to give one additional chance is incorrect. Also, the finding that the benefit of the executive orders should be extended to the petitioners is also incorrect.

[38] As to the challenge to the Government order dated 27.02.2004, suffice to say that the Examination Regulatory Authority by means of executive orders lay down conditions with regard to the conduct of examinations. But the Authority would not have any power to supersede any Regulation as Section 27 of the Act, 1993 does not give such a power. Thus, even though executive orders dated 11.09.2021 and 19.04.2002 have been issued, the same would be in violation of the Regulations, 2014, as the authority does not vest with the power to change any norms given in Regulations, 2014.

[39] Nothing has been brought on record to show that NCTE by means of any other Regulation had increased the time period given in the Regulations, 2014 to clear the diploma course. It is not the case of the respondents herein that NCTE in its wisdom had amended the Regulations, 2014 and thereby the executive orders were justified. Rather it has always been the case of NCTE that the course duration remained for two years with one additional year given to

complete the course. Thus, in total three years were given to complete the two years diploma course.

[40] In the order dated 03.05.2023, the Court had framed query "C" for NCTE with regard to any prior permission required to be taken from NCTE to relax the outer limit of the D.El.Ed Course. Although there is no specific finding given by the learned Single Judge with regard to this query, the answer to the said query is in Section 27 of the Act, 1993. Section 27 allows for delegation of powers on such terms and conditions as the order may deem fit but there is no power to make any Regulation under Section 32. Thus, the other powers of the Council may be delegated upon a specific reason being provided but the Regulation making power only vests with the Council and Council alone. Once the power to make Regulations is not delegated, then by necessary implication the power to relax norms of maximum time period as prescribed in the Regulations could also not be delegated. Thus, in our considered opinion, without answering query "C" in the order dated 03.05.2023, the executive orders could not have been held to have force of law.

[41] The respondents herein claimed benefit of Article 14 of the Constitution of India to claim parity with the students whose names figured in the list enclosed with the orders dated 11.09.2021 and 19.04.2022. The argument being that the State appellants had adopted a pick and choose policy while granting one additional chance and as such, they were discriminated.

[42] Article 14 of the Constitution of India guarantees equal protection to similarly situated persons. The intention of the Article is in a positive sense as it seeks to eliminate discrimination between persons who are similarly situated. There are authoritative judgments on this point of law which need not be reiterated. Suffice to say that there is no arguments with regard to the positive enforcement of Article 14. Article 14 protects the rights in a positive manner meaning thereby that any rights based on an illegality cannot be claimed under Article 14.

(43). Moreover, the petitioners (respondents herein) have admittedly not filed any representation before the Secretary. Therefore, even otherwise, they cannot claim any parity with the candidates, who have filed representations before the Secretary and consequently, their names were found placed in all the lists issued thereafter by the Secretary.

[44] In **Chandigarh Administration vs. Jagjit Singh**; the Supreme Court held that before any mandamus can be issued in favour of any person who seeks parity with another person on the basis of some order, the validity of the order has to be seen. If the order is found to be illegal then such an illegal order cannot be the basis for issuance of a writ. In **State of Odisha Vs. Anup Kumar Senapati**; the Supreme Court held that there is no concept of negative equality under Article 14. The Supreme Court further held that negative equality when the right does not exist, cannot be claimed. In **R. Muthukumar vs. The Chairman and Managing Director TANGEDCO**, the Supreme Court again upheld the concept that Article 14 does not envisage negative equality. The Court further held that if some similarly situated persons have been granted some benefits inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief. In **Rajasthan Public Service Commission, Ajmer vs. Yati Jain and**

others; the Supreme Court again reiterated the above principles and held that some illegality committed by the State cannot be made a basis for seeking the same benefit.

[45] As has been held above, the executive orders were in violation of Regulations, 2014 with regard to giving one additional chance over and above the time period prescribed for clearing the Course under the Regulations. Since the time limit was not increased by the Council by means of any Regulations, the executive orders would be in contradiction to the Regulations and such would be invalid. Once it is the opinion of this Court that the executive orders dated 11.09.2021 and 19.04.2022 were in contravention of the Regulations, 2014, then there would be no question with regard to granting a similar benefit to the respondents herein, as no rights can be claimed based on the illegal orders. In the considered opinion of the Court, the findings recorded by the learned Single Judge that Article 14 would be applicable and similar benefits could be granted is incorrect. The respondents herein cannot claim a parity which is based upon an illegal exercise of power.

[46] Learned counsels for the respondents have laid great emphasis on the compliance affidavit filed in Contempt Application (Civil) No.2851 of 2024 (Sheetal vs. Smt. Sarita Tiwari, Director, State Council of Education Research and Training), wherein the State appellants had issued an order directing the holding of the exam. On the basis of the said order, the Counsels contend that the State cannot now challenge the impugned orders as they have now implicitly accepted the judgment and order dated 06.07.2023 passed by the learned Single Judge. In **Mahendra Dev vs. Radhey Shaym Pandey** as well as **The State of U.P. and others vs. Association of Retired Supreme Court and High Court Judges at Allahabad and others** held that contempt proceedings cannot be used to obstruct parties or their counsel from availing legal remedies. Even though the order may have been issued by the Director but the issuance of an order cannot come in the way of challenging the judgment by means of filing an appeal. Suffice to say that the decision in the contempt application would depend upon the fate of the appeal and not vice versa.

ANSWERS TO THE POINTS OF DETERMINATION:

(47). The respondents herein cannot possibly claim any benefit from the order of the State Government as contained in the Contempt Application (Civil) No.2851 of 2024 for holding the examination. It is well settled that any illegal order passed by the State Authority (contemnor) under the pressure and duress of contempt proceeding will not create a vested right in favour of the applicants (respondents herein).

[48] Regarding issue no.1 i.e. Whether the NCTE regulations with regard to Diploma in Elementary Education are binding and mandatory on the State appellants, the issue is answered in the affirmative holding that the Regulations are binding and mandatory.

[49] Regarding issue no.2 i.e. whether the non-extension of time period to complete the course within 3 years as per Regulation 2.1 of Appendix-2 to the Regulations, 2014 would invalidate the order dated 11.09.2021 and 19.04.2022 passed by the Secretary, the issue is answered in affirmative holding that there is illegal exercise of power in issuing the two executive orders dated

11.09.2021 and 19.04.2022 without any corresponding increase in the time period mandated under the Regulations, 2014.

[50] Regarding issue no. 3 i.e. whether the petitioners are entitled to one additional chance as given to students whose name figured in the lists enclosed with orders dated 11.09.2021 and 19.04.2022, the issue is answered in the negative and against the petitioners.

[51] Regarding issue no. 4 i.e. whether there is any violation of Article 14 of the Constitution of India, the issue is answered in the negative, holding that negative parity cannot be claimed by the petitioners.

[52] Before we conclude, there is yet another issue at hand that needs to be dealt with. The issue is whether the right to appear for an additional chance in the examination of the Diploma course would supersede the fundamental right of children as enshrined under Article 21-A of the Constitution of India and the protection given by the Act 2009?. It is to be kept in mind that the Act, 2009, has been enacted in furtherance of the 86th Amendment Act of the year 2002 with the sole purpose of providing free and compulsory education to children. Further, for the purpose of maintaining standards of education to the children, Section 12A was incorporated in the Act of 1993 w.e.f. 01.06.2012 through the Act No.18 of 2011. The power to lay down norms and qualifications by Regulations is to ensure quality education to the children of age 6-14 years. These young formative minds will shape the future of the country, therefore the persons to be recruited as teachers should be of utmost quality and standards.

(53) The role of quality teachers as educators of young minds does not need much elaboration. Recently, this Court in the case of **Shailendra Kumar vs. State of U.P. And others**; has very elaborately dealt with the fundamental rights guaranteed to the children under Article 21A of the Constitution of India vis-a-vis the teachers. The Court while relying upon **Avinash Nagra v. Navodaya Vidyalaya Samiti and others** (with regard to the place of teachers in students life); **State of Maharashtra v. Vikas Sahebrao Roundale and others** (declining to lower teacher training standards); **Ram Sharan Maurya and others v. State of U.P. and others** (right to quality education vis-a-vis prescription of high examination levels) and **Devesh Sharma v. Union of India and others**, (recruitment of best qualified teachers for providing quality education) held that fundamental right to education envisages quality education for all children. The Court further stated that quality education is possible only if the appointment of the most meritorious teachers is ensured. The Court, keeping in mind the interplay of various provisions and the fundamental rights, held that Article 21A of the Constitution has made education an irrevocable feature of the constitutional conscience. Article 21A vests the fundamental right to education in all children and the Right to Education Act, 2009 provides a detailed mechanism for implementation of the aforesaid right.

[54] In **Sharda v. Dharmpal** the Supreme Court held that where there is a conflict between fundamental rights between two parties, the right which would advance public morality or public interest would prevail. The same view has been taken by the Supreme Court in **Modern Dental College & Research Centre and others v. State of M.P. and others**.

[55] Keeping in mind the above observations and the fact that the Constitutional Court owe a duty to protect the rights of the children, it would be apt to reinforce that the actions of the State must align with the constitutional guarantees provided to the children, keeping in mind the directive principles as enshrined in Article 45 of the Constitution of India. The Constitution has cast a permanent obligation on the State to fulfill the right to education of children. Besides this the State under the Constitution and various statutes is also a guarantor of rights and guardian of the children therefore before taking any executive action, the State must ensure that any order/direction/circular issued by the State or any authorized officer under any delegation of power under the Act, 2009 must be in compliance with the constitutional guarantees towards the children. If such orders/directions/circulars are not in consonance with the constitutional guarantees then the same are certainly amenable to judicial scrutiny.

CONCLUSIONS:

[56] In light of the findings and the opinion given above, the Special Appeal is allowed. The order of the learned Single Judge dated 06.07.2023 is set aside. There shall be no order as to cost.

Order in SPLA-189 of 2026; State of U.P. & others vs. Seema Yadav and others:

As the judgment dated 23.08.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 23.08.2023 is set aside. There is no order as to cost

Order in SPLA-188 of 2026; State of Uttar Pradesh & Others vs. Shalini & Others:

As the judgment dated 07.07.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 07.07.2023 is set aside. There is no order as to cost

Order in SPLA- 186 of 2026; State of U.P. and 4 others vs. Ruvendra Kumar and 45 others

As the judgment dated 07.07.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 07.07.2023 is set aside. There is no order as to cost

Order in SPLA-970 of 2024 State of UP & 4 others vs. Deepak Kumar and 29 others

As the judgment dated 18.09.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 18.09.2023 is set aside. There is no order as to cost

Order in SPLA-190 of 2026 State of U.P. and 2 others vs. Mayank Yadav

As the judgment dated 19.07.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 19.07.2023 is set aside. There is no order as to cost.

Order in SPLA-184 of 2026State of U.P. and 4 others vs. Satakshi Parasari and 45 others

As the judgment dated 03.08.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 03.08.2023 is set aside. There is no order as to cost.

Order in SPLA-187 of 2026 State of U.P. and 5 others vs. Km. Archana Shukla & 2 others-

As the judgment dated 06.09.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 06.09.2023 is set aside. There is no order as to cost.

Order in SPLA-185 of 2026; State of U.P. and 3 others vs. Divya Dwivedi and others:

As the two Executive order (circulars) have been held to be transgressing the Regulations, 2014 with regard to providing additional chances to clear exams, therefore in light of the observations and findings the appeal is allowed. The order dated 19.01.2024 is set aside. There is no order as to costs.

(2026) 2 ILRA 499
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ A No. 1850 of 2010

Jai Prakash Singh S/O Tribhuwan Singh ...Petitioner
Versus
State of U.P. ...Respondent

Issue for Consideration

(1) Validity of dismissal order on the charge of unauthorized absence without recording finding of its' being a willful absence.

Headnotes

(A) Service law – Dismissal – Disciplinary proceeding – Charge of unauthorized absence from duty while working as the Constable – Petitioner's statement that he had repetitively gone to Mainpuri for joining at the transferred post but he was not allowed to join as the transfer order had not reached Mainpuri, has not been specifically denied in the counter affidavit – Petitioner's explanation was not considered – No finding on unauthorized absence being a willful absence was recorded – Effect : (E-1)

Held : The impugned dismissal order has been passed without taking into consideration the petitioner's explanation that he was absent firstly because of his illness and thereafter because he was not allowed to join his duties. The dismissal order does not take into consideration these aspects of the matter and it merely records that the petitioner had been absent unauthorisedly, without recording any finding that the unauthorised absence of the petitioner was willful **–** Therefore, in any case, the failure of the petitioner to report for duty after passing of the transfer order dated 26.03.2008, cannot be said to be due to any fault of the petitioner himself. The petitioner cannot be made to suffer for the fault of any other person and he cannot be penalized for this reason **–** The petitioner is entitled to get all benefits consequential to quashing of the dismissal order. [Para 17, 22 and 25]

Case Law Cited

Krushnakant B. Parmar vs. Union of India and another, (2012) 3 SCC 178; Union of India vs. R.K. Sharma, 2022 SCC OnLine SC 2010; Writ Petition No. 3126 (S/S) of 1991, Surendra Nath Tripathi vs. State of U.P. & Ors. decided on 28.10.2006; Krushnakant B. Parmar vs. Union of India and another: (2012) 3 SCC 178; Writ A No. 36187 of 2013, Smt. Sadhna Gupta vs. State of U.P. & 2 Ors. decided on 24.07.2013; Suresh Chandra Belwal, Sub-Inspector vs. State of U.P. & Ors., (2013) SCC OnLine Alld. 10162 **– referred to.**

List of Acts

U.P. Subordinate Police Officers/ Employees (Punishment and Appeal) Rules, 1991 **–** Rule 14(1).

List of Keywords

Dismissal, Suspension, Sick, Unauthorized absence, Guilty, Treatment, Transfer order, Reporting, Willful, Compelling circumstances, Disproportionate, Grave misconduct, Irregularity, Unfitness, Administrative ground, Fault, Explanation, Service benefits.

Case Arising From

Impugned orders dated 14.01.2008 passed by the Senior Superintendent of Police, Lucknow and 22.10.2009 passed by the Inspector General of Police, Lucknow Zone, Lucknow.

Appearances for Parties

Advs. for the Petitioner : Ashutosh Shukla, K.S. Rai, Rakesh Kumar Chaudhary, Suresh Chandra Verma, Vishwajeet Rai.

Advs. for the Respondents : S. K. Khare, S.C.

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

1. Heard Sri K.S. Rai, the learned counsel for the petitioner, Sri S.K. Khare, the learned Standing Counsel for the State of U.P. and perused the record.

2. By means of the instant writ petition the petitioner has challenged the order dated 14.01.2009 (which is wrongly mentioned in the order as 14.01.2009) passed by the Senior Superintendent of Police, Lucknow, dismissing the petitioner from his service on the post of constable in Civil Police. The petitioner had challenged the dismissal order by filing an appeal which has been dismissed by means of an order dated 22.10.2009 passed by the Inspector General

of Police, Lucknow Zone and validity of the appellate order has also been challenged through this Writ Petition.

3. Briefly stated, facts of the case are that the petitioner was appointed as a constable in civil police in the month of March, 1975 and he was posted at District Sitapur from where he was transferred to Lucknow in the year 1993. On 27.10.2006, the petitioner was assigned Mela duty at Garhmukteshwar where he remained till 02.12.2006, but after returning from the Mela duty, he did not report for duty. The petitioner claims to have fallen sick and to have sent its information to the Inspector Sahadatganj Police Station, to the Circle Officer as well as to the Superintendent of Police.

4. The petitioner was placed under suspension by means of an order dated 29.01.2008 on the ground that he did not report after coming back from the mela duty. While he was already under suspension, the petitioner was transferred from Lucknow to Mainpuri on administrative grounds by means of an order dated 26.03.2008.

5. On 14.01.2009, the Senior Superintendent of Police passed the impugned dismissal order wherein it is stated that while the petitioner was working as a constable and was posted at Police Station Sahadatganj, Lucknow, he was assigned duty in a mela at Garhmukteshwar. The petitioner was sent for the mela duty at 06:50 hours on 27.10.2006. After completion of mela duty the petitioner did not report to Police Station Sahadatganj, Lucknow and he became absent unauthorizedly. Circle Officer, Sarojani Nagar has held in the report dated 11.12.2008 submitted in the disciplinary proceedings instituted against the petitioner under Rule 14(1) of U.P. Subordinate Police Officers/ Employees (Punishment and Appeal) Rules, 1991 (hereinafter referred to as 'the Rules of 1991) that the petitioner's unauthorized absence was reported on 12.12.2006. The petitioner did not submit any information regarding his absence for a period of about 1 year and 3 months. The petitioner was guilty of autocratic behavior, indiscipline and negligence in performance of duty.

6. A copy of the aforesaid findings were sent to the petitioner along with a show cause notice dated 18.12.2008 asking him to submit an explanation as to why he should not be dismissed from service under Rule 4(1)(a)(i) of the Rules of 1991. The petitioner submitted his explanation dated 09.01.2009 stating that he performed mela duty at Garhmukteshwar till 26.10.2006 but thereafter he had fallen ill, he was suffering from severe pain, he had sent an information about the same to his office and got some medicines but he did not get any relief. After returning to Lucknow, he had sent information of his illness to the Superintendent of Police-West, Circle Officer, Bazar Khala and Inspector Incharge Sahadatganj. He was treated by doctors for sciatica, diarrhea and jaundice. After being treated for some time at Lucknow, he got relief in diarrhea but he did not get any relief in his pain. As a lot of money had been spent in his treatment and there was scarcity of money, his family members took him to his native place Bharawan, where his treatment continued. Meanwhile the petitioner received the suspension order and thereafter, he came to police lines, Lucknow for getting himself treated in the police hospital. He was told to first seek permission for joining from Reserve Inspector and only thereafter his joining would be recorded. The petitioner obtained permission from the Reserve Inspector and he went to Gadna Munshi (Attendance Clerk) who told him to obtain permission from the Superintendent of Police. The petitioner showed him the

suspension order which mentioned that during suspension period, the petitioner would ensure staying in the police lines of the District but no heed was paid to his request. The petitioner tried to meet the Superintendent of Police-West but he was not allowed to meet him. The petitioner was quite distressed, he was not capable of walking and, therefore, he started getting himself treated in Balrampur Hospital and sent this information to the concerned officers through registered post. After recovering, the petitioner again went for joining whereupon he was told that he had been transferred to Mainpuri and he had been relieved in absentia on 04.04.2008.

7. Thereafter, the petitioner went to Mainpuri where he was told that the transfer order had not been received there and he should bring a copy of the transfer order from Lucknow. He kept his articles in the police lines in Mainpuri and thereafter returned to Lucknow and met the concerned official who told the petitioner to go to Mainpuri and said that he would sent the order to Mainpuri. The petitioner again went to Mainpuri and kept on waiting for the transfer order for several days but the order did not reach there. He again came to Lucknow and met the concerned official who told that he had forgotten to send the order. The petitioner requested him to hand him over a copy of the transfer order so that he could report at the transferred place but the official told that he could not give the transfer order by hand and that he would send the order to Mainpuri. The petitioner again went to Mainpuri and kept on waiting for the order for several days but the order did not reach there. The petitioner again returned to Lucknow and met the concerned official who got angry and said he would not hand over the order. Thereafter, the petitioner tried to obtain the transfer order under the Right to Information Act but it was not provided to him. The petitioner went to the residence of Senior Superintendent of Police but could not meet him due to the later's engagements. The following day he could meet the Superintendent of Police (Security) who told that the transfer letter had already been sent to the Superintendent of Police, Mainpuri and the petitioner should go there. The petitioner again went to Mainpuri but the letter had not reached there. Thereafter the petitioner was given a letter on 03.11.2008 (and not a copy of the transfer order). The petitioner again went to Mainpuri with the letter but the Superintendent of Police declined to register his reporting for want of the transfer order.

8. The petitioner stated that he had been running between Lucknow and Mainpuri repetitively and had spent a lot of money on it. When the petitioner got a notice from the Circle Officer, he went to get his statement recorded but his statement was not recorded stating that first he should get his reporting recorded and thereafter his statement would be recorded. Copies of his medical documents were also not received stating that the same would be received only after his reporting is recorded.

9. The petitioner further stated that he had served the police department without any blemish since the year 1975. He had actually fallen ill and the financial constraints restricted his treatment and delayed his recovery. He had been placed under suspension, he was transferred to a district which is 460 km away from his home district and he had suffered immensely both mentally and financially.

10. All the submissions made by the petitioner in his reply were turned down, the Superintendent of Police held him guilty of unauthorized absence from 27.10.2006 to 04.04.2008

and he was dismissed from service. The appellate authority has simply affirmed the dismissal order.

11. A supplementary affidavit has been filed by the petitioner stating that the Inquiry Officer had declined to record his statement unless he joined his duties. The petitioner was not permitted to join his duties without a copy of the transfer order and his evidence was not recorded by the Inquiry Officer. The inquiry report has been submitted without recording his evidence.

12. A counter affidavit has been filed by the opposite parties opposing the writ petition wherein it has inter alia been stated that the petitioner deliberately absented himself from duty without any authority. Through the letter dated 09.09.2008, the Superintendent of Police, Mainpuri was requested to record reporting of the petitioner at Mainpuri.

13. In the rejoinder affidavit the petitioner has stated that he had gone to join at Mainpuri but his joining was not accepted and thereafter he had sent a fax massage for his joining at Mainpuri yet he was not allowed to join in absence of original transfer order, which was never provided to him.

14. Assailing the validity of the dismissal order, the learned counsel for the petitioner has submitted that the charge of unauthorized absence from duty cannot be decided without deciding the question whether absence was willful or it was because of some compelling circumstances. In support of this contention the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of **Krushnakant B. Parmar v. Union of India and another:** (2012) 3 SCC 178.

15. The learned counsel for the petitioner has next submitted that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charges proved against the petitioner. In support of this contention, he has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Union of India v. R.K. Sharma**: 2022 SCC OnLine SC 2010.

16. He has submitted that the penalty of dismissal can only be imposed in case of grave misconduct indicating incorrigibility and complete unfitness for police service as held by this Court in **Surendra Nath Tripathi v. State of U.P. & Ors**., Writ Petition No. 3126 (S/S) of 1991 decided on 28.10.2006.

17. The petitioner's contention that his evidence was not recorded on the pretext that till his reporting is recorded, his evidence will not be recorded and his reporting was not recorded due to unavailability of the transfer order, has also not been denied. The impugned dismissal order has been passed without taking into consideration the petitioner's explanation that he was absent firstly because of his illness and thereafter because he was not allowed to join his duties. The dismissal order does not take into consideration these aspects of the matter and it merely records that the petitioner had been absent unauthorisedly, without recording any finding that the unauthorised absence of the petitioner was wilfull.

18. In in the case of **Krushnakant B. Parmar v. Union of India and another**: (2012) 3 SCC 178, the Hon'ble Supreme Court has held that: -

"15. Rules 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a government servant and reads as follows:

"3.General.-(1) Every government servant shall at all times?

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a government servant."

16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."

19. Therefore, the dismissal of the petitioner for his mere unauthorised absence, without recording a finding that the unauthorised absence was wilful, is unsustainable in law in view of the law laid down by the Hon'ble Supreme Court in **Krushnakant B. Parmar v. Union of India and another** (supra).

20. Although no submission was advanced by the learned counsel for the petitioner assailing the validity of the petitioner's transfer during his suspension, in **Smt. Sadhna Gupta v. State of U.P. & 2 Ors.**, Writ A No. 36187 of 2013 decided on 24.07.2013. A Coordinate Bench of this Court held that: -

"9. ... where an employee is under suspension, occasion to transfer such an employee, besides the fact that under the rules, it would not be permissible, but, even otherwise cannot be justified for any reason whatsoever. It is not a case where the employee is being shifted from one post to another to discharge her duties. She is already under suspension and is not supposed to discharge her regular duties.

10. If that be so, there cannot be any administrative exigency so as to justify his/her transfer from one post to another. Such an employee, who is not getting full salary, cannot be compelled to disturb his/her entire establishments incurring extra expenses by shifting a place particularly when he/she is not getting full salary of the office which is payable, if

he/she would not have been under suspension. Suspension though does not have the effect to severing the relationship of employer and employee as such, but, definitely have the effect of suspending such relationship to the extent that the employee cannot be compelled to discharge his/her regular duties and the employer would not be obliged to pay full salary, if so authorized under the rules.

11. It is always open to the employer to transfer employee as soon as suspension comes to an end, and the incumbent is reinstated, but otherwise, neither I could find out any justification to insist for transfer of a suspended employee nor any such justification has been provided/shown by the respondents. It is in these facts and circumstances, I have no hesitation in declaring the impugned order of transfer bad and illegal."

21. The aforesaid judgment was followed in **Suresh Chandra Belwal, Sub-Inspector v. State of U.P. & Ors.**, (2013) SCC OnLine Alld. 10162.

22. Therefore it appears that the petitioner was transferred from Lucknow to Mainpuri purportedly on administrative grounds while he was under suspension, there was no administrative ground for his transfer and his transfer was done in an illegal manner. The petitioner's specific contention that he had repetitively gone to Mainpuri for joining at the transferred post but he was not allowed to join as the transfer order had not reached Mainpuri, has not been specifically denied in the counter affidavit. Therefore, in any case, the failure of the petitioner to report for duty after passing of the transfer order dated 26.03.2008, cannot be said to be due to any fault of the petitioner himself. The petitioner cannot be made to suffer for the fault of any other person and he cannot be penalized for this reason. The petitioner's explanation has not been dealt with appropriately by the disciplinary authority and the appellate authority and the same have been rejected in a cursory manner.

23. For all the aforesaid reasons, I am of the considered view that the impugned order dated 14.01.2009 dismissing the petitioner from service and the appellate order dated 22.10.2009 are not sustainable in law.

24. Accordingly, the writ petition is ***allowed***.

25. The impugned orders dated 14.01.2008 passed by the Senior Superintendent of Police, Lucknow and 22.10.2009 passed by the Inspector General of Police, Lucknow Zone, Lucknow are hereby quashed. The petitioner is entitled to get all benefits consequential to quashing of the dismissal order. The arrears of service benefits payable to the petitioner shall be calculated and paid to him within a period of four months from the date of receipt of a certified copy of this order.

26. This writ petition is pending since the year 2010 whereas the petitioner was inducted in service in March, 1975 and he was dismissed in January, 2009. At the time of filing of the writ petition the petitioner was already aged about 55 years and presently the petitioner would have attained the age of 70 years. In these circumstances, it would not be proper to permit fresh disciplinary proceedings being held against the petitioner after giving a proper opportunity of hearing. Accordingly, this liberty is not being granted.

(2026) 2 ILRA 506
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ A No. 2700 of 2014

Ram Kishore ...Petitioner
Versus
U.P. Sahkari Gram Vikas Bank Ltd. ...Respondent

Issue for Consideration

(1) Validity of disciplinary proceeding and punishment order passed against the charged person holding the post of Accountant on the allegation of irregularity caused in sanctioning the loan, though the Accountant has no role in sanctioning the loan.

Headnotes

(A) Service law – Disciplinary proceeding – Punishment – Stoppage of two annual increments in the salary with cumulative effect – Inquiry – Charge of sanctioning a loan of Rs. 1,50,000/- in violation of guidelines and of disbursing the installment without following the time limit was leveled – The petitioner, being an Accountant, had no role in sanctioning the loan and making inspection before sanctioning the loan – Relevance – However, the petitioner was held guilty of charges – Validity challenged : (E-1)

Held : Recommending sanction of loan fell within the purview of duties of the field officer and sanctioning the loan was within the duty of the branch manager and the accountant has no role to play in it. Therefore, the petitioner can in no manner be held guilty for the first charge – Moreover, making inspection and ensuring proper utilization of the loan amount and reporting misutilization of loan amount or improper execution of the project falls within the duties of the field officer and ensuring proper utilization of the loan falls within the duties of the branch manager. The petitioner, who was merely an accountant, had no role to play in these processes. Therefore, the petitioner cannot be held guilty of the second charge also. [Para 15 and 16]

List of Acts

Co-operative Societies Employee Service Regulations, 1975 **–** Regulation 84 (i); Circular dated 18/19.02.1976.

List of Keywords

Punishment, Stoppage of two annual increments in the salary with cumulative effect, Disciplinary proceedings, Sanction of loan, Local inspection, Verification report, Utilization certificate, Misappropriate, Show cause notice, Explanation, Fair chance of defence, Decision making process, Inspection report, Misutilization of loan amount, Unsustainable in law.

Case Arising From

Punishment order dated 25.06.2009 passed by Managing Director and the Order dismissing the appeal by the appellate authority against the punishment order.

Appearances for Parties

Advs. for the Petitioner : Piyush Asthana.
Advs. for the Respondents : Singh Vinod Kumar, Balram Yadav.

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

1. Heard Sri Piyush Asthana, the learned counsel for the petitioner, Sri Balram Yadav, the learned counsel for the opposite parties and perused the records.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 25.06.2009, passed by the Managing Director of U.P. Sahkari Gram Vikas Bank Ltd. imposing the punishments of stoppage of two annual increments in the salary with cumulative effect and recovery of 20% of the amount of loss in case the loan irregularly disbursed by the petitioner is not recovered. The petitioner had challenged the aforesaid order by filing an appeal. The Chief General Manager, Administration U.P. Sahkari Gram Vikas Bank Ltd. Lucknow has written a letter dated 12.08.2011 stating that the petitioner's appeal has been found to be not maintainable and has been disposed off by means of an order passed by the Prescribed Authority/Principal Secretary, Cooperative. However, a copy of any order passed by the Prescribed Authority/Principal Secretary, Cooperative has not been provided to the petitioner.

3. Briefly stated, facts of the case are that while the petitioner was working as an Accountant in U.P. Sahkari Gram Vikas Bank, Branch Kuwayan, District Shahjahanpur, disciplinary proceedings were instituted against him on 15.05.2008 on the allegations that a loan of Rs.1,50,000/- was sanctioned in favour of a farmer under a dairy scheme, a cheque for Rs.75,000/- was handed over to him on 09.01.2007 towards the first installment and the second installment of Rs.75,000/- was released on 11.01.2007 in violation of the guidelines issued by the Bank.

4. A charge-sheet was issued to the petitioner on 02.08.2008 containing two charges - (i) that he had not followed the time limit between disbursal of two installments of loan as per the directions of the head office and (ii) during local inspection by Senior Manager, buffaloes were not found as per the standards.

5. The petitioner submitted a reply dated 08/09.09.2008 stating that he had prepared and handed over the cheques as per the instructions of the Branch Manager. After disbursal of the first installment of loan, the Field Officer of the Bank had conducted an inquiry and had submitted a report that the farmer had purchased the buffaloes from the first installment and he had recommended disbursal of the second installment. This recommendation was approved by the Branch Manager and the petitioner was directed to prepare a cheque for Rs.75,000/- on 11.01.2007. The petitioner categorically stated that it was his duty to comply with the orders of the Branch Manager and he had prepared the cheques in compliance of this duty. Regarding second charge the petitioner submitted that the Senior Manager had made a verification and found the buffaloes to be not of the requisite standards but the petitioner is not guilty for it it because the project had been verified by the Field Officer and the Branch Manager. In the verification report submitted by the Field Officer it was not mentioned that the amount of loan had been misappropriated. The inquiry was to be done by the Field Officer and the Branch Manager and not by the petitioner who was working as an Accountant.

6. The inquiry officer submitted a report dated 06.11.2008, specifically stating that the petitioner does not appear to be guilty directly, but as the loan was given in an irregular manner, the petitioner cannot escape his responsibilities. Regarding the second charge also the inquiry officer held that the Field Officer and Branch Manager were responsible for local inspection because it is their duty to furnish a verification report. The Field Officer has conducted a local inspection in the present case and had submitted a utilization certificate. However, the inquiry officer stated that when the loan has been given in an irregular manner the Accountant could not escape his responsibility.

7. A show cause notice dated 18.02.2009 was issued to the petitioner asking him to show cause as to why two annual increments be not stopped with cumulative effect and why 20% of the amount of loan be not recovered from him. The petitioner submitted his reply dated 13.03.2009 reiterating the version given by him during inquiry. The petitioner further stated that he had not misappropriated any money of the bank because neither he had prepared the loan file nor had he given the utilization certificate. He stated that he is a subordinate employee and he had merely complied with the directions of his officer and he was duty bound to do so.

8. On 25.06.2009 the Managing Director has passed the impugned order inflicting punishment of stoppage of two annual increments in the salary with cumulative effect and also providing that in case the loan irregularly disbursed by the appellant is not recovered 20% of the amount involved will be recovered from salary/dues of the petitioner. The appellate authority has merely affirmed the order and a copy of the reasoned order passed by the appellate authority has not yet been provided to the petitioner and it has not been annexed even with the counter affidavit.

9. Before proceeding to deal with the submissions advanced by the learned Counsel for the parties, it is important to mention that the impugned order merely states that the reply given by the petitioner to the show cause notice had been taken into consideration by the competent authority, without disclosing as to who was the competent authority who had considered the petitioner's explanation. The authority which passes an order adverse to any person, has himself to take into consideration the explanation submitted by the affected person so that he may have a fair chance of defence. The consideration of the explanation by any other authority indicates that the authority who has passed the order adverse to the employee, has not applied his mind to the explanation given by the employee. The aforesaid error vitiates the decision making process adopted by the disciplinary authority and renders the impugned order violative of principles of natural justice. The impugned order could be quashed on this limited ground alone, but as detailed submissions have been advanced by the learned Counsel for the parties on merits of the order, I proceed to examine deal with the same.

10. Assailing the validity of the punishment order and the appellate order the learned counsel for the petitioner has submitted that duties of various officers and employees of U.P. Rajya Sahkari Bhumi Vikas Bank have been provided in a Circular dated 18.02.1976/19.02.1976, a copy whereof has been annexed as Annexure No.6 to the writ petition. The duties of an accountant are to work under control of the Branch Manager and to prepare the documents. His duties also include comply with audit reports and inspection reports. The learned counsel for the petitioner has submitted that sanctioning loans, making field inspections or submitting field reports, and disbursement of loans

were not within the purview of the duties of the petitioner and he had not performed any of such duties. The alleged misconduct is of disbursal of two installments of a loan within a short period in violation of the guidelines and that the borrower had purchased buffaloes which were not as per the standards. The inquiry officer himself has recorded a categorical finding that the applicant is not involved in the aforesaid acts directly. When as per the circular the alleged irregular acts were not within the purview of duties of the petitioner and the inquiry officer himself has found that the petitioner is not guilty of the commission of the aforesaid acts directly, the petitioner cannot be punished for an act for which the inquiry officer has held him to be not guilty directly.

11. The learned counsel for the petitioner has placed reliance on the provision contained in Regulation 84 (i) of the Co-operative Societies Employee Service Regulations, 1975, which is as follows: -

"Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal ofence or an offence under Section 103 of the Act or does anything prohibited by these regulations, ***shall be liable to be punished by anyone of the following penalties: -***

(a) Censure
(b) withholding of increment,
(c) fine on employee of category IV (peon, chaukidar etc.)
(d) recovery from pay of security deposit to compensate in whole or in part for any pecuniary loss caused to the Bank by the employee's conduct,
(e) reduction in rank or grade held substantively by the employee,
(f) removal from service, or
(g) dismissal from service."

12. He has submitted that although the regulations permit imposition of any one of the prescribed penalties, by means of the impugned order two penalties have been imposed upon the petitioner: recovery from pay and withholding of two increments with cumulative effects, which is not permissible in the regulations.

13. Opposing the writ petition, Shri Balram Yadav, the learned counsel for the opposite party has submitted that the duties of the accountant include compliance with audit and inspection reports and, therefore, it was incumbent on the petitioner to have verified whether the inspection report submitted by the field officer was correct or not. I am unable to accept this submission because compliance with audit and inspection report does not mean verification of inspection report. Being a subordinate employee the petitioner was bound to comply with the inspection report submitted by the field officer and the direction issued by the branch manager in furtherance thereof.

14. It is also relevant to note that the Circular dated 18/19.02.1976 issued by U. P. Rajya Sahkari Bhumi Vikas Bank Ltd. lays down the duties of branch manager, which include examination of loan applications, examination of fulfillment of conditions for grant of loan, ensuring proper utilization of the loan and exercising control over all the employees of his branch and supervision of their work. The duties of field officers include making recommendations for

sanction of loans, examining the loan documents, making inspection and ensuring proper utilization of the loan amount, collecting loan applications and reporting misutilization of loan amount or improper execution of the project. He is also responsible to exercise control over the working of the branch in absence of the branch manager.

15. From the aforesaid provisions, it is clear that recommending sanction of loan fell within the purview of duties of the field officer and sanctioning the loan was within the duty of the branch manager and the accountant has no role to play in it. Therefore, the petitioner can in no manner be held guilty for the first charge.

16. Moreover, making inspection and ensuring proper utilization of the loan amount and reporting misutilization of loan amount or improper execution of the project falls within the duties of the field officer and ensuring proper utilization of the loan falls within the duties of the branch manager. The petitioner, who was merely an accountant, had no role to play in these processes. Therefore, the petitioner cannot be held guilty of the second charge also.

17. Shri Balram Yadav has next submitted that the petitioner has not been inflicted with two penalties as the impugned order merely states that in case the amount is not recovered from the borrower, 20% amount will be recovered from the petitioner. This is a contingent order. The contingency has not yet arrived and 20% of the amount of loss has not been recovered from the petitioner. Therefore, his submission is that only one penalty has been inflicted upon the petitioner. I find no force in this submission also, as imposing a penalty and execution of the punishment order are two different and distinct things. The impugned order clearly and categorically inflicts two penalties on the petitioner which is not permissible as per Regulation 84(i) quoted above.

18. In the aforesaid facts circumstances of the case, I am of the considered view that the impugned punishment order dated 25.06.2009, passed by the Managing Director of U.P. Sahkari Gram Vikas Bank Ltd. Is not sustainable in law and it deserves to be quashed.

19. The dismissal of the petitioner's appeal against the punishment order has been communicated by a letter dated 12.08.2011 sent by the Chief General Manager, Administration U.P. Sahkari Gram Vikas Bank Ltd. Lucknow. The appeal has purportedly been dismissed by the appellate authority - the Prescribed Authority/Principal Secretary, Cooperative. However, a copy of any order passed by the Prescribed Authority/Principal Secretary, Cooperative has not been provided to the petitioner and no such order has been annexed with the counter affidavit. From, the aforesaid facts, it appears that the appeal has been dismissed in a cursory manner without any application of mind by the appellate authority and without any reasoned order having passed by the appellate authority himself, which is also unsustainable in law.

20. Accordingly, the writ petition is **allowed**. The punishment orders are hereby quashed. The petitioner shall be entitled to receive all consequential benefits. The opposite parties are directed to calculate the benefits payable to the petitioner and pay the same expeditiously in accordance with law say within a period of four months from the date of receipt of a certified copy of this order.

21. No order as to the costs.

(2026) 2 ILRA 511
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.02.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 9735 of 2016

Mishri Lal **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Entitlement of retired employee to get interest on delayed payment of retiral benefits.
(2) Applicability of Government Order dated 26.03.2010 providing benefit of the recommendations of Sixth Pay Commission to the petitioner, who was already retired on 31.07.2007.

Headnotes

(A) Service law – Retiral benefits – Inordinate delay in payment of the retiral dues, including the gratuity and leave encashment – Interest on the delayed payment claimed – Entitlement : (E-1)
Held : It is trite law that retiral benefits are not a bounty to be distributed by the Government to its employees after their retirement, but these are valuable rights and property in the hands of the retired employees. In fact, non-payment of retiral dues is the harassment of the retired employee, who rendered his services with dedication and devotion, and if the retiral dues are paid with inordinate delay, suitable interest in a compensatory nature shall suffice the purpose so as to solace harassed employee – The competent authority is directed to make payment of interest on the delayed payment of post terminal dues (gratuity and leave encashment), with interest of 7% per annum, to the petitioner, within period of eight weeks. [Para 22 and 36]

(B) Service law – Recommendations of Sixth Pay Commission, benefit thereof – Petitioner was retired on 31.07.2007 – Entitlement to get the benefit of recommendation – Government Order dated 26.03.2010 was issued providing the same benefits with immediate effect – Applicability – Authority declined to provide the benefit – Validity challenged : (E-1)
Held : The government order dated 26.03.2010, which is still intact, prescribes that the benefit of the Sixth Pay Commission shall be provided with immediate effect, meaning thereby i.e. from the date of the issuance of the government order dated 26.03.2010 and it further says that the notional benefits shall also be considered since January, 2006. The admitted position is that the benefit of recommendations of the Sixth Pay Commission has notionally been granted to the petitioner and since the petitioner was retired in the year, 2007, therefore, the benefit of the govt. order dated 26.03.2010 would not be available to the petitioner, in totality. [Para 32]

Case Law Cited

Union of India vs. Balbir Singh Turn, AIR 2018 SC 206; State of Kerala vs. M. Padmanabhan Nair, reported in (1985) 1 SCC 429; Delhi Development Authority vs. Skipper Constructions, reported in 1994(23) ALR 40 (SC); D.D. Tewari (Dead) through Legal Representatives vs. Uttar Haryana Bijli Vitran Nigam Limited and others, (2014) 8 SCC 894; H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd., (2003) 3 SCC 40 **– referred to.**

List of Acts

Payment of Gratuity Act, 1972 – S. 7; UP Payment of Gratuity Rules, 1975 – Rule 7.

List of Keywords

Retiral benefits, Gratuity, Leave encashment, Delayed payment, Interest, Notice, Written application, Disease, Accident, Valuable rights, Harassment, Computation of gratuity, Inordinate delay, Procedure established by law, Lawful duty, Post terminal dues, Unreasonable delay, Benefit of the recommendations of Sixth Pay Commission.

Case Arising From

Order dated 02-03-2016 passed by the Managing Director declining the petitioner benefit for payment of interest over the delayed payment of retiral dues and the benefit of the recommendations of the Sixth Pay Commission.

Appearances for Parties

Advs. for the Petitioner : Anurag Srivastava, Navneet Awasthi, Raj Kumar Verma.
Advs. for the Respondents : Shishir Jain, Brijendra Singh, A.C.S.C., Ashutosh Mishra, S.C.

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

1. Heard learned counsel for the petitioner, Mr. Shishir Jain,learned counsel for the respondent-U.P.State Bridge Corporation Ltd.,(hereinafter referred to as 'Corporation'), Mr. Brijendra Singh, learned Additional Chief Standing Counsel and Mr. Ashutosh Mishra, learned Standing Counsel for the State and perused the record.

2. The present writ petition has been preferred assailing the order dated 02-03-2016 passed by the Managing Director of the respondent-corporation, whereby the petitioner has been declined the benefit for payment of interest over the delayed payment of retiral dues and the benefit of the recommendations of the Sixth Pay Commission, which was granted to the employees of the respondent-corporation by virtue of the government order dated 26-03-2010.

3. Contention put forth by the learned counsel for the petitioner is that the petitioner was appointed in the respondent-corporation on 09-01-1979, on the post of Sub. Engineer at district-Ghaziabad and his work and conduct was always above board and remained unblemished. He submitted that the petitioner was promoted in the month of October, 1997 on the post of Deputy Project Manager and he was posted at district-Lucknow and subsequently, in the month of May,2003, the petitioner was again promoted on the post of Project Manager. He added that the petitioner has been retired on 31-07-2007 after attaining the age of superannuation and after the retirement, when the retiral dues were not paid to the petitioner, he moved an application on 11-10-2007, before the Managing Director of the respondent-corporation, and the department paid the retiral dues in the year 2014, after passing of about 7 years, but, the interest on the delayed payment of gratuity and the leave encashment etc. have not been paid.

4. Further submission is that the recommendations of the Sixth Pay Commission are prevalent in the respondent-corporation w.e.f. 01-01-2006, which is apparent from the government order dated 26-03-2010 and the benefit of the aforesaid recommendations has been given to the petitioner only w.e.f. 26-03-2010, though he is entitled for the said benefit started from the date of it's commencement i.e. 01-01-2006. He argued that once the authority did not pay any heed to make

payment of interest, the petitioner approached this court by way of instituting Writ Petition No. 1838(S/B) of 2015, wherein the final Judgment and Order was passed on 01-10-2015 while directing the Managing Director of the respondent-corporation to take the decision on the claim of the petitioner within the period of three months and the Managing Director of the respondent-corporation vide order dated 02-03-2016 impugned herein, has rejected the claim of the petitioner for payment of the interest, erroneously and arbitrarily.

5. Adding his arguments, he submitted that it is an admitted fact in between the parties that the payment of retiral dues have been done in the year 2014, though the petitioner has been retired in the year, 2007 and therefore, the petitioner is infact entitled for interest for that period of time. He also submitted that so far as the payment of arrears of benefit of recommendation of Sixth Pay Commission, started from the year 2006 to the year 2010, is concerned, the claim of the petitioner is covered with the ratio of the Judgment rendered by the Hon'ble Apex Court in the case of **Union of India Vs Balbir Singh Turn**, reported in **AIR 2018 SC 206**. The relevant paragraph 11 is extracted as under:-

"11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of the 6th CPC as modified and accepted by the Central Government insofar as they relate to pay structure, pay scales, grade pay, etc. will apply from 1-1-2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 1-1-2006. We may also point out that the Resolution dated 30-8-2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay, etc. have been made applicable from 1-1-2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30-5-2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30-8-2008. Thus, administrative instruction dated 30-5-2011 is totally ultra vires the Resolution of the Government."

6. Referring the paragraph no. 11 of the aforesaid Judgment, learned counsel for the petitioner submitted that the Hon'ble Apex Court has held that so far as the executive orders are concerned, that will not have override effect over the decision taken by the legislature and therefore, the benefit was granted to those petitioners with effect from the actual commencement of the Sixth Pay Commission.

7. Concluding his arguments, he submitted that the petitioner is entitled for the interest on the delayed payment of the retiral dues and therefore, the order dated 02-03-2016 is unsustainable.

8. Per contra, Mr. Shishir Jain, learned counsel appearing for the respondent-corporation has opposed the contentions aforesaid and submitted that so far as the application dated 11-10-2007, said to be submitted by the petitioner is concerned, that has never been received in the office of the respondent-corporation and in this regard, the specific stand is taken in paragraph no. 5 of the Supplementary Affidavit dated 13-08-2024.

9. He further submitted that so far as the Payment of Gratuity Act,1972 (hereinafter referred to as 'Act,1972') is concerned, Form No. 'I' is prescribed for claiming the gratuity and the petitioner has never submitted this Form No. 'I' before the employer and as soon as the formalities were completed, in the year,2014, the payments were made to the petitioner.

10. He argued that so far as the payment of arrears of Sixth Pay Commission w.e.f. 01-01-2006 is concerned, that is not available to the petitioner as the state government in it's order dated 26-03-2010, itself has clarified the position and therefore, the actual benefit has been provided since the date of the government order dated 26-03-2010. Thus, there is no errorneousness in the order impugned dated 02-03-2016, wherein the decision has been taken that the petitioner is not entitled for such benefits, therefore no interference is warranted, in this matter.

11. Upon considering the submissions of learned counsels for the parties and after perusal of records, it borne out that the claim of the petitioner is of two folds; First, whether the petitioner is entitled for the interest on the delayed payment of the retiral dues, including the gratuity and leave encashment started from the year 2007 to the year 2010 ? Secondly, whether the entitlement of the petitioner for the benefit of the recommendations of Sixth Pay Commission, w.e.f. 01-01-2006 has been rightly declined .

12. The law regarding the payment of gratuity to an employee is codified under the Payment of Gratuity Act,1972(hereinafter referred to as ?Act,1972?).

13. Section 7 of the Act, 1972 provides for determination of the amount of gratuity. Section 7 of the Act, 1972, reads as under:-

"7. Determination of the amount of gratuity.-(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4)(a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity,

or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

[(e)] As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the "Inominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

a) enforcing the attendance of any person or examining him on oath,
(b) requiring the discovery and production of documents:
(c) receiving evidence on affidavits;
(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228. and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by suficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority."

14. From bare reading of the provision of Section 7(1) of the Act, 1972, it reveals that the same provides that a person who is eligible for payment of gratuity, shall send a written application

to the employer. The form of the application is appended as Form 'I', meaning thereby that as soon a person becomes eligible for payment of gratuity under the 'Act, 1972', he himself or by authorising some other person, shall submit a written application to the employer within the time prescribed under the 'Act, 1972'.

15. Form 'I' as prescribed under the ?Act, 1972?, is extracted hereinunder :-

FORM 'I'

[See sub-rule (1) of rule 7]

APPLICATION OF GRATUITY BY AN EMPLOYEE

To……..

[Give here name or description of the establishment with full address]

Sir/Gentlemen,

I beg to apply for payment of gratuity to which I am entitled under sub-section (1) of retirement/resignation after completion of not less than five years of continuous service/section 4 of the Payment of Gratuity Act, 1972 on account of my superannuation/total disablement due to accident/total disablement due to disease with effect from the Necessary particulars relating to my appointment in the establishment are given in the statement below:

Statement

1. Name in full.
2. Address in full.
3. Department/Branch/Section where last employed.
4. Post held with Ticket No. or Serial No., if any.
5. Date of appointment.
6. Date and cause of termination of service.
7. Total period of service.
8. Amount of wages last drawn.
9. Amount of gratuity claimed.
I was rendered totally disabled as a result of
[Here give the details of the nature of disease or accident]
The evidences/witnesses in support of my total disablement are as follows:

[Here give details]

Payment may please be made in cash/open or crossed bank cheque.

As the amount of gratuity payable is less than rupees one thousand, I shall request you to arrange for payment of the sum due to me by Postal Money Order at the address mentioned above after deducting postal money order commission therefrom.

Place....

Yours faithfully,

Date.....

Signature/Thumb impression

of the applicant employee.

Note.-1. Strike out the words not applicable.

2. Strike out paragraph or paragraphs not applicable."

16. This provision in the considered opinion of this court, is mandatory and the reason behind it is that the aforesaid Form 'I' prescribes certain statements/information furnished by the retired employee to the employer. These are not the simple statements/information, but, this is in the form of an undertaking, which is given to the employer. Apart from the information, the undertaking is also to be given that ?in an event, if the petitioner is disabled, as a result of some disease or accident and the evidences and witnesses are also to be given in case of total disablement?. It is also to be undertaken by the employee that the ?payment may please be made in cash/open or crossed bank cheque'.

17. Rule 7 of the U.P. Payment of Gratuity Rules, 1975(hereinafter referred as 'Rules,1975') is reproduced herein below;

"7. Application For gratuity Section 7.-(1) An employee who is etigible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from dne date the gratuity became payable, in Form 'T' to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity wider the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within thirty days from the date the gratuity became payable to him, in From 'y to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso in sub-section (1) of Section 4 shall apply, ordinarily within one year from the date the gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the period of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such conunencement.

5) An application for payment of gratuity filed after the expiry of the period specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgment due"

18. When this court examines the matter, it is apparent that the petitioner has claimed that he has made an application, on 11-10-2007, for payment of all the retiral dues, whereas this has specifically been denied by the employer-respondent corporation in paragraph no. 5 of the Supplementary Affidavit that no such application has ever been received in the office of the Managing Director.

19. There is no assertion all over in the writ petition that such application is submitted in the year 2007 by the petitioner to the respondent-corporation and as per the submission of learned counsel for the respondent-corporation, all the formalities were fulfilled in the year 2014 and the retiral dues were paid in the year,2014 itself.

20. Section 7(2) of the 'Act, 1972' fastens the liability upon the employer to determine the amount of gratuity and further to give a notice in writing to the person, who is entitled for gratuity and the same has also to be informed to the controlling authority. Section 7(2) of the 'Act,1972' reads as under :-

"7. Determination of the amount of gratuity.-(1)….

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined."

21. The petitioner has taken no specific pleading in all over the writ petition regarding non compliance of the mandate of section 7(2) of the ?Act,1972?, by the employer, whereas, upon a question asked by the court, the counsel for the respondents has stated that though the amount of gratuity has been determined and the same has also been intimated to the controlling authority, but, what is lacking is that the notice to the empoyee/petitioner, has not been furnished. The provision is very obvious in it's term that there are three stages of the mandate of Section 7(2) of the 'Act, 1972'. First that the employer shall determine the amount of gratuity; second is that a notice shall be given in writing to the person, who is entitled for such gratuity and third is that the computation of gratuity shall also be brought into the notice of the controlling authority. What is apparent is that the procedure as prescribed under the provision of Section 7(2) of the 'Act,1972' has not properly been undertaken, as no notice has been given to the petitioner by the employer deparatment.

22. It is trite law that retiral benefits are not a bounty to be distributed by the Government to its employees after their retirement, but these are valuable rights and property in the hands of the retired employees. In fact, non-payment of retiral dues is the harassment of the retired employee,

who rendered his services with dedication and devotion, and if the retiral dues are paid with inordinate delay, suitable interest in a compensatory nature shall suffice the purpose so as to solace harassed employee. The procedure established by law, in fact, does not permit someone to escape from any lawful duty, causing injury to the person, who is entitled to some lawful dues.

23. This Court is aware of the law rendered in the case of **State of Kerala Vs. M. Padmanabhan Nair, reported in (1985) 1 SCC 429**. The relevant paragraph of the judgment is extracted as under:-

"1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment [to the employees)."

24. The Hon'ble Apex Court, while dealing with identical issue, has held in the abovenoted case that payment of post terminal dues are the valuable rights and property and an unreasonable delay in such payment creates liability to penal interest.

25. The law rendered in the case of **Delhi Development Authority Vs. Skipper Constructions**, reported in **1994(23) ALR 40 (SC)**, the Hon'ble Supreme Court, has held as under:-

"A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not mean to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they de grind steadily and grind well and truly. The Justice system cannot be allowed to become soft, supine and spineless."

26. It has been held by the Hon'ble Apex Court that no procedure can be left to be open to permit anyone to delay or defeat just retribution, meaning thereby that if things are not undertaken within a reasonable period of time and extraordinary delay is caused, the person standing at the other end should not be left to suffer. The employer is always on the upper hand, and a retired employee, in case of unreasonable non-payment of the retiral dues, suffers hard and the interest for such delay would compensate.

27. In another Judgment rendered in the case of **D.D. Tewari (Dead) through Legal Representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**, reported in **(2014) 8 SCC 894**, it has been held that retiral dues are valuable right of the retired employee, and any culpable delay in settlement or disbursement must visit with penalty of payment of interest.

28. I have also considered the law rendered by the Hon'ble Apex Court in the case of **H.Gangahanume Gowda Vs Karnataka Agro Industries Corpn. Ltd.** reported in **(2003) 3 SCC 40**, wherein paragraph no. 7, it has been held that as soon as gratuity becomes payable, the

employer is under obligation to determine the amount of gratuity and furnish the notice in writing to the person to whom the gratuity is payable.

29. The another issue is that whether the petitioner is entitled for payment of the benefits of the recommendations of Sixth Pay Commission ? The government order dated 26.03.2010 provides that the benefits of recommendation of Seventh Pay Commission shall also be available to the employees of the respondent-corporation.

30. Clause 2 of the government order dated 26-03-2010 is quoted hereinunder:-

"2- (1) उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि सार्वजनिक उद्यम अनुभाग-1 के शासनादेश संख्या-1105/44-1-2009-77/09, दिनांक 16 अक्टूबर, 2009 में निहित व्यवस्था के कम में सार्वजनिक उद्यम अनुभाग / के कार्यालय ज्ञाप दिनांक 06 नवम्बर, 2009 द्वारा गठित अधिकृत समिति की संस्तुतियों पर लिये गये निर्णय के अनुसार उ०प्र० राज्य सेतु निगम लिमिटेड के नियमित एवं पूर्णकालिक कार्मिकों को उपर्युक्त शासनादेश दिनांक 16 अक्टूबर, 2009 के प्रस्तर (2) (क) में निहित प्राविधान के अनुरूप संलग्न तालिका के अनुसार
पुनरीक्षित वेतन संरचना में वेतन बैण्ड एवं ग्रेड वेतन दिनांक 01 जनवरी, 2006 से परिकल्पित आधार पर आगणित करते हुये उसका वास्तविक लाभ तात्कालिक प्रभाव से अनुमन्य कराये जाने की स्वीकृति इस प्रतिबन्ध के अधीनं प्रदान की जाती है कि इससे आने वाले 5 अतिरिक्त व्ययभार को निगम द्वारा अपने स्रोतों से वहन किया जायेगा और इस हेतु कोई शासकीय अनुदान देय न होगा"

31. From bare perusal of the aforesaid provision, it is apparent that the state government consciously took the decision that the benefit of the recommendations of the Sixth Pay Commission will be given with immediate effect, on computing the aforesaid benefit notionally, since 01-01-2006. The govt. order dated 26-03-2010 is not under challenge, in this writ petition and even the petitioner has also failed to demonstrate any order, wherein the order dated 26-03-2010 has ever been quashed by any of the court or authority. The petitioner has been retired on 31-07-2007 and as per the stand of respondent-corporation, the notional benefits have been provided as per the decision taken by the state vide issuing the government order dated 26-03-2010, to the regular and full time employees.

32. It's long settled law that a thing should be done in a manner prescribed and not otherwise, and so far as the issue with respect to payment of recommendations of Sixth Pay Commission is concerned, the government order dated 26-03-2010, which is still intact, prescribes that the benefit of the Sixth Pay Commission shall be provided with immediate effect, meaning thereby i.e. from the date of the issuance of the government order dated 26-03-2010 and it further says that the notional benefits shall also be considered since January,2006. The admitted position is that the benefit of recommendations of the Sixth Pay Commission has notionally been granted to the petitioner and since the petitioner was retired in the year, 2007, therefore, the benefit of the govt. order dated 26.03s.2010 would not be available to the petitioner, in totality.

33. So far as the reliance is placed by the petitioner upon the law rendered by the Hon'ble Apex Court in the case of Balbir Singh Turn(Supra) is concerned, the same would not applicable in the facts and circumstances of the present case, as in the aforesaid matter, which went upto the Hon'ble Apex Court, the executive order was under challenge, by which, the benefit of the recommendations of the Sixth Pay Commission to the Central Government Employees were declined, whereas the government order dated 26-03-2010 has never been challenged and declared nullity.

34. In view of the above, this court finds no illegality in the order of rejection dated 02-03-2016, to the extent of the denial of the actual benefits of the recommendations of the Sixth Pay Commission to the petitioner, since 01-01-2006.

35. Ergo, the writ petition is **partly allowed**. The order impugned dated 02-03-2016 is hereby quashed to the extent of the decision of the respondent authority for non payment of the interest, on the delayed payment of the gratuity and the leave encashment.

36. The competent authority is directed to make payment of interest on the delayed payment of post terminal dues (gratuity and leave encashment), with interest of 7% per annum, to the petitioner, within period of eight weeks

37. No order as to costs.

(2026) 2 ILRA 521
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.02.2026

BEFORE

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

Writ A No. 14138 of 2022

Akhtar Ali **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Permissibility of framing the charge and holding enquiry against the filing of writ petition under Article 226 of the Constitution on the strength that it was filed without getting permission of Nagar Ayukt.
(2) Legality of dismissal order passed on the strength of enquiry held without giving sufficient notice to answer the charge-sheet and without intimating date, time and place of inquiry and without adopting the due process of examining and cross examining the witnesses.

Headnotes

(A) Service law – Constitution of India – Article 226 – Rule of law – Right to approach the High Court by filing writ petition – Restriction imposed to it – In the charge-sheet, fourth charge was

framed against filing of writ petition under Article 226 of the Constitution on the strength that it was filed without getting permission of Nagar Ayukt – Permissibility : (E-1)

Held : If it were held that an employee must seek permission from his employer, before approaching us in our jurisdiction under Article 226 of the Constitution, it would shake the very foundations of the rule of law. In fact, this kind of insistence, by the employer, is an act which prejudices and interferes with the due course of judicial proceedings, competently brought by any citizen, including an employee against his employer or an Authority of the State which constitutes criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 **–** A charge of this kind must, therefore, neither be permitted to be framed nor inquired into in departmental proceedings. [Para 21 and 23]

(B) Service law – Dismissal – Disciplinary enquiry – Principle of natural justice – Applicability – Charge of corruption and embezzlement –Burden to prove the charge – Duty of Establishment – No sufficient notice to answer the charge-sheet was given – No intimation of date, time and place for holding the inquiry was given – No due process of examination and cross examination of witnesses was adopted during inquiry – Effect : (E-1)

Held : There is not the slightest mention of the basic imputations, in what manner, where and when the loss was caused so as to afford the petitioner sufficient notice to answer this charge-sheet as well. We, therefore, find and hold that the charge-sheet dated 01.11.2018 lacks essential imputations that could enable the petitioner to answer the second charge-sheet, carrying as it does, a serious charge. We, therefore, hold that this charge-sheet, too, is vitiated. [Para 24]

Held further : In a case where a major penalty may be imposed, the inquiry officer or Tribunal must fix a date, time and venue for holding the inquiry and intimate the Establishment as well as the employee of the date, time and place so fixed **–** At the appointed date, time and venue, the inquiry officer must not assume the role of an officer of the Establishment, even if he is one, but don the mantle of an impartial arbiter. He must require the Establishment, in the first instance, to prove the charge or charges against the employee carried in the charge-sheet by leading evidence, both documentary and oral, with a right to the employee to cross-examine the Establishment's witnesses. If the Establishment are able to discharge their burden, the employee is to be called upon to enter defence and produce both documentary and oral evidence in support, if he so chooses. If he produces witnesses, the Establishment's presenting officer can cross-examine the employee's witnesses. If the employee does not produce any evidence, the Establishment's burden, to prove the charges in the first instance, cannot be relieved. [Para 26]

Case Law Cited

Shankar Lal Sharma vs. M.S. Bisht, AIR 1956 All 160; Pratap Singh and another vs. Gurbaksh Singh, AIR 1962 SC 1172; State of Uttar Pradesh and others vs. Saroj Kumar Sinha, (2010) 2 SCC 772; Roop Singh Negi vs. Punjab National Bank and others, (2009) 2 SCC 570; State of Uttaranchal and others vs. Kharak Singh, (2008) 8 SCC 236; State of U.P. and another vs. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB); Smt. Karuna Jaiswal vs. State of U.P., 2018 (9) ADJ 107 (DB) (LB); State of U.P. vs. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB) **– referred to.**

List of Acts

Uttar Pradesh Mahapalika Service Rules, 1962 – Rule 11, 31, 32 and 35; Contempt of Courts Act, 1971 – Section 2(c).

List of Keywords

Dismissal, Corruption, Embezzlement, First Information Report, Disciplinary proceeding, Principle of natural justice, Preliminary enquiry, Charge-sheet, Prior approval, Permission, Departmental appeal, Rule of law, Criminal contempt, Examination of witnesses, Cross-examination.

Case Arising From

Order of Nagar Ayukt dated 27.06.2019 dismissing the petitioner and Order of appellate authority dated affirming the dismissal order.

Appearances for Parties

Advs. for the Petitioner : Anwar Hussain
Advs. for the Respondents : Sharad Chandra Upadhya, Pankaj Srivastava

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

1. This writ petition is directed against an order of the Nagar Ayukt, Nagar Nigam Meerut dated 27.06.2019, dismissing the petitioner, a Clerk, from service, after holding disciplinary proceedings. Also under challenge is the order of the Commissioner, Meerut Division, Meerut, dismissing the petitioner's appeal against the last mentioned order of the Nagar Ayukt, and affirming his dismissal from service.

2. The petitioner was employed as a Senior Clerk in the service of the Nagar Nigam Meerut. A complaint was laid against him by a former Corporator, Ajay Gupta, on 16.08.2017, relating to allegations of corruption and embezzlement, as it appears. The complaint, somehow, was taken cognizance of by the Commissioner of the Division, who constituted a three Member Committee to inquire into the matter. Apparently, the aforesaid inquiry, that was directed by the Commissioner, was a preliminary inquiry. Pending this inquiry, a First Information Report (FIR) was lodged against the petitioner, giving rise to Case Crime No.34 of 2018, under Section 409 IPC, Police Station Dehli Gate, District Meerut. Apart from the FIR, that was lodged by the Nagar Swasthya Adhikari on 20.02.2018, the petitioner was suspended pending inquiry vide order dated 08.03.2018, on ground that he was not cooperating with the inquiry undertaken under orders of the Divisional Commissioner. The inquiry apparently bears reference to the preliminary inquiry that was then afoot under directions of the Commissioner of the Division.

3. Upon suspension from service, a regular inquiry was initiated against the petitioner and the Chief Finance and Accounts Officer, Nagar Nigam, Meerut was appointed the Inquiry Officer. The petitioner was issued a charge-sheet dated 11.07.2018. According to the petitioner, the charge-sheet did not mention evidence by which the charges were proposed to be proved nor the witnesses. It is averred that the charge-sheet has not been drawn up in accordance with Rule 31 of the Uttar Pradesh Mahapalika Service Rules, 1962 (for short, 'the Rules of 1962'). Upon receipt of the charge-sheet, the petitioner vide letters dated 20.07.2018, 31.07.2018, 20.08.2018 and 29.08.2018 requested the Inquiry Officer for provision of documents, so that he could submit a reply to the charge-sheet. However, the documents in support of the charges were never supplied. Deprived of this opportunity, the petitioner submitted a reply dated 24.09.2018, answering the charge-sheet dated 11.07.2018. Objection in the reply as to validity of the charge-sheet was also taken in that, that it was issued without prior approval of the Nagar Ayukt.

4. Next, the Nagar Ayukt issued a second charge-sheet dated 01.11.2018. On the basis of whatever materials were collected by the Commissioner of the Division in the preliminary inquiry held under his directions, this charge-sheet imputed to the petitioner, causing the Nagar Nigam a loss to the tune of Rs.14,89,600/-. He was asked to submit his reply to the charge-sheet dated 01.11.2018 (for short, 'the second charge-sheet) within three days. This charge-sheet too, according to the petitioner, was not drawn up in compliance with Rule 31 of the Rules of 1962. The petitioner vide letters dated 06.11.2018 and 11.12.2018 asked for the provision of a copy of the inquiry

report, which apparently refers to the preliminary inquiry report that the Commissioner secured through the Committee set up by him.

5. It is the petitioner's case that instead of providing a copy of the preliminary inquiry report, he was furnished a gist of the said report vide letter dated 22.12.2018. The petitioner vide letter dated 08.01.2019 asked for the furnishing of a complete copy of the preliminary inquiry report dated 16.02.2018, but to no avail. Deprived of the particulars of the charge against him, which was based on the preliminary inquiry report, the petitioner submitted, as he says, a reply to the second charge-sheet on 04.02.2019. In his reply, it was asserted that the charge-sheet had been issued without annexing a copy of the preliminary inquiry report or evidence in support of the charge, sought to be relied upon by the respondents. The charge-sheet was, therefore, assailed as illegal. Time and again, it was also asserted by the petitioner that there was no mention in the charge-sheet that he had a right to cross-examine witnesses and produce witnesses in his defence. There are other objections of technical detail raised to the two charge-sheets, but we need not mention them.

6. Suffice it to say that the petitioner denied the charges. It is the petitioner's case that the inquiry that was held did not intimate to the petitioner any date, time and venue of inquiry and the Inquiry Officer proceeded in violation of principles of natural justice. There is an assertion to this effect in paragraph No.33 of the writ petition. It is pleaded in paragraph No.35 of the writ petition that the Inquiry Officer did not adhere to Rule 31 of the Rules of 1962, which prescribes a detailed procedure, in case a major penalty is in contemplation, to be followed by the Inquiry Officer when disciplinary proceedings are taken against a servant of the Mahapalika. This procedure requires, apart from serving the charge-sheet drawn up in the manner prescribed, opportunity to be provided to the delinquent employee to examine and cross-examine witnesses. But, no such procedure was followed.

7. It is also averred in paragraph No.37 of the writ petition that Rule 32 of the Rules of 1962 was observed in breach by the respondent Mahapalika in that, that a copy of the inquiry report along with the show cause notice was not served upon the petitioner before final orders in the disciplinary matter, dismissing him from service, were made. The petitioner was dismissed from service, on the basis of the Inquiry Officer's report, by the Disciplinary Authority vide order dated 27.06.2019. The petitioner challenged this order through a departmental appeal dated 12.07.2019 under Rule 35 of the Rules of 1962 before the Commissioner of the Division. The appeal remained pending and the petitioner had to move this Court by means of Writ-A No.15517 of 2021 in order to seek a direction to the Commissioner to decide his appeal expeditiously. The directions were issued in the aforesaid writ petition vide order dated 02.11.2021. The order of this Court was served upon the Divisional Commissioner by registered post on 20.11.2021. Those directions to decide the appeal were not complied with by the Commissioner. This compelled the petitioner to move an application for contempt, being Contempt Application (Civil) No.1539 of 2022, where this Court granted a further time of three months to the Commissioner to comply with the order dated 02.11.2021 passed in Writ-A No.15517 of 2021.

8. It is averred in paragraph No.31 of the writ petition that the Commissioner, after the order dated 24.03.2022 made in the contempt application, proceeded to reject the petitioner′s appeal in haste vide order dated 23.05.2022.

9. Aggrieved by the orders of the Disciplinary Authority and the Appellate Authority, this writ petition has been instituted under Article 226 of the Constitution.

10. The parties having exchanged affidavits, the writ petition was admitted to hearing on 12.12.2024. Later on, after hearing parties, judgment was reserved.

11. Heard Mr. Anwar Hussain, learned Counsel for the petitioner, Mr. Sharad Chandra Upadhyay, learned Standing Counsel, appearing on behalf of respondent Nos. 1 and 2 and Mr. Pankaj Srivastava, learned Counsel, appearing for respondent No. 3.

12. The petitioner has been punished with the imposition of a major penalty - dismissal from service - after holding disciplinary proceedings. The foremost question to be seen is if the procedure, in holding the inquiry as well as the entirety of disciplinary proceedings culminating in the order of dismissal from service impugned, is one that is in accordance with the rules, and, above all, in accordance with the rules of natural justice applicable to proceedings that are involved here.

13. The service conditions of the petitioner, who is an employee of the Mahapalika, not covered by Rule 11 of the Rules of 1962, are governed by the said rules. Rules 31 and 32 of the Rules of 1962 read:

*"**31. Procedure for disciplinary proceedings.**-(1) No order (other than an order based on facts which have led to his conviction on a criminal charge) of dismissal, removal or reduction in rank (which includes reduction to a lower post or time-scale or to a lower stage in a time-scale but excludes the reversion to a lower post of a person who is officiating in a higher post), shall be passed on any servant of the Mahapalika unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged and which shall be so clear and precise as to give sufficient indication to the charged servant of the facts and circumstances against him. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called as he may wish provided that the officer conducting the inquiry may for sufficient reason to be recorded in writing refuse to call a witness. Neither the Mahapalika nor the servants of the Mahapalika shall be entitled to be represented by a counsel. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The officer conducting the enquiry may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged servant.*

(2) This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing

exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged.

(3) This rule shall also not apply where it is proposed to terminate the employment of either a temporary servant, or of a probationer whether during or at the end of the period of probation. In such cases a simple notice of termination, which in the case of temporary servant, must conform to the conditions of his service, will be sufficient.

32. (1) After an inquiry against a servant has been completed and after the punishing authority has arrived at provisional conclusions in regard to the penalty to be imposed, the servant charged shall, if penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under Rule 31 excluding the recommendations, if any, in regard to punishment made by the officer conducting the inquiry and asked to show cause by a particular date, which affords him reasonable time, why the proposed penalty should not be imposed on him.

Provided that if for sufficient reasons the punishing authority disagrees with any part or whole of the proceedings prepared under Rule 31 the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be communicated to the officer or servant charged along with the copy of the proceedings under Rule 31.

(2) Every order of dismissal, removal or reduction in rank shall be in writing and shall specify the charge or charges brought, the defence, if any, and the reasons for the order.″

14. Here, two charge-sheets were issued to the petitioner on the basis of which disciplinary proceedings were drawn. The first charge-sheet dated 11.07.2018 must be quoted for every word of it:

"कार्यालय मुख्य वित्त एवं लेखाधिकारी,
नगर निगम, मेरठ।

पत्रांक:- 97/लेखा विभाग/18 दिनांक:- 11-07-2018

श्री अख्तर अली
लिपिक (निलम्बित)
सम्बद्ध केन्द्रीय कार्यालय,
नगर निगम, मेरठ।

वित्तीय वर्ष 2011-12 से वित्तीय वर्ष 2015-16 तक स्वास्थ्य विभाग में चूना सहित विभिन्न सामग्रियों के क्रय में बरती गई अनियमितता एवं भ्रष्टाचार के सम्बन्ध में मण्डलायुक्त महोदय के निर्देशन में चल रही जांच के दौरान सम्बन्धित पत्रावलियों व अन्य अभिलेखों को उपलब्ध नहीं कराया गया जबकि आप आलोच्य अवधि में स्टोर लिपिक के पद पर कार्यरत थे। अतः जांच में सहयोग न करने तथा पत्रावलियों व अभिलेखों को उपलब्ध न कराये जाने के कारण नगर आयुक्त महोदय के आदेश संख्या 1032/आ०लि०-न०आ०-कैम्प/18 दिनांक 08 मार्च, 2018 के द्वारा आपको निलम्बित करते केन्द्रीय कार्यालय से सम्बद्ध किया गया

है। उक्त निलम्बन आदेश में अरोप-पत्र निर्गत कर जांच करने हेतु अधोहस्ताक्षरी को जांच अधिकारी नामित किया गया है।

अतः उक्त के क्रम में निर्देशित किया जाता है कि आप अपने ऊपर लगे आरोपों के सम्बन्ध में निम्नांकित बिन्दुओं के सम्बन्ध में अपनी सुस्पष्ट एवं तथ्यात्मक आख्या एक सप्ताह के अन्दर अधोहस्ताक्षरी को उपलब्ध कराना सुनिश्चित करें :-

1. मा० आयुक्त, मेरठ मण्डल, मेरठ द्वारा करायी जा रही जांच में सहयोग न करने।

2. जांच से सम्बन्धित पत्रावलियों/अभिलेखों को प्रस्तुत न करने।

3. अनुशासनहीनता बरतते हुए बिना अधोहस्ताक्षरी की अनुमति के दिनांक 19.02.2018 से मुख्यालय छोड़ने व अनियमित रूप से अवकाश पर रहने।

4. <u>बिना अनुमति मा० न्यायालय में वाद योजित करने।</u>

उपरोक्त बिन्दुओं के सम्बन्ध में सुस्पष्ट एवं तथ्यात्मक आख्या उपलब्ध न कराने पर यह समझा जायेगा कि आपको इन आरोपों के सम्बन्ध में कुछ नहीं कहना है और जिन आरोपों में आपको निलम्बित किया गया है वो आपको स्वीकार हैं, यह मानते हुए अधोहस्ताक्षरी द्वारा आपके आरोपों की पुष्टि करते हुए जांच आख्या नियुक्ति अधिकारी/नगर आयुक्त महोदय को प्रेषित कर दी जायेगी जिसका उत्तरदायित्व आपका होगा।

मुख्य वित्त एवं लेखाधिकारी
नगर निगम, मेरठ।

प्रतिलिपि:- नगर आयुक्त महोदय को अवलोकनार्थ प्रेषित।

मुख्य वित्त एवं लेखाधिकारी
नगर निगम, मेरठ।"
(emphasis by Court)

15. Likewise, the second charge-sheet dated 01.11.2018 is also required to be quoted:

<u>"रजिस्टर्ड</u>
कार्यालय नगर आयुक्त,
नगर निगम, मेरठ।

पत्रांक:- 668/ आ०लि०-न०आ०/2018 दिनांक:- 01-11-2018

<u>आरोप पत्र - 2</u>

श्री अख्तर अली
लिपिक (निलम्बित)
सम्बद्ध केन्द्रीय कार्यालय,

नगर निगम, मेरठ।

आपके द्वारा नगर निगम के स्वास्थ्य विभाग में स्टोर लिपिक के पद पर तैनात अवधि वर्ष 2011-12 से वर्ष 2015-16 तक क्रय की गई चूना, मैलाथियाँन तथा अन्य सामग्रियों के क्रय व भण्डारण प्रक्रिया में बरती गयी वित्तीय अनियमितताओं की जांच मा० मण्डलायुक्त महोदय, मेरठ मण्डल, मेरठ के द्वारा, श्री अजय गुप्ता निवासी सागर विला, आनन्दपुरी, मेरठ के शिकायती पत्र दिनांक 16.08.2017 के क्रम में की गई। जांच में यह पाया गया है कि "आलोच्य अवधि में आपके द्वारा बरती गई वित्तीय अनियमितताओं के कारण नगर निगम, मेरठ को न्यूनतम 1489600/- रू० की वित्तीय क्षति हुई है।"

उक्त के क्रम में तीन दिवस के अन्दर साक्ष्य सहित अपना पक्ष प्रस्तुत करें कि "आपके द्वारा की गई वित्तीय अनियमिताओं के लिए अनुशासनात्मक कार्यवाही करते हुए अंकन 1489600/- रु० की वसूली आपसे, क्यों न कर ली जाये।" साक्ष्य के रूप में जांच आख्या की छाया प्रति इस पत्र के साथ प्रेषित है।

नगर आयुक्त,
नगर निगम, मेरठ।

प्रतिलिपि :- मा० आयुक्त महोदया, मेरठ मण्डल, मेरठ को अवलोकनार्थ प्रेषित।

ह० अपठनीय
नगर आयुक्त,
नगर निगम, मेरठ।"

16. A look at Rule 31 of the Rules of 1962 shows that it is mandatory in the holding of disciplinary proceedings that the grounds upon which it is proposed to take action, be reduced to the form of a definite charge or charges, which have to be so clear and precise so as to give sufficient indication to the employee of the facts and circumstances appearing against him. The rule, under reference, embodies nothing more than the requirements of natural justice and procedure salutary. A charge, after all, need not be in a particular form so far as disciplinary proceedings or for that matter, any administrative proceedings are concerned as distinguished from proceedings in a Court of law. But, it is essential that the charge must convey imputations on the foot of which action is proposed to be taken in terms that are intelligible enough for the employee to understand all the necessary particulars of the allegations sufficiently, in order to enable him to effectively answer the charge.

17. A look at the first charge-sheet would show that the four charges, mentioned in the first charge-sheet, are mere labels of the charges without the substance of imputations being there. It is not mentioned as to which of the records the petitioner did not make available to the inquiry officers holding the preliminary inquiry under orders of the Divisional Commissioner. There is a vague allegation that the petitioner did not make available files and documents relating to the inquiry being undertaken. Likewise, there is the first charge that the petitioner did not cooperate with the inquiry undertaken under orders of the Divisional Commissioner; in what precise manner and by what acts or omissions, when and where, is not specified. In the absence of these, what,

where and when about the charges, the charges are hollow incantations with no answerable substance to them.

18. The third charge mentioned in the first charge-sheet dated 11.07.2018 carries somewhat of the necessary particulars saying that from 19.02.2018 to an unspecified date the petitioner left headquarters without permission or seeking leave of the Nagar Ayukt. Again, even if this were regarded as a charge, which could be answered and inquired into, it is one of the four charges and certainly not grave enough to invite the imposition of a major penalty. The major penalty would have been imposed on the other charges based on findings of the inquiry officer.

19. The first of the two charges, we have already shown to be in terms that cannot lead us to a conclusion that those are "answerable charges" and, therefore, valid.

20. The fourth charge is absolutely illegal; in fact, contumacious. The charge says that the petitioner instituted an action before this Court without permission of the Nagar Ayukt. Elsewhere, it has come that the proceedings instituted by the petitioner were before this Court and it was a writ petition challenging an FIR that the respondents had lodged against him.

21. Now, if it were held that an employee must seek permission from his employer, before approaching us in our jurisdiction under Article 226 of the Constitution, it would shake the very foundations of the rule of law. In fact, this kind of insistence, by the employer, is an act which prejudices and interferes with the due course of judicial proceedings, competently brought by any citizen, including an employee against his employer or an Authority of the State which constitutes criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971. A reference, in this context, may be made to a Bench decision of this Court in **Shankar Lal Sharma v. M.S. Bisht, AIR 1956 All 160**, where the facts and holding read:

"*1. Sri Shankar Lal Sharma, an employee in the Public Works Department of the Uttar Pradesh, moved in this Court an application for the grant of a writ against Sri M.S. Bisht, Chief Engineer, P.W.D., U.P., Lucknow, praying for a direction to the opposite party to forward to the Public Service Commission, U.P. his application for employment in some higher post, which he had sent to the said Commission through the opposite party. While the writ petition was pending in this Court Sri M.S. Bisht purporting to act in accordance with certain directions contained in Government Order No. O-3237/II-B-32-52, dated December 24, 1952, asked for an explanation from Sri Shankar Lal as to why he had submitted a writ application in the High Court of Judicature at Allahabad (Lucknow Bench) Lucknow. It was clearly an attempt to hold out a threat of departmental action against an employee of the Government, who had approached the High Court for what he considered to be the protection of his rights under the Constitution. This matter was brought to the notice of the Court by a petition filed by Sri Shankar Lal and thereupon a notice was issued to Sri N.S. Bisht to show cause why action should not be taken against him for contempt of court.*

2. Sri M.S. Bisht has filed an application explaining the circumstances under which he took the action complained of and disclaiming all intention of intimidating the applicant. He has tendered an unqualified apology to this Court. With his application he has appended a copy of the Government order.

3. There is no doubt that if any kind of threat or any action which may amount to such threat is held out to a person, who has approached the civil courts for a redress of such grievances as he may consider that he has, with a view to induce him to forego the assistance of the civil courts, the action amounts to a contempt of court. It is a clear interference with the right of every citizen who claims redress from the civil courts for any grievance that he may have. No kind of Government order in this respect can excuse such an action. It is true that the order of the Government to which reference is made does contain some passages from which it may be inferred that if any person approaches the civil courts, he may in certain circumstances, be called upon to submit an explanation. We are not satisfied that in the present case those conditions were fulfilled, but in any case even if they were that would be no justification for an action to be taken and we cannot allow any impediment to be placed in the way of a citizen seeking redress from the courts of law.″

22. In **Pratap Singh and another v. Gurbaksh Singh, AIR 1962 SC 1172**, it was held by the Supreme Court (Raghubar Dayal, J. dissenting):

"9. Assuming that the circular letter contained certain executive instructions, what then is the position? It should perhaps be made clear at the very outset that the question before us is not so much the validity of the circular letter in the abstract, but the propriety of the action taken against the respondent on the basis of the circular letter at a time when his suit was awaiting decision in the Court of the Senior Subordinate Judge at Amritsar. It must not, however, be assumed that we are holding the circular letter to be valid in the sense that compliance with it will, in no circumstances, amount to contempt of court. We do not come to any such conclusion. The argument before us is that the circular letter did not impose an absolute ban on a government servant seeking redress of his grievances arising out of his employment or service conditions in a court of law; it is submitted that all that it did was to ask government servants to exhaust first the normal official channels of redress before proceeding to a court of law. The emphasis, it is stated, is on propriety and discipline in the conduct of a government servant; and it has been submitted that judged from that point of view, the circular letter cannot be said to constitute an interference with the course of justice in any court of law. Theoretically and in the abstract, this may be true; and if the circular letter merely lays down that ordinarily a government servant should exhaust his departmental remedies before going to a court of law, no objection can be taken to it. Speaking generally, a government servant does not ordinarily go to court, unless and until he fails to get what he considers to be justice from the departmental authorities. But we have to consider in this case a somewhat different problem, namely, the action taken against the respondent during a pending litigation, as though going to a court of law before exhausting departmental remedies must in all cases be visited with punishment.

10. What, after all, is contempt of court? "To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation". (Oswald's Contempt of Court, 3rd Edn., p. 6). We are concerned in the present case with the second part, namely, "to interfere with or prejudice parties litigant during the litigation". In the case under our consideration the respondent had instituted a suit in the Court of the Senior Subordinate Judge, Amritsar, in respect of his grievance that a certain sum of money was being illegally deducted from his salary. On behalf of the respondent it was alleged that he had

no further departmental remedies to exhaust, inasmuch as the order by which a part of his salary was being deducted was a final order made by the Punjab Government after considering the respondent's explanation. On behalf of the appellants it has been contended that the respondent had still a further remedy by way of an appeal to the Governor. That is a matter with which we are not really concerned, as it relates to the question whether the respondent had or had not violated the terms of the circular letter. We are concerned with the action that was taken against the respondent on the footing, right or wrong, that he had violated the instructions of the circular letter. His suit was pending in the Court of the Senior Subordinate Judge, Amritsar. When the summons in the suit was served on the Government, the Under-Secretary to the Government, drew the attention of one of the appellants to the circular letter and asked the latter to intimate to the Government what action he proposed to take against the respondent. Appellant Pratap Singh then forwarded the memorandum of the Under-Secretary to the Conservator of Forests, South Circle, and in his forwarding endorsement Pratap Singh directed that the respondent should be proceeded with in accordance with the instructions in the circular letter and that a copy of the proceedings recorded and orders passed should be forwarded to him. It appears, therefore, that appellant Pratap Singh was not merely content with forwarding the memorandum of the Under-Secretary. He directed his subordinate officer to take action against the respondent. In accordance with that direction a proceeding was drawn up against the respondent and the appellant Bachan Singh was asked to enquire into it. The appellant Bachan Singh then drew up a charge-sheet and in that charge-sheet it was stated that the respondent had gone to a court of law before exhausting all his departmental remedies. What would be the effect of these proceedings on the suit which was pending in the Court of the Senior Subordinate Judge, Amritsar? From the practical point of view, the institution of the proceedings at a time when the suit in the Court of the Senior Subordinate Judge, Amritsar, was pending could only be to put pressure on the respondent to withdraw his suit, or face the consequences of disciplinary action. This, in our opinion, undoubtedly amounted to contempt of court. There are many ways of obstructing the court and "any conduct by which the course of justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts". (Oswald's Contempt of Court, 3rd Edn., p. 87). The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of court, even though they were merely carrying out the instructions contained in the circular letter.

11. We have been referred to a large number of decisions dealing with various aspects of contempt of court. We consider it unnecessary to refer to them all, because it is clear to us that any conduct which interferes with or prejudices parties litigant during the litigation is undoubtedly contempt of court. There is, however, one decision which is very much in point and to which we must refer. In Shankar Lal Sharma v. M.S. Bisht in very similar circumstances it was held by the Allahabad High Court that if any kind of threat or any action which may amount to a threat is held out to a person who has approached the civil courts for a redress of his grievances, with a view to induce him to forego the assistance of the civil courts, the action amounts to a contempt of court. In that case also an employee of the Public Works Department of Uttar Pradesh moved the High

Court for the grant of a writ. While the writ petition was pending in the High Court the Chief Engineer, PWD., U.P., purporting to act in accordance with certain directions contained in a circular letter asked for an explanation from the employee as to why he has submitted a writ application to the High Court. The learned Judges expressed the view that there was no doubt that the action taken by the Chief Engineer in accordance with the instructions contained in the circular letter amounted to a threat with a view to induce the employee to forego the assistance of the civil courts. An unqualified apology having been tendered in the case, no further action was taken. On behalf of the appellants reliance was placed on the decision of this Court in S.S. Roy v. State of Orissa. That was a case in which a First Class Magistrate misconceiving his powers and exercising a jurisdiction not vested in him by law and without any justifying circumstances made an order under Section 144 of the Code of Criminal Procedure, by which a civil court peon was restrained from executing a warrant of arrest issued by an Additional Munsif in connection with the execution of a money decree; the Magistrate was not influenced by any extraneous consideration or dishonest motive in making the order and it was held that the Magistrate was not guilty of contempt of the Court of the Additional Munsif, because there was nothing to suggest any wilful culpability on his part. We are unable to agree with the learned advocate for the appellants that the principle of that decision should apply to the present case. The appellants in the instant case were not judicial officers who misconceived their powers. They were no doubt carrying out executive instructions given by their employer, but they carried out those instructions at a time when a civil suit was pending and they carried out the instructions in such a manner as to exert pressure on the respondent to withdraw the suit. That is the finding at which the High Court arrived and on that finding the appellants were clearly guilty of contempt of court. The decision in Webster v. Bakewell Rural District Council on which also learned advocate for the appellants relied is not in point. That was a case in which the yearly tenant of a cottage and land, adjoining a highway and forming part of a settled estate, issued a writ against the local authority for an injunction to restrain an alleged trespass on his land; the solicitor of the tenant for life wrote to the local authority with a view to arrange the matter and at the same time wrote to the tenant that the tenant for life required him to withdraw the writ, and that, if he did not comply, his tenancy would be determined. It was held that the solicitor had not committed a contempt of court. The decision proceeded on the footing that the tenant for life had the right to turn out the yearly tenant and there was nothing to prevent the tenant for life, who was the landlord, from exercising his legal rights if he did so honestly to protect the rights he had in the property.

12. We have, therefore, come to the conclusion that the appellants were guilty of contempt of the Court of the Senior Subordinate Judge, Amritsar and in awarding the sentence the High Court correctly took into consideration the circumstance that the appellants were merely carrying out the instructions contained in the circular letter. Though that circumstance does not afford a defence to the charge, it is undoubtedly a consideration relevant to the sentence.″

23. A charge that holds the act of instituting of a writ petition before this Court challenging an FIR, as appears from other material to be the case, apart from constituting criminal contempt of Court, a matter with which we are now not concerned, would render the charge void and non-est. Something that is done, if it is against the law, to an extent that it would constitute criminal contempt of Court, must not be done at all. A charge of this kind must, therefore, neither be permitted to be framed nor inquired into in departmental proceedings. We, therefore, hold that

charge no. 4, in the first charge-sheet dated 11.09.2018, is not only fit to be quashed but never to be framed against the petitioner on the basis of which a departmental inquiry may be held.

24. So far as the second charge-sheet goes, though it mentions that the preliminary inquiry, held by the Divisional Commissioner into financial irregularities during the period of the petitioner's posting from 2011-12 to 2015-16, found that the purchase of lime, malathion and other materials, as well as their storage, caused during that period financial loss to the Mahapalika to the tune of Rs. 14,89,600/-, there is not the slightest mention of the basic imputations, in what manner, where and when the loss was caused so as to afford the petitioner sufficient notice to answer this charge-sheet as well. We, therefore, find and hold that the charge-sheet dated 01.11.2018 lacks essential imputations that could enable the petitioner to answer the second charge-sheet, carrying as it does, a serious charge. We, therefore, hold that this charge-sheet, too, is vitiated.

25. That apart, what we find is that though subject to the petitioner's demand Rule 31 incorporates the necessity for the Establishment to lead oral evidence in support of the charge before it can be proved against an employee, who is to likely to be awarded a major penalty.

26. It is a salutary principle governing inquiries against employees whose tenure is protected by statute that in a case where a major penalty may be imposed, the inquiry officer or Tribunal must fix a date, time and venue for holding the inquiry and intimate the Establishment as well as the employee of the date, time and place so fixed. At the appointed date, time and venue, the inquiry officer must not assume the role of an officer of the Establishment, even if he is one, but don the mantle of an impartial arbiter. He must require the Establishment, in the first instance, to prove the charge or charges against the employee carried in the charge-sheet by leading evidence, both documentary and oral, with a right to the employee to cross-examine the Establishment's witnesses. If the Establishment are able to discharge their burden, the employee is to be called upon to enter defence and produce both documentary and oral evidence in support, if he so chooses. If he produces witnesses, the Establishment's presenting officer can cross-examine the employee's witnesses. If the employee does not produce any evidence, the Establishment's burden, to prove the charges in the first instance, cannot be relieved. In this regard reference may be made to the law laid down by the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570, State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB)** and **State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB).**

27. In the present case, it is averred in paragraph no. 33 that the inquiry proceedings were held without intimation of date, time and place for holding the inquiry.

28. It is further averred in paragraph no. 35 that the procedure envisaged for the holding of an inquiry, in a matter where a major penalty may be imposed regarding examination of witnesses and cross-examination by the other side, have not been followed. There is vague denial of these assertions in paragraphs nos. 66 and 68 of the counter affidavit without specifically saying that a

date, time and place was indeed fixed and evidence led by the Establishment to prove the charges with opportunity to the petitioner to cross-examine the Establishment's witnesses.

29. A perusal of the inquiry report dated 17.06.2019, submitted by the Inquiry Officer in this case, shows to its face, that the Inquiry Officer virtually took sides with the Establishment and assumed everything said in the charge-sheet to be proof of itself. The inquiry officer also relied upon the findings of the preliminary inquiry ordered by the Commissioner of the Division, in proof of the charges, which could never have been done.

30. A reading of the slipshod inquiry report dated 17.06.2019 submitted by the Chief Finance and Accounts Officer, Mahapalika, Meerut shows that the officer had no idea about the manner in which a departmental inquiry into charges, where a major penalty may ensue, has to be held. This would be apparent from the following findings of the inquiry officer carried in his report dated 17.06.2019:

"चूंकि श्री अख्तर के उक्त आख्या में आरोप बिन्दु के प्रतिउत्तर में कोई जवाब नही दिया गया। अतः अधोहस्ताक्षरी द्वारा पुनः पत्रांक 132 दिनांक 21.08.2018 के द्वारा आरोप पत्र दिनांक 11.07.2018 को बिन्दुवार आख्या प्रस्तुत करने के लिए नोटिस दिया गया जिसके क्रम में पुनः श्री अख्तर द्वारा पत्र दिनांक 20.08.2018 एवं दिनांक 29.08.2018 के द्वारा माननीय उच्च न्यायालय के आदेश तथा महापालिका नियमावली की धारा 31 का उल्लेख करते हुए उक्त सूचनाएं मांगी जा रही है जबकि श्री अख्तर अली आलोच्य अवधि में स्वयं नगर निगम, मेरठ के स्वास्थ्य अनुभाग विभाग में स्टोर कीपर/लिपिक के पद पर कार्यरत थे। उनके द्वारा विभिन्न पत्रों के माध्यम से मांगी जा रही समस्त सूचनायें इनके कार्य व कार्यकाल से सम्बन्धित है। किन्तु जांच अधिकारी को भ्रमित करने व जांच में सहयोग न करने की मंशा से श्री अख्तर अली द्वारा निरन्तर जांच बिन्दु से इतर अन्य बिन्दुओं पर सूचनायें मांगी जा रही है तथा अनुशासनिक कार्यवाही से सम्बन्धित अनेक शासनादेशों व नियमों का उल्लेख करते हुए जांच को प्रभावित करने का प्रयास किया जा रहा है। अवगत ही हैं कि नगर निगम में आलोच्य वर्ष 2011-12 से 2015-16 तक स्वास्थ्य विभाग में क्रय किये गये चूना, मैलाथियान व अन्य सामग्रियों के क्रय व रख-रखाव में की गई अनियमितताओं की जांच मण्डलायुक्त महोदय, मेरठ मण्डल, मेरठ के द्वारा की जा रही थी। चूंकि जांच के दायरे में लिये गये सम्पूर्ण अवधि में श्री अख्तर अली ही स्टोर लिपिक के पद पर तैनात थे। अतः जांच के समय मण्डलायुक्त महोदय को श्री अख्तर अली द्वारा सम्बन्धित अभिलेख उपलब्ध न कराये जाने तथा अभिलेखों को गायब करने के आरोप में दिनांक 19.12.2018 को थाना देहली गेट में प्रथम सूचना रिपोर्ट (एफ०आई०आर०) दर्ज करायी गई जिसके विरूद्ध श्री अख्तर अली द्वारा माच० उच्च न्यायालय में रिट याचिका संख्या 5174/2018 योजित की गई, जिसे मा० उच्च न्यायालय द्वारा दिनांक 28.02.2018 को खारिज कर दिया गया। इसी बीच मण्डलायुक्त महोदय के निर्देश पर जांच कर रहे अपर आयुक्त, मेरठ मण्डल, मेरठ द्वारा प्रश्नगत प्रकरण में श्री अख्तर अली को प्राकृतिक न्याय व नियमों के परिपेक्ष्य में पूर्ण

सुनवाई का अवसर देते हुए जांच कार्यवाही पूर्ण की गई जिसे मण्डलायुक्त महोदय द्वारा पत्र संख्या 5036 दिनांक 18.09.2018 के द्वारा कार्यालय नगर निगम, मेरठ को इस निर्देश के साथ प्रेषित किया गया कि जांच में पाये गये दोषी लिपिक श्री अख्तर अली पर कार्यवाही सुनिश्चित करें चूंकि मण्डलायुक्त महोदय की जांच एक उच्चस्तरीय समिति की जांच थी जिसमें श्री अख्तर अली को पर्याप्त सुनवाई का अवसर दिये जाने के उपरान्त आरोपों की पुष्टि की गई है। अतः इस सन्दर्भ में नियुक्ति प्राधिकारी होने के कारण आपके माध्यम से पत्र संख्या 668 दिनांक 01.11.2018 के द्वारा श्री अख्तर अली को मण्डलायुक्त महोदय, मेरठ मण्डल, मेरठ के द्वारा करायी गई जांच की जांच आख्या की प्रति के साथ आरोप पत्र-2 निर्गत कराया गया ताकि श्री अख्तर अली पर मण्डलायुक्त महोदय की जांच में पुष्ट हुए आरोप के आधार पर अंकन रू० 14,89,600/- की वसूली एवं वित्तीय अनियमितताओं को बरतने के कारण अनुशासनिक कार्यवाही के पूर्व इन्हें अपने बचाव पक्ष में एक और अवसर प्रदान किया जा सके। किन्तु श्री अख्तर अली द्वारा एक माह व्यतीत हो जाने के उपरान्त भी कोई जबाब नहीं दिया गया। अतः पुनः दिनांक 01.12.2018 को श्री अख्तर अली को अपना पक्ष प्रस्तुत करने के लिए पुनः निर्देशित किया गया। श्री अख्तर अली द्वारा अपने पत्र दिनांक 04.02.2019 के माध्यम से अरोप पत्र संख्या-2 का जो स्पष्टीकरण प्रस्तुत किया गया, वह तथ्यहीन है तथा उनके द्वारा अपने पक्ष में ऐसा कोई अभिलेखीय साक्ष्य प्रस्तुत नहीं किया गया जिससे आरोपित विन्दुओं का खण्डन होता हो।

उपर्युक्त विवेचना से स्पष्ट है कि श्री अख्तर अली द्वारा आरोप पत्र संख्या-1 के माध्यम से 4 आरोप बिन्दुओं तथा मण्डलायुक्त महोदय मेरठ मण्डल, मेरठ की जांच में श्री अख्तर अली को वित्तीय अनियमिततओं तथा नगर निगम को अंकन 14,89,600/- रूपये की वित्तीय क्षति का दोषी पाये जाने के आधार पर जारी आरोप पत्र संख्या-2 के माध्यम से लगाये गये अरोपों का दोषी पाया जाना सिद्ध होता है।"

31. The findings of the inquiry officer are based upon a procedure that is far from one that is essential to be followed in a disciplinary inquiry involving the likely imposition of a major penalty. In fact, the inquiry report is no report at all and the findings there no more than a blanket acceptance of the Establishment's case, with no evidence offered by them at the inquiry or opportunity to the petitioner to rebut it.

32. The impugned orders passed by the Nagar Ayukt and the Commissioner, Meerut Division, Meerut, in appeal, overlook these essential flaws in procedure which vitiate the departmental inquiry held as these go to the root of the matter. Also, we hold that one of the charges in the first charge-sheet, that is to say, the charge, regarding the institution of proceedings before this Court, without permission of the respondents, is manifestly illegal, void and a nullity. Upon remand even if the respondents deem it fit to take fresh disciplinary proceedings against the petitioner, the aforesaid charge or a charge to the aforesaid effect, howsoever worded, shall not be framed or inquired into by the respondents. Of course, on the other charges, it would be open to the respondents to take fresh proceedings, if they so elect, after issuing a properly drawn up charge-

sheet carrying sufficient and intelligible particulars of the charges or imputations that may enable the petitioner to understand and answer the same effectively.

33. In the event of the respondents electing to pursue fresh disciplinary proceedings, after the issue of a charge-sheet conforming to the law, the inquiry shall be held afresh strictly, in accordance with the procedure indicated in the body of this judgment relating to inquiries where a major penalty may be imposed.

34. In the circumstances of the case, not only the impugned orders, with the aforesaid liberty, are fit to be **quashed** and the petitioner reinstated in service but, the charge-sheets as well, again with the liberty indicated. In the result, the writ petition **succeeds** and is **allowed**. The impugned orders dated 29.06.2019 passed by the Nagar Ayukt, Nagar Nigam, Meerut and the impugned appellate order dated 23.05.2022 passed by the Commissioner, Meerut Division, Meerut are hereby **quashed**. The charge-sheet dated 11.07.2018 as well as the one dated 01.11.2018, both issued by the Nagar Ayukt, Nagar Nigam, Meerut, are hereby quashed. The petitioner shall be reinstated in service forthwith and paid his current salary, in the same manner as any other employee of the Nigam.

35. It will be open to the respondents to pursue fresh disciplinary proceedings against the petitioner, if they so elect, in the manner indicated in this judgment. If the respondents elect to pursue fresh proceedings against the petitioner, his entitlement to receive arrears of salary shall abide by the result of those proceedings. In the event no fresh proceedings are elected to be taken, the petitioner shall be entitled to 50% of his emoluments for the period that he has remained out of service, together with 6% simple interest from the date of this order until payment of arrears.

36. There shall be no order as to costs.

(2026) 2 ILRA 536
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

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

Writ A No. 16994 of 2024

Anuj Kumar & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Validity of denial of payment of salary for the period, during which the petitioners were forced to stay away from work, in consequence of an order, which was subsequently quashed.

Headnotes

(A) Service law – Arrears of salary – Petitioner's appointment as Instructor was cancelled on the ground of not possessing the certificate – Writ petition against the cancellation order was allowed – Though the petitioner was reinstated in service, his claim of arrear of salary was rejected on the ground of 'No work, no payment' – Validity challenged : (E-1)

Held : Not rendering work, cannot be made basis of denying emoluments to the petitioners for the period that they were forced to stay away from work, in consequence of a decision of the respondents themselves, that has not survived judicial scrutiny in the first instance, and after remand, their own consideration of the matter – The respondents cannot deny the petitioners their arrears of salary for the different periods of time payable to petitioner Nos. 1, 2 and 3, and the impugned order is manifestly illegal. [Para 13 and 19]

Case Law Cited

Shobha Ram Raturi vs. Haryana Vidyut Prasaran Nigam Limited and others, (2016) 16 SCC 663; Prayag Narain Dubey (P.N. Dubey) vs. U.P.S.R.T.C. and another, 2018 (8) ADJ 561; U.P.S.R.T.C. and another vs. Prayag Narain Dubey (P.N. Dubey), 2018 ADJOnline 0727; Rajesh Kumar Yadav vs. State of U.P. and others, 2023 SCC OnLine All 3097; Special Appeal (D) No. 704 of 2024, State of U.P. and 2 others vs. Rajesh Kumar Yadav decided on 05.10.2023; Management of Reserve Bank of India, New Delhi vs. Bhopal Singh Panchal, (1994) 1 SCC 541 **– referred to.**

List of Acts

Constitution of India – Article 226; Reserve Bank of India (Staff) Regulations, 1948 **–** Regulation 46(1).

List of Keywords

Reinstatement, Arrear of salary, Service benefit, Appointment, Probation, Cancellation, Unconditional order, Employment, No work no pay, Unqualified reinstatement, Rendering work, Judicial scrutiny, Unilateral act, Honourably acquitted.

Case Arising From

Impugned order dated 01.10.2024 declining payment of salary to the petitioners for the different periods of time that they were out of service on account of an order, that was subsequently quashed by this Court in a writ petition.

Appearances for Parties

Advs. for the Petitioner : Siddharth Khare.
Advs. for the Respondents : Sharad Chandra Upadhyay, S.C.

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

1. This writ petition is directed against an order dated 01.10.2024 passed by the Director, Training and Employment, U.P., Lucknow, declining payment of salary to the petitioners for the different periods of time that they were out of service on account of an order, that was subsequently quashed by this Court in a writ petition earlier preferred by them, and their reinstatement in service pursuant to this Court's order in Writ-A No.4569 of 2017 decided on 19.12.2018. The petitioners have further prayed that a mandamus be issued to the respondents to sanction and pay arrears of salary in case of petitioner No.1 for the period 19.01.2017 to 02.01.2020, petitioner No.2 for the period 01.01.2017 to 07.01.2020, and, petitioner No.3 for the period 01.01.2017 to 16.12.2019, within a period of time to be specified by this Court. A further mandamus has been sought, directing the respondents to treat the period of this absence as period spent on duty for the purpose of granting them other service benefits.

2. The Director, Training and Employment, U.P., Lucknow issued an advertisement, bearing No. Instructor Training/2/2014 dated 07.11.2014, inviting applications for a large number of posts of instructors in different trades to be appointed to various Government Industrial Training Institutes in the State. The posts advertised include posts of Instructors in the trade of Machinist (Grinder). The petitioners were eligible and qualified for the said posts. They applied in response to the advertisement aforesaid. The petitioners were awarded quality points based on their High School Certificate, National Trade Certificate and Craft Instructor Certificate in the manner that the High School Certificate was granted a weightage of 50%, the National Trade Certificate 20% and the Craft Instructor Certificate 15%.

3. A merit list was drawn up on the basis of the quality point marks earned. The petitioners were called to participate in an interview. Each of the petitioners appeared on the scheduled date and were interviewed. The interview carried 15% marks. A final merit list was drawn up by the respondents, where each of the three petitioners stood selected. The quality point marks awarded to petitioner Nos.1, 2 and 3 on the basis of their academic qualifications worked out to 52.157, 56.992 and 51.186, respectively. To these quality point marks awarded to the petitioners, marks earned in the interview were added, on the foot of which the final selection list was drawn up.

4. The petitioners were appointed as Instructor Machinist (Grinder) and were issued letters of appointment, all dated 13.11.2016. They were appointed on probation for a period of two years. The first petitioner was posted at the Government Industrial Training Institute, Farrukhabad; petitioner No.2 at the Government Industrial Training Institute, Pandu Nagar, Kanpur; and, petitioner No.3 at the Government Industrial Training Institute, Karaundi, Varanasi. Each of the petitioners joined duties at their respective stations of posting. The petitioners say that their work and conduct have been satisfactory.

5. On 18.01.2017, similarly worded orders were passed by the Director, Training and Employment, U.P., Lucknow, cancelling the petitioners' appointments. The appointments were cancelled on the ground that each of the petitioners did not possess the certificate under the Craft Instructor Training Scheme (CITS) in the relevant trade and were not, therefore, entitled to appointment. Consequential orders were issued by the Principals of the Government Industrial Training Institutes, where the petitioners were serving, notifying cancellation of the petitioners' appointment. These orders were challenged before this Court by means of Writ-A No.4569 of 2017, jointly filed by all the three petitioners here. The writ petition aforesaid was allowed by this Court vide judgment and order dated 19.12.2018 in terms of the following findings and orders:

"Having considered the rival submissions, the Court notes that there is no dispute that the impugned orders came to be passed without affording any opportunity of hearing to the petitioners. The order on its plain terms and impact does visit the petitioners with grave and serious civil consequences. It was therefore, incumbent upon the respondents to place the petitioners on notice of the proposed action. More importantly what emerges from the above discussion is that the respondents have failed to consider the defence which could have been proffered namely of the CITS certificate in the relevant trade being only a preferential qualification and not an essential prerequisite. The Court further notes that Rule 9 carries to it a proviso which postulates that in case a candidate does not possess the preferential qualification as prescribed for

different trades, he still obtains a right to be considered for selection and if selected is statutorily granted time as per Rule 17(3) to acquire the said qualification.

These grounds and aspects would clearly merit the matter being remitted to the concerned respondent for taking a decision afresh.

Accordingly the writ petition is allowed. The orders dated 18 January 2017 are hereby quashed. The matter shall in consequence stand remanded to the second respondent for decision afresh and in light of the observations made hereinabove.

The consequential orders dated 19 January 2017 and 20 January 2017 shall also consequently stand set aside."

6. In compliance with the said order, unconditional orders of reinstatement in service were passed by the Director, Training and Employment, U.P., Lucknow, where one of these, relating to petitioner No.3, Dharmendra Kumar, has been annexed to the writ petition as Annexure No.7. The petitioner asserts in paragraph No.15 that similarly worded orders were issued in regard to other two petitioners as well. The order of reinstatement passed in compliance with the orders of this Court dated 19.12.2018 in Writ-A No.4569 of 2017 reads:

"प्रशिक्षण एवं सेवायोजन निदेशालय, उ0प्र0

रोजगार भवन, गुरु गोविंद सिंह मार्ग,

पत्रांक /एक/टी-1/0307/4569/2017/अनुज/100

लखनऊ दिनांकः 13/12/2019

कार्यालय आदेश

श्री धर्मेंद्र कुमार की नियुक्ति निदेशालय के पत्र संख्या 282/एक/टी-1/ 0307/नियुक्ति निरस्त/126 दिनांक 18.01.2017 द्वारा निरस्त की गई। जिसके विरुद्ध याची द्वारा मा0 उच्च न्यायालय में रिट याचिका संख्या 4569/2017/अनुज कुमार और दो अन्य बनाम उ0प्र0 राज्य और चार अन्य दाखिल की गई। प्रश्नगत रिट याचिका में मा0 उच्च न्यायालय द्वारा दिनांक 19.12.2018 का प्रभावी अंश निम्नवत हैः

Accordingly the writ petition is allowed. The orders dated 18 January 2017 are hereby quashed. The matter shall in consequence stand remanded to the second respondent for decision afresh and in light of the observations made hereinabove.

The consequential orders dated 19 January 2017 and 20 January 2017 shall also consequently stand set aside. Order Date :- 19.12.2018

मा0 उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश के समादर में विभागीय स्तर पर गठित की गई समिति के दिनांक 09.08.2019 को सम्यक अभिमत के आधार पर श्री धर्मेन्द्र कुमार पुत्र श्री राम सूरत को व्यवसाय मशीनिष्ट ग्राइन्डर के पद पर पुनः पद स्थापित किया जाता है। शेष पूर्व में श्री धर्मेंद्र कुमार जी को जारी नियुक्ति पत्र में उल्लेखित शर्तें/ प्रतिबन्ध यथावत लागू होगी।

(कुलदीप सिल्कू)

निदेशक"

7. In compliance, petitioner Nos.1, 2 and 3 were reinstated in service by the Principals, Government Industrial Training Institute, Naini, Prayagraj and Karaundi vide orders dated 03.01.2020, 08.01.2020 and 17.12.2019, respectively. The petitioners joined duties and have been working satisfactorily. The petitioners, however, were not paid salary for the period that they were out of employment on account of the order impugned, since quashed by this Court and which was submitted to unconditionally by the respondents. The periods of time, for which arrears of salary were claimed by the petitioners, is as follows: petitioner No.1 19.01.2017 to 02.01.2020, petitioner No.2 01.01.2017 to 07.01.2020, and, petitioner No.3 from 01.01.2017 to 16.12.2019.

8. The petitioners represented their cause for sanction and disbursement of arrears of salary, but the same remained unheeded. Representations dated 24.06.2021, 14.09.2023 have been mentioned in this connection and copies brought on record. When no action was taken, the petitioners filed Writ-A No.3329 of 2024, which was disposed of, ordering the Director, Training and Employment, U.P., Lucknow, to look into the matters and consider the petitioners' claim for arrears of salary for the respective periods of time between the orders of cancellation of appointment and reinstatement in service and pass final orders in the matter, as expeditiously as possible, preferably within a period of three months from the production of a certified copy of the order made by this Court. The order was directed to be a speaking order.

9. Eschewing unnecessary detail, the Director, Training and Employment, U.P., Lucknow by means of the impugned order dated 01.10.2024 rejected the petitioners' claim on ground that for the periods of time that the petitioners claimed salary, they were not in service, and, therefore, not entitled to it without having worked. In substance, the principle of 'no work no pay' was invoked. Representations of all the three petitioners were rejected by the order impugned.

10. Aggrieved, this writ petition has been instituted under Article 226 of the Constitution.

11. Heard Mr. Siddharth Khare, learned Counsel for the petitioners and Mr. Sharad Chandra Upadhyay, learned Standing Counsel, appearing on behalf of all the respondents.

12. Upon hearing learned Counsel for the parties, what we find is that this Court vide judgment and order dated 19.12.2018 passed in Writ-A No.4569 of 2017, instituted by the petitioners raising challenge to the orders of cancellation of their appointments, allowed the writ petition and quashed those orders, remanding the matter to the second respondent to take decision afresh, bearing in mind the remarks in the judgment. Now, upon remand, the orders for reinstatement of the petitioners in service were passed without imposing any condition, restricting emoluments payable to the period after reinstatement. Possibly, that could not have been done either. The reason is that the petitioners did not discharge duties for the period of time that they now claim arrears on account of the impugned orders, cancelling their appointments. Prior to those orders, the petitioners were regularly discharging their duties. After this Court quashed the orders cancelling the petitioners' appointments with a remand to the respondents, the respondents acknowledged their mistake and granted unqualified reinstatement in service. In these circumstances, no blame can be fastened upon the petitioners for not performing their duties during

the respective periods of time after the orders of cancellation since quashed by this Court and the orders of reinstatement passed in each case. The petitioners were kept away from their duties by the respondents and forced not to work pursuant to a decision, which the respondents themselves acknowledged to be illegal, when considering the petitioners' claim, post judgment of this Court in Writ-A No.4569 of 2017. The respondents have found no flaw in the petitioners' appointments.

13. In our opinion, therefore, not rendering work, cannot be made basis of denying emoluments to the petitioners for the period that they were forced to stay away from work, in consequence of a decision of the respondents themselves, that has not survived judicial scrutiny in the first instance, and after remand, their own consideration of the matter.

14. The question that falls for consideration here arose in **Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited and others, (2016) 16 SCC 663**, where it was observed:

"1. It is not a matter of dispute, that the appellant was retired from service on 31-12-2002, even though he would have, in the ordinary course, attained his date of retirement on superannuation, only on 31-12-2005. The appellant assailed the order of his retirement dated 31-12-2002 by filing Writ Petition No. 751 of 2003. The same was allowed by a learned Single Judge of the Punjab and Haryana High Court, on 14-9-2010 [Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd., WP (C) No. 751 of 2003, order dated 14-9-2010 (P&H)] . The operative part of the order is extracted hereunder:

"Accordingly the present writ petition is allowed; order dated 31-12-2002 (Annexure P-4) is quashed. The petitioner would be treated to be in continuous service with all consequential benefits. However it is clarified that since the petitioner has not worked on the post maxim of "no work, no pay" shall apply and the consequential benefits shall only be determined towards terminal benefits. However there will be no order as to costs."

2. The denial of back wages to the appellant by the High Court vide its order dated 14-9-2010 [Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd., WP (C) No. 751 of 2003, order dated 14-9-2010 (P&H)] was assailed by the appellant by filing Letters Patent Appeal No. 489 of 2011. The High Court rejected the claim of the appellant, while dismissing the letters patent appeal on 26-5-2011 [Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd., 2011 SCC OnLine P&H 17610] . The orders dated 14-9-2010 [Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd., WP (C) No. 751 of 2003, order dated 14-9-2010 (P&H)] and 26-5-2011 [Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd., 2011 SCC OnLine P&H 17610] passed by the High Court limited to the issue of payment of back wages, are the subject-matter of challenge before this Court.

3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31-12-2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1-1-2003 to 31-12-2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1-1-2003 to 31-12-2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay"."

(emphasis by Court)

15. This decision was followed by this Court in **Prayag Narain Dubey (P.N. Dubey) v. U.P.S.R.T.C. and another, 2018 (8) ADJ 561**, which was upheld on appeal by the Division Bench in **U.P.S.R.T.C. and another v. Prayag Narain Dubey (P.N. Dubey), 2018 ADJOnline 0727**. The principle in all these cases is clear, and that is where the employee has remained out of service on account of the unilateral act of the employer, which is subsequently found not valid and lawful, the employer cannot refuse to pay him emoluments on the principle of 'no work no pay'.

16. I had occasion to consider the same issue in Rajesh Kumar Yadav v. State of U.P. and others, 2023 SCC OnLine All 3097 relating to the same service governed by the same rules and a similar denial of emoluments for the period that the petitioner in that case remained out of service on account of cancellation of his appointment. In **Rajesh Kumar Yadav** (supra), I held:

"*In the circumstances, to attribute the petitioner any blame for not performing his duties between the period 14.09.2011 to 01.05.2017 would be patently arbitrary. But for the respondents' decision to terminate his services on 14.09.2011 on a particular view about the essential qualification that the petitioner ought to have possessed, the petitioner would have continued in service and served the respondents. However, later on, when this Court sent the matter back to the respondents to reconsider the issue, the respondents acknowledged their mistake and held that cancellation of the petitioner's appointment, was for the reason indicated, not tenable. Therefore, the petitioner remaining out of job or not rendering work cannot be made the basis of denying him his emoluments for the period that he was forced to stay away It becomes all the more relevant in this case because the respondents have acknowledged their mistake while reinstating the petitioner, and, done so, without any limitation regarding the terms of reinstatement.*"

17. The respondents preferred **Special Appeal (D) No.704 of 2024, State of U.P. and 2 others v. Rajesh Kumar Yadav**, where the Division Bench upheld the order and dismissed the appeal vide judgment and order dated 05.10.2023. The respondents further challenged the order of the Division Bench by moving the Supreme Court praying for grant of Special Leave to Appeal vide SLP (Civil) Diary No.4870 of 2024. The Special Leave Petition was summarily dismissed vide order dated 12.02.2024.

18. Mr. Sharad Chandra Upadhyay, learned Standing Counsel, however, resisted the petitioners' claim and placed reliance upon a decision of the Supreme Court in **Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, (1994) 1 SCC 541. Bhopal Singh Panchal** (supra) was a case relating to an employee of the Reserve Bank of India, who was arrested on a criminal charge and placed under suspension under Regulation 46(1) of the Reserve Bank of India (Staff) Regulations, 1948. He was convicted by the learned Sessions Judge for an offence under Section 304 Part-I IPC and sentenced to 8 years' R.I. Upon an appeal, the High Court acquitted him, granting him the benefit of doubt. He was not reinstated in service by the Reserve Bank of India, but upon raising an industrial dispute, the Industrial Tribunal passed an award directing reinstatement in service with full wages and continuity, as if he had never been dismissed. It was in the context of the aforesaid facts and Regulation 46 of the Regulations of 1948 that it was held that in the circumstances, it could not be said that the employee was absent from duty on

account of circumstances beyond his control. He had indulged in misconduct, of which he had not been honourably acquitted. It was in those circumstances that Regulations 39, 46 and 47 were interpreted to empower the Bank to deny salary on the principle of 'no work no pay' to the employee concerned. This decision stands on the edifice of a completely different principle, which is not even remotely attracted to the facts of the present case, as already indicated.

19. In the totality of circumstances, we are of opinion that the respondents cannot deny the petitioners their arrears of salary for the different periods of time payable to petitioner Nos.1, 2 and 3, and the impugned order is manifestly illegal.

20. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 01.10.2024 passed by the Director, Training and Employment, U.P., Lucknow is hereby **quashed**. A mandamus is issued to the Director, Training and Employment, U.P., Lucknow, the Principal, Government Industrial Training Institute, Naini, Prayagraj and the Principal, Government Industrial Training Institute, Karaundi, Varanasi, to ensure, amongst themselves, payment of arrears of salary to petitioner No.1 for the period 19.01.2017 to 02.01.2020, petitioner No.2 for the period 01.01.2017 to 07.01.2020, and, petitioner No.3 for the period 01.01.2017 to 16.12.2019, within a period of two months of receipt of a copy of this order.

21. There shall be no order as to costs.

22. Let a copy of this judgment be communicated to the Director, Training and Employment, U.P., Lucknow, the Principal, Government Industrial Training Institute, Naini, Prayagraj and the Principal, Government Industrial Training Institute, Karaundi, Varanasi by the Registrar (Compliance).

(2026) 2 ILRA 543
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 27948 of 2010

Ram Swaroop Shukla **...Petitioner**

Versus

State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of non-compliance of principle of oral hearing by the Inquiry Officer, even in the absence of provision on it in the Rules of 1999.

Headnotes

(A) Service law – Termination – Inquiry proceeding – Principle of natural justice – Opportunity of oral hearing – The delinquent employee, who was Lekhpal, was charged with of treating a person as dead and passing the mutation order – No date and time was ever fixed by the Inquiry Officer for any further hearing – No opportunity of oral hearing was given to the petitioner – Effect – Rule 7 of Rules of 1999 require no oral inquiry to the delinquent employee before concluding the inquiry proceedings – Relevance : (E-1)

Held : There is no express requirement in the said rules for according any oral inquiry to the delinquent employee before concluding the inquiry proceedings. However, in *Kaptan Singh's case*, the Division Bench of this Court while interpreting the aforesaid Rules, relying upon the general principles of law as held in *Roop Singh Negi's case* and other judgments relied upon by the Division Bench, has interpreted the aforesaid Rules so as to mean that after submission of the reply by the delinquent employee or even in the absence of reply by the delinquent employee to the charge-sheet, it is implicit in the aforesaid Rules, though not expressed, that there is requirement of holding of an oral inquiry as it is *sine qua non* for providing reasonable opportunity to defend and it is part of principles of natural justice under Articles 311 and 14 of the Constitution of India – In view of the aforesaid binding precedent in *Kaptan Singh's case*, it is an implicit duty of the Inquiry Officer to afford an opportunity of hearing to the delinquent employee before concluding the inquiry proceedings. Since, such opportunity has never been granted in the instant case to the petitioner herein, thus, the inquiry report without affording such opportunity of hearing to the delinquent employee to the petitioner cannot be relied upon for termination of service of the petitioner herein. Thus, the entire proceedings against the petitioner is vitiated. [Para 24 and 25]

Case Law Cited

Roop Singh Negi vs. Punjab National Bank, (2009) 2 SCC 570; Divl. Forest Officer vs. Madhusudhan Rao, (2008) 3 SCC 469; Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney, (2009) 4 SCC 240; Satyendra Singh vs. State of U.P. and Another arising out of SLP (Civil) No.(2). 29758 of 2018 dated 18.11.2024; State of U.P. and Others vs. Mam Chand Tyagi and Another, 2017 (6) ADJ 723 (DB)(LB); Writ A No. 25240 of 2014, Kaptan Singh vs. State of U.P. and another decided on 14.05.2014; Writ A No. 1498 of 2024, Rajesh Kumar Mall vs. State of U.P. and another decided on 15.02.2024; Moni Shankar vs. Union of India, (2008) 3 SCC 484 **– referred to**.

List of Acts

Constitution of India – Article 14 and 311; Indian Penal Code – Sections 419, 420, 467, 471, 477-A and 120B; Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999 – Rules 7.

List of Keywords

Mutation order, First Information Report, Final report, Charge-sheet, Opportunity of oral hearing, Inquiry report, Termination order, Statutory appeal, Principle of natural justice, Disciplinary proceeding, Reasonable opportunity to defend, Binding precedent.

Case Arising From

Termination order dated 17.12.2009 passed by the disciplinary authority and Order dated 30.04.2010 passed by the appellate authority.

Appearances for Parties

Advs. for the Petitioner : Ashok Khare, Sr. Adv.; Rakesh Kumar Shukla, Rakesh Kumar Shukla, Santosh Kumar Srivastava, Suresh C. Dwivedi.

Advs. for the Respondents : Girijesh Kumar Tripathi, Adl. C.S.C.

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

1. Heard Sri Santosh Kumar Srivastava, learned counsel for the petitioner and Sri Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel for the State.

2. The instant petition has been filed by the petitioner herein seeking quashing of the order dated 17.12.2009, passed by respondent no.3, whereby the services of the petitioner herein were terminated and also seeking quashing of the order dated 30.04.2010, whereby the appeal preferred by the appellant herein was dismissed by the respondent no.2.

FACTS

3. The brief facts of the case are the petitioner herein was appointed on the post of Lekhpal in the year, 1980 and in the year, 2008, he was posted in the area of Domagor of Tehsil and District-Jhansi. On 04.10.2008, an F.I.R. being Case Crime No. 686 of 2008 under Sections 419, 420, 467, 471, 477-A and 120B I.P.C. was registered at the behest of the Revenue Inspector, Shri Buddhi Prakash, making out the allegations that the petitioner has treated one Brij Kishore as dead and passed a mutation order in favour of Rajendra Singh and Hari Mohan. In the aforesaid case, after investigation a final report was submitted on 21.10.2008.

4. In the final order it was categorically observed by the Investigation Officer (IO) that since the said Brij Kishore had left his house in the year, 1988 and has taken Sanyas and renowned the world, but his sons and relatives continued to search for him sufficiently for long period upto 1997. When the said Brij Kishore could not be traced out by them, in the year 1997 his sons and relatives have performed his last rites treating he is dead and thereafter they have applied for mutation of their names in place of his father. Since, the entire village has accepted that said Brij Kishore has died, in such circumstances it is further observed that Village Pradhan has also certified that he is dead. However, later on in the year, 2006, said Brij Kishore came in the village in the form of a Sadhu and did not raise any objection with regard to the mutation of his property in the name of his legal heirs i.e., his sons. Since, the neighbors of the land belonging to the sons of the said Brij Kishore, wanted to purchase the land from Hari Mohan etc., which they have refused to sell. Having regard to this he has made the complaints to the Higher Officials, therefore, it was concluded that there was no criminality attached to the action taken by the petitioner herein in passing the mutation order in favor of the legal heirs of the said Brij Kishore, on the basis of the Death Certificate issued by the Village Pradhan.

5. Subsequent to the filing of the aforesaid final report, another F.I.R. being Case Crime No. 2293 of 2008 under Section 420 I.P.C. was lodged against the petitioner herein alleging therein that the petitioner herein had torned the order ?o?o-11 with regard to the Khata No. 349, whereby an alive person was shown as dead and name of his heirs were mutated.

6. The criminal proceedings of the aforesaid case was stayed by this Court on a Criminal Misc. Application under Section 482 Cr.P.C. No. 17392 of 2009 filed by the sons of the said Brij Kishore. Subsequent thereto, vide order dated 11.11.2008, the petitioner herein was suspended on the allegation that he has torned the order ?o?o-11-? relating to Khata No. 349 of the year, 1359 Fasli, while inspecting the aforesaid file. Thereupon, on 21.03.2009, the inquiry officials has issued the following charge-sheet against the petitioner herein:

कार्यालय नियुक्ति एवं दण्डाधिकारी / जिलाधिकारी, झाँसी

संख्या: 1586/रा०. ऑ.०-वि०का०/2004-05 दिनांकः मार्च 21, 2009

आरोप पत्र

श्री रामस्वरूप शुक्ला,
लेखपाल (निलम्बित),
तहसील-झाँसी।

तत्कालीन उप जिलाधिकारी झाँसी के आदेश संख्या-781/एस०टी०-वि०का०/2008.09 दिनाँक 11.11.2008 द्वारा आपको निलम्बित निमा गया तथा आपके विरुद्ध विभागीय कार्यवाही प्रारम्भ की गई। आपको निम्नलिखित आरोप से आरोपित किया जाता है :-

आरोप संध्या-1

आप द्वारा राजस्व अभिलेखालय, कलैक्ट्रेट, झाँसी में पहुँचकर ग्राम सेरसा तहसील मोंठ, जिला झाँसी के खाता संख्या 349 की सन् 1359 फ० की खतौनी का मुआयना करने के बहाने उसमें से प०क०-11-क का आदेश चोरी से फाड लिया गया। इस प्रकार आप राजस्व अभिलेखों को नष्ट करने के दोषी हैं।

उक्त आरोप की पुष्टि में निम्नलिखित साक्ष्य पठनीय है :-

(1) राजस्व अभिलेखपाल की आख्या दिनाँक 25.9.2008
(2) प्रभारी अधिकारी राजस्व अभिलेखागार की आख्या दिनोंक- 25.9.2008.
(3) प्रथम सूचना रिपोर्ट मु०अ०सं2293/08 धारा 420आई.पी.सी.।

आरोप संख्या-2

आप व्दारा आय से अधिक निम्नलिखित सम्पत्ति अर्जित की गई है जिस लिए कोई अनुमति प्राप्त नहीं की गई है।

1. कस्वा मऊरानीपुर में गुरसराय रोड पर स्टेशन के सामने कीमती मकान लगभग 15 लाख का व सत्संग भवन लगभग एक लाख रूपये का बना रखा है।

2. झाँसी नगर में लक्ष्मीगेट रोड पर कैलाश रेजीडेन्सी में भवन सं० 110 कोमती 20 लाख रूपये है, में निवास करते हैं जो आप द्वारा क्रय किया गया है किन्तु कोई अनुमति प्राप्त नहीं की गई।

3. तीन पुत्रियों की शादी में 12 लाख रूपये व्यय किया है तथा 20 बीघा भूमि है।

4. आपके रहन-सहन का स्तर आय से अधिक व्यय का है।

उक्त आरोप की पुष्टि में निम्नलिखित साक्ष्य पठनीय हैं:-

(1) निरीक्षक स्थानीय अभिसूचना इकाई की आख्या दिनांक 11.1.2009

<u>आरोप सं०-३</u>

आप द्वारा बिना किसी आधार के गाँवसभा की मूल्यवान भूमि मौजा नयागाँव की खतौनी फ० के गाटा सं0 790 मि रकबा 0.894 को श्रेणी 5 बंजर से निरस्त किर श्रेणी-6 रास्ता अंकित करने की आख्या दिनांक 8.12.2003 प्रस्तुत की गई थी जबकि मौके पर किसी प्रकार की सड़क नहीं थी और न ही आज सडक है। इस प्रकार आप फर्जी आख्या प्रस्तुत कर फजी तौर पर भूमि परिवर्तन की आख्या प्रेषित करने के दोषी हैं।

उक्त आरोप की पुष्टि में निम्नलिखित साक्ष्य पठनीय हैं:-

(1) आख्या दिनोंक 8.12.2003 की प्रतिलिपि।
(2) तहसीलदार झाँसी की आख्या दिनाँक 26.2.2009 की प्रति।
(2) परगनाधिकारी झाँसी के आदेश दिनाँक 17.12.2003 की प्रतिः।
(3) परगनाधिकारी झाँसी के आदेश दिनांक 04.03.2009 की प्रति।

उपरोक्त आरोप पत्र के सम्बन्ध में आप अपना उत्तर 15 दिवस के अन्दर जाँच अधिकारी अथवा उप जिलाधिकारी झाँसी के समक्ष प्रस्तुत करे।

आपसे पुनः अपेक्षा की जाती है कि आप नियत समय पर ही अपना उत्तर प्रस्तुत करना सुनिश्चित करें। यति आपका उत्तरः समय के अन्दर प्राप्त नहीं होता है तो आपके विरूद्ध एक पक्षीय कार्यवाही की जायेगी। यह कि इस कार्यवाही में यदि किसी से आप जिरह अथवा गबाही अपेक्षित हो तो उसका नाम व पता सहित जिरह की विषय वस्तु अपने उत्तर में अंकित करें।

(डा०मुत्तु कुमार स्वामी बी.)
नियुक्ति एवं दण्डाधिकारी
/ उप जिलाधिकारी झाँसी।

पत्रांक एवं दिनॉक उक्त ।

प्रतिलिपिः-तहसीलदार, झॉसी को आरोप पत्र दो प्रतियों में इस आशय से कि एक प्रति आरोपी कर्मचारी पर तामील कराकर सदिनॉक पूर्ण हस्ताक्षर प्राप्त कर आवश्यक कार्यवाही करें तथा जाँच आख्या आरोप पत्र का उत्तर प्राप्त होने के उपरान्त अधोहस्ताक्षरी को समक्ष आर्देशार्थ प्रस्तुत करें।

(डा०मुत्तु कुमार स्वामी बी.)

नियुक्ति एवं दण्डाधिकारी
/ उप जिलाधिकारी झाँसी।

7. In the aforesaid charge-sheet, the inquiry officer has not proposed any of the witnesses to be examined in support of the charges.

8. In the reply to the aforesaid charge-sheet as well, the petitioner herein has also not proposed any of the witnesses to be examined in support of his defense. Though, he has submitted the following documents along with his reply dated 23.06.2009:

"संलग्नक :-

1. भूमि प्रबंधक समिति डोमागोर प्रस्ताव की छाया प्रति।
2. श्री कैलाश नारायण गुप्ता दिया गया शपथपत्र।
3. श्री लक्ष्मीदेवी द्वारा दिया गया शपथ पत्र।
4. थाना नवाबाद व थाना पूंछ की एफ. आई. आर. की छाया प्रति।
5. अभिलेखापाल श्री बृजेश श्रीवास्तव व ओमप्रकाश आदि के ब्यानों की छाया प्रति।
6. अभिलेखागार में दिया गये प्रश्नोत्तरी की छाया प्रति ।"

9. After submission of the reply by the petitioner herein, Inquiry Officer has proceeded to examine the charge-sheet, reply submitted by the petitioner and the documents available on record and on the basis thereof, he has recorded its finding with regard to all the three charges without giving any opportunity of oral hearing to the petitioner herein or without examining any witnesses in support of the case of the department and with regard to the first charge of tearing of the order ?o?o-11 from the revenue records, it has been found that Charge No.1 has been proved against the petitioner. Charge No.2 has been found to have been proved partially against the petitioner and Charge No.3 found to have been proved against the petitioner.

10. In the inquiry report dated 31.10.2009. After receipt of the said inquiry report by the SDM, the Disciplinary Authority issued show cause notice dated 10.11.2000 against the petitioner herein along with copy of the inquiry report. Thereupon, the petitioner herein has submitted a detailed reply on 11.12.2009 to the aforesaid show cause notice. Thereupon, vide impugned order dated 17.12.2009, the Disciplinary Authority has terminated the services of the petitioner herein.

11. Against the aforesaid termination order dated 17.12.2009, the petitioner herein has approached this Court by filing Civil Misc. Writ Petition No.1760 of 2010. The aforesaid writ petition was disposed of vide judgement and order dated 18.01.2010, directing the petitioner herein to file the statutory appeal within 15 days before the District Magistrate, Jhansi. Thereupon, the petitioner herein has filed his statutory appeal on 01.02.2010 before the District Magistrate. The District Magistrate vide impugned order dated 30.04.2010 has considered the submissions made in the appeal by the appellant herein and thereupon the Appellate Authority has found the Charges

No. 1 and 3 to have been proved against the appellant and Charge No.2 was partially proved against the petitioner. Being aggrieved by the aforesaid two orders, the instant petition has been filed by the petitioner herein.

SUBMISSION BY THE PETITIONER

12. Contention of learned counsel for the petitioner is that while concluding the inquiry, the Inquiry Officer has not followed the procedure as prescribed under Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, neither the Inquiry Officer has examined any of the witnesses in support of the documents relied upon by the petitioner herein nor any opportunity of oral hearing has ever been accorded by the Inquiry Officer to explain to the charges leveled by the Inquiry Officer. Therefore, the entire inquiry proceeding is vitiated and cannot be relied upon for his dismissal.

13. It has further argued by learned counsel for the petitioner that the Disciplinary Authority has also not taken any independent decision after considering his reply to the show cause notice and the charges leveled against the petitioner herein. The Disciplinary Authority has simply relied upon the findings recorded by the Inquiry Officer and the same has been upheld and the termination order has been passed against the petitioner herein. Likewise, the Appellate Authority has also not applied its mind to the facts of the case and has simply relied upon the findings recorded by the Inquiry Officer and dismissed the appeal.

14. Learned counsel for the petitioner further submits that after submission of reply to the charge-sheet by the petitioner, it was the duty of the Inquiry Officer to fix a date and time for oral hearing in the matter, giving an opportunity of hearing to the petitioner herein before concluding the inquiry proceedings, the same has not been done in the instant case by Inquiry Officer. Therefore, the entire inquiry proceedings is vitiated and against the settled principles of natural justice and against the provisions of 1999 Rules as has been interpreted by various judgments of this Court as well by the Apex Court.

15. In support of his submission, he has relied upon the judgment of the Apex Court in **Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570, Divl. Forest Officer v. Madhusudhan Rao, (2008) 3 SCC 469, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240 and Satyendra Singh vs. State of U.P. and Another** arising out of **SLP (Civil) No.(2). 29758 of 2018 dated 18.11.2024**. He has also relied upon the judgements of the Division Benches of this Court in **State of U.P. and Others vs. Mam Chand Tyagi and Another, [2017 (6) ADJ 723 (DB)(LB)] of Lucknow Bench, Kaptan Singh vs. State of U.P. and Another (Writ A No. 25240 of 2014, judgement dated 14.05.2014) and the judgements**. He has further relied upon the judgements of the Coordinate Bench of this Court in **Rajesh Kumar Mall vs. State of U.P. and Another (Writ A No. 1498 of 2024 dated 15.02.2024)**.

SUBMISSION ON BEHALF OF STATE

16. Per contra, learned Additional Chief Standing Counsel for the State submitted that Rule 7(iii) of 1999 Rules provides that while issuing the charge-sheet, it is incumbent upon the Inquiry

Officer to name all the witnesses and also the documents which are to be relied upon by the Inquiry Officer during the disciplinary proceedings against the delinquent employee. From the perusal of the charge-sheet, it is apparent that though certain documents have been mentioned in the charge-sheet, however, the Disciplinary Authority has not proposed any witnesses to be examined in support of the charges. Likewise, Rule 7(iv) also provides that delinquent employee is also supposed to categorically mention the names of the witnesses which he wish to propose to be examined during inquiry and also the documents to be relied upon by the delinquent employee. From the perusal of the reply submitted by the petitioner herein, it is apparent that he has not proposed any witnesses to be examined during inquiry proceedings in support of his version. Though, he has relied upon certain documents which were annexed along with reply.

17. Learned Additional Chief Standing Counsel for the State submits that since both sides have not proposed any witness to to be examined during inquiry proceedings, therefore, there was no occasion for the Inquiry Officer to examine any of the witnesses during the inquiry proceedings. Therefore, he was not obliged to fix any date and time in the instant disciplinary proceedings. Further, 1999 Rules do not provide that any oral hearing be accorded prior to concluding the disciplinary proceeding against the delinquent employee. In view thereof, there is no infirmity in the procedure adopted by the Inquiry Officer in the instant case. So far as the disciplinary proceedings as well as the Appellate Authority are concerned, they have given detailed discussion with regard to the charges leveled and the findings of the Inquiry Officer as well as the explanation submitted by the petitioner herein and thereupon the Disciplinary Authority having found the charges against the petitioner having been proved, has passed the order of termination of the petitioner herein. Likewise, in the appeal preferred by the petitioner herein, the Appellate Authority has also applied its mind to the facts and circumstances of the case, explanation submitted by the petitioner herein as well as the material available on record and thereupon has upheld the termination of the petition by dismissing the appeal. Therefore, there is no illegality in the entire procedure adopted in the instant case by the respondents. Accordingly, learned Additional Chief Standing Counsel for the State prayed for dismissal of the instant petition.

ANALYSIS

18. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case. The facts of the case have already been noted hereinabove. Before proceeding further, it would be relevant to take note of the Rule 7 of Rules 1999, which reads as under:

"7. Procedure for imposing major penalties.-Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner:

i.The disciplinary authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.

ii.The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority: Provided that where the appointing authority is

Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.

iii.The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.

iv.The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

v.The charge-sheet, alongwith the copy of the documentary evidence mentioned therein and list of witnesses and their statements, if any, shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records. In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation: Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

vi.Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

vii.Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

viii.The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

ix.The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

x.Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

xi.The disciplinary authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner,to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

xii.The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits: Provided that this rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied that for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii)Where the Governor is satisfied that, in the interest of the security of the State, it is expedient to hold an enquiry in the manner provided in these rules."

19. So far as the judgment in **Roop Singh Negi** (supra) is concerned, the Apex Court has relied upon the general principle to be applied in the disciplinary proceedings in the cases where there are no specific rules in this regard. In **Roop Singh Negi** (supra), the Apex Court has observed as under:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. ***The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties.*** *The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by

the criminal court on the basis of selfsame evidence should not have been taken into consideration. ***The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible****. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the* ***principles of natural justice are****. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."*

20. Likewise, in **Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008)**, the Apex Court held as under:

"17. The ***departmental proceeding is a quasi-judicial one****. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider* ***as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom****. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."*

21. In **Satyendra Singh** (supra), the Apex Court though has referred to the 1999 Rules, has observed as under:

"17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of ***Roop Singh Negi*** *and* ***Nirmala J. Jhala, : (2013) 4 SCC 301*** *, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally* ***vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges."***

22. In **Kaptan Singh** (supra), the Division Bench of this Court, while considering the Rule 7 of Rules 1999, has observed as under:

"Even if the delinquent does not demand personal hearing or does not give the names of witnesses with brief synopsis of points on which he wishes to examine or cross-examine the witnesses, the ***Inquiry Officer is not absolved from fixing a date of enquiry, with intimation to the delinquent and if he does not appear on the date fixed to either adjourn the enquiry to some other date or to proceed exparte, as he deems fit. In either eventuality, he is required to hold inquiry, if delinquent is present, in his presence, if he is absent, exparte. If oral evidence is***

referred in the charge-sheet, same is required to be recorded/examined, if not, even then the documentary evidence is required to be examined in the light of the charges for ascertaining the truth in respect thereof. The delinquent is also entitled to be intimated the date for oral enquiry, wherein the Inquiry Officer should confront the delinquent with the charges and the evidence in support thereof, put relevant queries to him, elicit and record his replies/response in respect thereof. Such oral enquiry is necessary as it gives an opportunity, to the delinquent to explain his conduct and to the Inquiry Officer to have a better perspective of the controversy, as, it is not always possible to discern the truth from written replies and documents which may not necessarily convey the complete truth. Even where the delinquent does not dispute the veracity of the documentary evidence, oral enquiry is necessary as he may still have an explanation to offer. "

"The Rules of 1999 also require the Inquiry Officer to hold an enquiry into the charges except where the delinquent admits the charges (Rule 7vi), in such an eventuality, he can submit a report straight away. As per Sub Rule (iv) and (x) of Rule 7 if the delinquent does not file his written statement or does not appear, the Investigating officer shall proceed exparte. Where he files the written statement and denies the charges, as in the instant case, it shall proceed as per Rule 7(vii) and the following sub rules.

The reference to "documentary evidence" in ***Rule 7(iii) and (v) clearly indicates that the same have to be examined, as aforesaid, on the date to be fixed for enquiry, whether in the presence of the delinquent or in absentia (exparte). This requirement though not express is implicit in the aforesaid rules, as is the requirement of holding an oral enquiry,as it is a sine qua non for providing reasonable opportunity to defend and is part of the principles of natural justice under Article 311 and 14 of the Constitution."***

23. In **Rajesh Kumar Mall** (supra), the Co-ordinate Bench of this Court has observed as under:

"17. It is well settled law that during enquiry proceeding the principle of natural justice must be followed i.e. the documents relied upon, be provided to the charged employee, opportunity to adduce the evidence be provided, statement of witnesses for establishing the charges be recorded and opportunity to cross examine the witnesses be provided, whereas in the present case no such procedure has been followed. The petitioner has not been given opportunity to adduce the evidence and cross examine the witnesses and no witnesses has been examined by the enquiry officer in support of the charges levelled against the petitioner. "

CONCLUSION

24. Thus, from the perusal of the aforesaid rules, it is apparent that in case if neither in the charge-sheet nor in the reply submitted by the delinquent employee, any witness has been proposed, there is no express requirement in the said rules for according any oral inquiry to the delinquent employee before concluding the inquiry proceedings. However, in **Kaptan Singh** (supra), the Division Bench of this Court while interpreting the aforesaid Rules, relying upon the general principles of law as held in **Roop Singh Negi** (supra) and other judgments relied upon by

the Division Bench, has interpreted the aforesaid Rules so as to mean that **after submission of the reply by the delinquent employee or even in the absence of reply by the delinquent employee to the charge-sheet, it is implicit in the aforesaid Rules, though not expressed, that there is requirement of holding of an oral inquiry as it is sine qua non for providing reasonable opportunity to defend and it is part of principles of natural justice under Articles 311 and 14 of the Constitution of India.**

25. Admittedly, in the instant case, it is evident from the record as well as and from the inquiry report itself that after submission of reply to the charge-sheet by the petitioner herein**, no date and time has ever been fixed for any further hearing in the instant case by the Inquiry Officer, nor any opportunity of oral hearing to the petitioner has ever been granted**. In view of the aforesaid binding precedent in **Kaptan Singh** (supra), it is an implicit duty of the Inquiry Officer to afford an opportunity of hearing to the delinquent employee before concluding the inquiry proceedings. Since, such opportunity has never been granted in the instant case to the petitioner herein, thus, the inquiry report without affording such opportunity of hearing to the delinquent employee to the petitioner cannot be relied upon for termination of service of the petitioner herein. Thus, the entire proceedings against the petitioner is vitiated. In view thereof, the orders passed by the Disciplinary Authority as well as by the Appellate Authority are not sustainable in law.

26. Therefore, the instant writ petition is ***allowed***. The order dated 17.12.2009 passed by the Disciplinary Authority and order dated 30.04.2010 passed by the Appellant Authority are ***set-aside***. Ordinarily, while setting aside the order of termination order, the matter is required to be remitted back for concluding the disciplinary proceedings from the stage it was vitiated. However, since the petitioner has already attained the age of superannuation on 09.01.2018, no fruitful purpose would be served in remitting back the matter at this stage, hence, this Court refrains from remitting back the matter to the Disciplinary Authority.

(2026) 2 ILRA 555
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

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

Writ A No. 62515 of 2017

Raghvendra Prasad Mishra **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Jurisdiction of District Magistrate to intervene into the matter relating to Secondary Education Department.
(2) Liability of management to pay exemplary costs for its mala fide in scuttling the career of employee.
(3) Effect of non-communicated adverse entry to the entitlement of selection grade and promotion.
(4) Effect of an illegal termination order to the entitlement of selection grade and promotion.

(5) Effect of retirement occurred during the course of pendency of writ petition to the entitlement of arrears of salary and post retiral benefits.

Headnotes

(A) Service law – Termination – Assistant Teacher – Termination order passed by the manager was disapproved by the D.I.O.S. – District Magistrate find no place in the hierarchy of Secondary Education Department – However, the District Magistrate intervened into the matter by issuing certain direction – Permissibility.

Held : The District Collector or the District Magistrate is the Head of the Revenue and the Civil Administration in the district and has nothing to do with the Department of Secondary Education. He has no jurisdiction, authority or power in matters of the Department of Secondary Education **–** A direction of the kind, that the District Magistrate issued, could either be done by an administrative superior, 'in-line' in the hierarchy, sitting over the DIOS or it could be done by a Judge, exercising judicial powers of the State, may be the ordinary original civil jurisdiction, that is exercised by a Civil Judge **–** The law does not invest the District Magistrate with any kind of general supervisory powers over authorities and functionaries of other Departments of the Government of the same or a higher rank stationed in the district. [Para 13, 14 and 15]

(B) Service law – Termination – Assistant Teacher – Selection was made by the Board – However, Committee of Management terminated the appointment leveling the charge of committing fraud to obtain the same – Termination order was disapproved by the D.I.O.S. – Validity was challenged by the management – Mala fide of the management in scuttling the career of employee – Exemplary costs – Liability to pay :

Held : The fact that Mishra was indeed selected by the Commission/Board is beyond cavil as appears upon a conjoint perusal of all these documents. The notification number is also confirmed upon a perusal of the original stenciled copy of the notification dated 24.12.2004, bearing No. 491/2004, which has been produced by the Board. In the said notification, Mishra's name finds place at serial No. 9 and the roll number mentioned is 020110023. In the face of all these documents, there is no scope for the Management to come up with a case of fraudulent appointment against Mishra, based upon a non-existent selection by the Board **–** The order impugned passed by the DIOS is not only unexceptionable, but the Management's stand is *mala fide*, which must invite imposition of exemplary cost of Rs. 50,000/-. [Para 24 and 25]

(C) Service law – Assistant Teacher – Adverse entry was made, but was not communicated to the employee – Effect – Selection grade was denied on the basis of non-communicated adverse entry – Permissibility :

Held : It is not permissible for an employer to rely on adverse entries for the purpose of denying promotion or withholding grant of selection grade or visiting the employee with any other adverse civil consequences, if the relevant adverse entries have not been communicated to the employee concerned **–** Mishra is entitled to the grant of selection grade, not w.e.f. 01.07.2019, that is to say, when he completed 10 years of service from the date of the last adverse entry awarded to him, but w.e.f. 19.01.2015 upon completion of 10 years service from the date he joined the Management's institution, to wit, on 20.09.2005. [Para 40 and 41]

(D) Service law – Assistant Teacher – Promotion to the post of Lecturer – Termination order was declared illegal – Employee was retired from services during the course of pendency of writ petition – Effect – Notional promotion – Post retiral benefits – Entitlement – Non-communicated adverse entries was relied upon to refuse the promotion – Permissibility :

Held : If Mishra is found entitled to promotion or his case on this score held wrongfully denied by the respondents, entitling him to a quashing of that part of the impugned order with a direction to re-consider it, Mishra would also be entitled to notional promotion from the date he is found by this Court to be entitled or by the Authority to which the matter is remitted, i.e. if his claim is substantiated before the said Authority – Uncommunicated prejudicial entries cannot be relied upon for the purpose of considering the employee's case for promotion. Such uncommunicated adverse entries are to be ignored – The impugned order passed by the Joint Director of Education, declining Mishra's case for promotion, cannot be sustained. [Para 43, 49 and 70]

Further held : Mishra, however, will not be entitled to salary for the promotion post of Lecturer, on whichever date he is granted the notional promotion because he did not actually work on that post till his retirement. He would be granted the status of a Lecturer, if found fit by the Selection Committee, as above directed, and shall be entitled to a suitable revision of his post retiral benefits, including pension, worked out

on the basis of the Lecturer's grade. Of course, he would be entitled to arrears of pension and other post retiral benefits on account of the revision, but nothing by way of salary arrears or other in-service benefits. [Para 71] (E-1)

Case Law Cited

Surendra Kumar Gupta vs. State of U.P. and others, 2022 SCC OnLine All 1918; Dev Dutt vs. Union of India and others, (2008) 8 SCC 725; Rukhsana Shaheen Khan vs. Union of India and others, (2018) 18 SCC 640; Rakesh Bhardwaj vs. State of U.P., 2007 (5) ALJ 39; S.D. Raghunandan Singh vs. State of Karnataka and others, 1994 Supp (2) SCC 526; State of Haryana and others vs. O.P. Gupta and others, (1996) 7 SCC 533; V.N. Meenakshi vs. Union of India and others, 1999 SCC (L&S) 669; A.K. Soumini vs. State Bank of Travancore and another, (2003) 7 SCC 238; Union of India vs. B.M. Jha, (2007) 11 SCC 632; Abhijit Ghosh Dastidar vs. Union of India and others, (2009) 16 SCC 146 **– referred to.**

List of Acts

Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971; Regulations framed under the Intermediate Education Act, 1921 **–** Regulations 72 and 73 of Chapter III; Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982 **–** Section 2(l) and 12; Uttar Pradesh Secondary Education Services Selection Board Rules, 1998 **–** Rule 14.

List of Keywords

Termination, Selection, Outcome of fraud, Fraudulent appointment, Opportunity, Disapproval, Jurisdiction, Next higher officer, Hierarchy, Suitable direction, Civil jurisdiction, Mandatory injunction, Supervisory power, Citizen at large, Independent functionaries, Public faith, Plenipotentiary, Perception, Colour of authority, Appointment without selection, Coercive action, Adjustment register, Non-existence selection, Promotion, Exemplary cost, Reasoning, Adverse entry, Service book, Error, Withholding grant of selection grade, Uncommunicated adverse entry, Emoluments, Infructuous, Notional promotion, *fortiori*, Direct recruitment, Quota, Requisite qualification, Sanctioned strength, Genuineness of documents, Seniority list, Retirement, Post retiral benefit, Arrears of pension.

Case Arising From

Order dated 07.02.2024 of D.I.O.S. disapproving the termination order passed by the Committee of Management.

Appearances for Parties

Advs. for the Petitioner : Arvind Kumar Singh, Bashisth Narain Pandey.
Advs. for the Respondents : Shachindra Kumar Mishra, Dr. Santosh Kumar Shukla, Roopesh Tiwari, A. K. Yadav, Vibhanshu Vaibhav.

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

1. By this judgment, we propose to decide Writ-A No.62515 of 2017, Writ-A No.42077 of 2016, Writ-A No.19042 of 2022 and Writ-A No.5197 of 2024, three of these relating to the claim of Raghvendra Prasad Mishra, an Assistant Teacher with the Sri Shiv Mohar Nath Pandey Kisan Janta Inter College, Nagar Bazar, Basti, for promotion as a Lecturer in the said institution and the award of selection grade as an Assistant Teacher from the appropriate date. Of these writ petitions, Writ-A No.5197 of 2024 has been preferred by the Management of the Sri Shiv Mohar Nath Pandey Kisan Janta Inter College, Nagar Bazar, Basti (for short, 'the Management'), challenging an order dated 07.02.2024 passed by the District Inspector of Schools, Basti (for short, 'the DIOS'), virtually disapproving the resolution of the Committee of Management dated 26.01.2024, deciding to terminate the services of Raghvendra Prasad Mishra on ground that his selection by the Uttar

Pradesh Secondary Education Services Selection Board, Prayagraj (for short, 'the Board') was never made and his appointment was the result of fraud.

2. We have heard Writ-A No.62515 of 2017 as the leading case. Nevertheless, we propose to decide Writ-A No.5197 of 2024, preferred by the Management for a first as the said writ petition carries facts and a cause of action slightly different from those involved in the other three writ petitions preferred by Raghvendra Prasad Mishra, who shall hereinafter be referred to as 'Mishra' in respect of all the writ petitions.

3. Writ-A No.5197 of 2024 preferred by the Management was heard together with the three writ petitions preferred by Mishra for reason that the action of the Management in terminating Mishra's services, dubbing his selection by the Board as non-existent, was really meant to scuttle consideration of Mishra's claim for promotion to the post of a Lecturer. As we would presently see, there was absolutely no basis for the Management to say that Mishra was never selected as a Lecturer by the Board, and, therefore, his appointment was non est, entitling them to terminate his services vide resolution dated 26.01.2024 and notified by the Manager vide order dated 29.01.2024. The Management also want in this petition, after quashing the order of the DIOS dated 07.02.2024, the issue of a mandamus to the Uttar Pradesh Education Service Selection Commission (for short, 'the Commission'), the successor of the Board, to approve the order dated 29.01.2024, terminating Mishra's services.

4. The case of the Management is that an order dated 13.09.2005 was issued by the DIOS that in accordance with a memo dated 09.08.2005 issued by the Secretary of the Board, Mishra had been selected as an Assistant Teacher (Trained Graduate) in Hindi and that he be appointed by the Management as such, in their institution. It is the Management's case that in compliance with the said statutory direction issued by the DIOS, they issued a letter of appointment dated 16.09.2005 in Mishra's favour and on 20.09.2005, he joined as an Assistant Teacher. It is the Management's case that in the year 2017, it came to their knowledge that Mishra was never selected in the selection examination, held pursuant to Advertisement No. 01/2002 and Roll No.020110023 mentioned in the order dated 13.09.2005 issued by the DIOS was not available in the entire despatch list of joining letters issued by the Board. The Management say that the despatch list of letters show the name of a man, called Raghvendra Mishra, but his posting is indicated with an institution, called the R.R. Inter College, Hardoi. The Management further assert that upon personal verification of the fact, they found that Raghvendra Mishra is working with the institution, known as R.R. Inter College, Hardoi and is a man different from Mishra, who was appointed by the Management.

5. It is the Management's case further that they submitted multiple applications under the Right to Information Act to the Board and their successor Commission, in order to secure information regarding Mishra's selection against Advertisement No. 01/2002. They were ultimately furnished with a copy of the adjustment register, where letter No. Patrank-2053-2120/2005 dated 09.08.2005, bears the same number as that mentioned in the order dated 13.09.2005 issued by the DIOS, directing Mishra's appointment in the Management's institution. It is the Management's case that in the entire letter No. Patrank-2053-2120/2005 dated 09.08.2005, Roll No. 020110023, mentioned in the DIOS' order, directing Mishra's appointment, is not available. It is also said that in the aforesaid list, a man, named Raghvendra Mishra, finds mention, but his posting is with the R.R.

Inter College, Hardoi. The Management, after receipt of the said information, informed the DIOS, to take action against Mishra regarding the fraud committed by him, saying that Raghvendra Mishra, who was selected by the Board, is another man, who sat the selection examination under Roll No. 090110640 and now serving with another institution. Mishra was never selected, and, therefore, his appointment was the outcome of fraud. It was non est. No action was taken by the DIOS in the matter nor inquiry held into the fraud that Mishra committed. The DIOS on a later representation preferred by the Management dated 16.12.2023, called evidence from the Management through his letter dated 20.12.2023, fixing 26.12.2023 for hearing. The DIOS heard parties, but did not look into the relevant material, disclosing Mishra's fraudulent appointment. Instead, a letter dated 27.12.2023 was issued by the DIOS to pay arrears of selection grade to Mishra. At the end of it all, when the DIOS did not take action, the Management granted opportunity to Mishra to show cause in the matter and resolved by the resolution dated 26.01.2024 to terminate his services.

6. A formal order, dispensing with Mishra's services, was issued by the Manager, on the Management's behalf, on 29.01.2024. The DIOS then called for a report regarding the order dated 29.01.2024 from the Management passed against Mishra. The Management answered it by their reply dated 02.02.2024 with a request that the order, terminating Mishra's services, be approved.

7. It is the Management's case that no action was taken by the DIOS in the matter of granting approval to the order, terminating Mishra's services. The Management, aggrieved by the inaction, went to the District Magistrate, Basti, with a representation dated 06.02.2024, which is short, very odd and by no means sweet. The material part of the representation, together with the request made, reads:

उपरोक्त के सम्बन्ध में अधोहस्ताक्षरी ने जिला विद्यालय निरीक्षक बस्ती को कुल 09 पत्र भेजकर दिशा-निर्देश/ अनुमति मांगा। इसके बावजूद उनके द्वारा कोई दिशा-निर्देश या अनुमति नहीं दी गयी और दिनांक 26.12.2023 को सुनवाई की। उसके बाद करीब 43 दिन व्यतीत हो जाने पर भी निर्णय नहीं लिया।

अधोहस्ताक्षरी ने दिनांक 29.01.2024 को श्री राघवेन्द्र प्रसाद मिश्र फर्जी शिक्षक की सेवा समाप्त कर दी। तब जिला विद्यालय निरीक्षक बस्ती प्रबन्धतंत्र को भंग करने की धमकी दिये।

महोदय जनपद का सर्वोच्च अधिकारी होने के कारण उपरोक्त के सम्बन्ध में आप से उचित कार्यवाही का अनुरोध है।"

8. The Management say that the District Magistrate, Basti directed the DIOS to take a decision in the matter, in consequence of which the DIOS passed the order impugned dated 07.02.2024, disapproving the order dated 29.01.2024 passed by the Manager, terminating Mishra's services. It is the validity of this order dated 07.02.2024 passed by the DIOS, that is impugned in the writ petition, presently under consideration.

9. In this writ petition, notice was issued to the State, the Commission as well as Mishra, but no return has been filed.

10. We have heard Mr. Shachindra Kumar Mishra, learned Counsel for the Management in support of the present writ petition, Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel along with Mr. Roopesh Tiwari, learned Standing Counsel on behalf of respondent Nos.1, 2, 3 and 4, Mr. A.K. Yadav, Advocate, holding brief of Mr. Vibhanshu Vaibhav, learned Counsel appearing on behalf of respondent No.5, the Secretary of the Commission, and Mr. Arvind Kumar Singh along with Mr. Bashisth Narain Pandey, learned Counsel appearing on behalf of Mishra. The record has been perused.

11. Before we proceed to examine the validity of the impugned order and the Management's claim to allied relief, we consider it appropriate to notice a few things, that relate to matters of jurisdiction of certain authorities, vis-a-vis each other, in particular the District Magistrate and the DIOS.

12. The District Inspector of Schools is a district level officer in his own right and the Head of the Secondary Education Establishment of the State Government in the district. The Department of Secondary Education is an independent department of the Government with its own hierarchy of officers. The next in line to the District Inspector of Schools is the Deputy Director of Education (Secondary), above whom, there is a Regional Joint Director of Education (Secondary). The next higher officer is the Additional Director of Education (Secondary). The next officer is the Director of Education (Secondary), who is the Head of the Directorate of Secondary Education in the State. The next in hierarchy is part of the State Government and he is the Additional Chief Secretary/ Principal Secretary (Secondary Education). The Department is headed by the Minister of Secondary Education.

13. In this entire hierarchy, the District Collector or the District Magistrate figures nowhere. The District Collector or the District Magistrate is the Head of the Revenue and the Civil Administration in the district and has nothing to do with the Department of Secondary Education. He has no jurisdiction, authority or power in matters of the Department of Secondary Education. It is, therefore, odd, though not surprising, that the Management faced with inaction upon their proposal to approve their order terminating Mishra's services, approached the District Magistrate for a direction to the DIOS to act with dispatch and take a quick decision. What is more odd, though again not surprising, is that the District Magistrate indeed issued directions, as the Management say, to the DIOS, who promptly complied and discharged his duties in passing an order that he was obliged to do under the law in the matter of approval/ disapproval of the Management's resolution.

14. We are of clear opinion that if the Management were faced with inaction on the District Magistrate's part, they ought have complained in the matter to the next higher officer in the hierarchy of Secondary Education Department, that is to say, the Deputy Director of Education or the Regional Joint Director of Education. The necessary directions could have been issued by these officials to the DIOS. Failing a suitable direction by higher officials in the Department of Secondary Education or even without going to them, the Management could always have moved

this Court for the issue of a mandamus to the DIOS to undertake his duty and take a decision on their proposal, terminating Mishra's services. A direction of the kind, that the District Magistrate issued, could either be done by an administrative superior, 'in-line' in the hierarchy, sitting over the DIOS or it could be done by a Judge, exercising judicial powers of the State, may be the ordinary original civil jurisdiction, that is exercised by a Civil Judge. A Civil Judge, on the Management's suit, could have issued a mandatory injunction, commanding the necessary action to be taken by the DIOS. If for some reason that remedy was advised not to be efficacious, the Management could always come and invoke our jurisdiction under Article 226 of the Constitution, praying for the issue of a mandamus to the DIOS to take a decision in the matter of approval of their proposal to terminate Mishra's services. The District Magistrate did not have the semblance of a jurisdiction to direct the DIOS in the matter.

15. Why we say that the Management going to the District Magistrate was odd, has been indicated by us hereinabove. The reason why we say that this was not surprising is that there are prevalent notions amongst the citizens at large, both educated and uneducated, that the District Magistrate is some sort of a 'head' of all authorities, public functionaries and statutory bodies functioning in the district, in relation to which he functions as the Collector, being head of the civil administration, responsible for the maintenance of law and order. The law does not invest the District Magistrate with any kind of general supervisory powers over authorities and functionaries of other Departments of the Government of the same or a higher rank stationed in the district. Even if the citizens at large have such mistaken notions about the District Magistrate's authority, it is the District Magistrate's duty to dispel such notions by declining to interfere in matters related to functionaries of other departments, not related to his establishment, or remit under the law. If a statute invests the District Magistrate with any kind of authority in certain matters that would affect the establishment of other authorities, that, of course, is a different matter, but not otherwise. Here, that is not at all the case.

16. There is still another aspect of the matter that we must notice. It is just not that the District Magistrate in this case assumed jurisdiction and issued directions to the DIOS to decide a matter pending before him, but again, surprisingly, the DIOS promptly complied with the District Magistrate's directions. This shows that independent functionaries of the district serving departments, not at all connected to the District Magistrate's establishment, acknowledge the District Magistrate's authority over them without any legal basis to it. This is a case, where the DIOS should have firmly told the District Magistrate not to intervene in matters of his department, but, instead, he submitted to the District Magistrate's command issued without authority.

17. We must notice here that these kind of situations are commonplace and District Magistrates across the State, virtually act as knights errant, interfering in matters of absolutely unrelated departments upon representations or memorials presented to them by members of the public. Because, independent functionaries, who are in no way subject to the District Magistrate's authority, promptly succumb to all such commands, it re-enforces the public faith that the District Magistrate is some kind of a plenipotentiary in the district, who holds a magic wand that is a panacea to redress any grievance that the public may have against any functionary of the State belonging to whatever establishment, sitting in the district. This perception leads to administrative and legal aberrations, which have to be eliminated with a firm hand. It is advisable for the District

Magistrates to tread a safe course and refrain from acting under colour of authority, where they do not have it under the law. Else, for future instances, this Court may have to think of resorting to penal measures against incumbents, who cross line and violate the law.

18. Now turning to the issue involved in the writ petition under consideration, what we find from a reading of the impugned order is that the DIOS, upon inquiries made from the Secretary of the Board, was intimated through letter No. 1325/ अधियाचन/ 677-2023/2023-24 dated 30.01.2024 that the records maintained in the office of the Board show that letter No. 2053-2120 dated 09.08.2005 had forwarded an adjusted panel to the DIOS. In the said panel, Mishra, who was selected in response to Advertisement No. 01/2002 by the Board as a Trained Graduate Teacher Hindi (Biklang) and recommended for appointment to the Ganga Prasad Mishri Lal Inter College, Kaudia, Gonda vide notification dated 24.12.2004, had subsequently been recommended for appointment vide adjustment letter No. मा0शि0च0बो0/2053-2120/2005 dated 09.08.2005 to the Janta Inter College, Nagar Bazar, Basti. The DIOS, therefore, held that Mishra's case was one of a genuine selection and appointment made by the Board and the order terminating his services on ground that he had secured an appointment without selection, fraudulently, cannot be countenanced. The order of termination was, therefore, disapproved with directions to pay all outstandings of salary etc. upon pain of coercive action against the Management under the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971.

19. The learned Counsel for the parties urged before us their respective cases with the Management saying that Mishra was never selected by the Board and indeed appointed fraudulently, whereas the learned Standing Counsel and the Board, both said that Mishra was genuinely selected and appointed. We, therefore, summoned the original records from the Board relating to Mishra's appointment and perused the same.

20. The foremost document that has been perused is a covering letter, bearing No. मा0शि0च0बो0/ 9588-9603/ 2002 from the Secretary of the Board to the District Inspectors of School, Gonda and Balrampur dated 25.01.2005, enclosing therewith a panel in duplicate of selected candidates in the subject of Hindi under the relevant rules, with a direction to ensure that the selected candidates are placed in the appropriate college. Along with this memo, there are other memoranda addressed to other unrelated District Inspector of Schools, not concerned with Mishra. There is then a notification carrying the panel enclosed with the memo dated 25.01.2005. The notification issued by the Board is dated 24.12.2004 and bears No.491/2004. This notification clearly mentions that the notified selection of teachers, whose names are mentioned there, relates to Advertisement No. 01/2002 issued by the Board. It carries a total number of 12 names of teachers selected for different districts. At serial No.9 of this notification, Mishra's name is mentioned in the following terms:

> "9. Ganga Prasad Mishri Lal Inter College, Kaudia, Gonda
> 0202110023 Shri Raghvendra Prasad Mishra,
> Gram-Agai Pad, Post Pipra Gautam, Basti."

21. The second document that we have perused is a list of LT Grade Teachers-Select, drawn up by the Board in its meeting dated 02.08.2005, where the concerned selectees have been adjusted against institutions other than the ones they were first placed against for appointment. The list carries eight columns. The first carries the serial number, the second the subject, the third the roll number, the fourth the name and address of the teacher-select, the fifth the caste, the sixth the notification number and date, the seventh the name of the institution initially allotted, and the eighth, the adjusted/ re-allotted institution. This document has been produced before us by the learned Counsel for the Board, like the other documents.

22. What appears to be serial No.29 of the list (the precise serial number being removed from the frame of the stenciled copy), mentions in the second column 'L.T. Hindi', the roll number mentioned in the third column is 020110023, in the fourth column, Mishra's name is mentioned with his address. In the column relating to caste, the entry is 'Biklang'. In the sixth column, the notification number and date shown is 491/04, dated 24.12.2004. In the seventh column, the name of the institution originally allotted to Mishra is mentioned as 'Ganga Prasad Mishri Lal Inter College, Kaudia, Gonda. In the eighth column, the adjusted/ re-allocated institution mentioned is 'Janta Inter College, Nagar Bazar, Basti'. There is little dispute that the institution run by the Management, the full name whereof is Sri Shivmohar Nath Pandey Kisan Janta Inter College, Nagar Bazar, Basti is the same as Janta Inter College, Nagar Bazar, Basti. No one has disputed before us that reference in the adjustment list to the re-allocated institution as Janta Inter College, Nagar Bazar, Basti, is a reference to the Management's institution. Also placed in original before us is the adjustment register relating to the Board, which again has eight columns. The original register is certified to be a document containing 189 leaves. Leaves are no doubt 189, two successive pages being treated as one leaf. The adjustment entries commence from the second page of the first leaf and end at the first page of the eighth leaf. The adjustment register has eight columns, wherein the first carries the serial number, the second the teacher′s-select roll number, the third the 'Subject', the fourth the teacher′s-select name and address, the fifth his/ her caste, the sixth the notification number and date, against which the teacher-select had applied, the seventh the name of the institution that was originally allotted, and the eighth, the re-allocated institution. One set of serial numbers end at the first page of leaf No.5 and proceed from 1 to 31. At the second page of leaf No.5, fresh serial numbers commence. Here, at this page of the adjustment register, against serial No.1, the roll number mentioned is 020110023, the subject is Hindi, the teacher′s-select name is that of Mishra, the notification number mentioned is 491/2004 and the date of the notification is 24.12.2004. The institution originally allotted to Mishra is Ganga Prasad Mishri Lal Inter College, Kaudia, Gonda and the re-allotted institution, shown in the last column, is Janta Inter College, Nagar Bazar, Basti.

23. The assertions in paragraph Nos.5 and 8 of Writ-A No.5197 of 2024, based on the inaccuracy pointed out in Mishra's roll number from a copy of the adjustment register, loose all significance. A perusal of the adjustment register clearly shows that Mishra's roll number is 020110023 and the notification number is 491/2004 dated 24.12.2004. The adjustment register also shows that Mishra was originally allotted the Ganga Prasad Mishri Lal Inter College, Kaudia, Gonda and then re-allocated to the Janta Inter College, Nagar Bazar, Basti, that is to say, the Management's institution.

24. The fact that Mishra was indeed selected by the Commission/Board is beyond cavil as appears upon a conjoint perusal of all these documents. The notification number is also confirmed upon a perusal of the original stenciled copy of the notification dated 24.12.2004, bearing No.491/2004, which has been produced by the Board. In the said notification, Mishra's name finds place at serial No.9 and the roll number mentioned is 020110023. In the face of all these documents, there is no scope for the Management to come up with a case of fraudulent appointment against Mishra, based upon a non-existent selection by the Board. In fact, the Management's case, which has led them to pass the resolution dated 26.01.2024 and the consequential order dated 29.01.2024, terminating Mishra's services is clearly mala fide. It is based on no evidence.

25. We are of opinion that it has been made deliberately in order to scuttle Mishra's career and send him on a diversion to redeem his employment and service, when he would otherwise be agitating his claim for promotion, that has been denied. We, therefore, hold that the order impugned passed by the DIOS is not only unexceptionable, but the Management's stand is mala fide, which must invite imposition of exemplary cost of Rs.50,000/-.

26. We may now turn attention to the remainder of the three writ petitions, all preferred by Mishra.

27. Heard Mr. Arvind Kumar Singh along with Mr. Bashisth Narain Pandey, learned Counsel appearing on behalf of Mishra, Mr. Shachindra Kumar Mishra, learned Counsel for the Management and Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel along with Mr. Roopesh Tiwari, learned Standing Counsel on behalf of the State-respondents, in three of the remaining writ petitions.

28. Writ-A No.42077 of 2016 seeks the issue of a mandamus to the DIOS to decide Mishra′s representation dated 11.01.2016. The representation is about Mishra′s claim to be granted his selection grade, which, according to him, fell due on 20.09.2015. The DIOS has not filed a counter affidavit in response to the present writ petition. However, a counter affidavit has been filed on behalf of the Management, saying many things, resisting Mishra's claim, but what is relevant is the plea set out in paragraph No.31 of their counter affidavit. It is said there that Mishra's claim regarding grant of the selection grade has been decided by the DIOS vide order dated 25.07.2023, where selection grade has been ordered to be provided to Mishra w.e.f. 01.07.2019.

29. It is also averred that the order dated 25.07.2023 has never been challenged by Mishra. A perusal of the order dated 25.07.2023 shows that Mishra has been granted the selection grade indeed w.e.f. 01.07.2019. The reasoning in the order apparently discernible is that Mishra was appointed as an Assistant Teacher w.e.f. 02.09.2005, and indeed, completed his qualifying service of 10 years on 19.09.2015, entitling him to selection grade, but it was recommended for him by the Management vide their resolution dated 05.05.2023, because the last adverse entry awarded to him was one dated 30.06.2009 and the period of 10 years would have to be reckoned from the date of the said entry. It is in this manner that the DIOS vide order dated 25.07.2023 decided to grant selection grade w.e.f. 01.07.2019.

30. No doubt, it is true that Mishra has not challenged the order dated 25.07.2023, but in the other two writ petitions, to which we would soon allude in this judgment, he has questioned the validity of the adverse entries awarded to him. Therefore, if the adverse entries awarded to Mishra, the last being admittedly the one dated 30.06.2009, were to be held ineffectual by this Court, while deciding the remainder of the two writ petitions, we would think that consequences that would follow would obviate the necessity for any order to be made in the present writ petition.

31. In Writ-A No.62515 of 2017, Mishra has sought quashing of the order dated 12.10.2017 passed by the Joint Director of Education, Basti Region, Basti, declining Mishra's claim to the grant of selection grade as an Assistant Teacher L.T. Grade as well as promotion to the post of Lecturer (Sanskrit). Here, Mishra has further sought our mandamus directing each of the respondents to promote Mishra to the post of a Lecturer in Sanskrit with the institution maintained by the Management.

32. Writ-A No.19042 of 2022 has been instituted by Mishra, seeking to quash the order dated 30.08.2022 passed by the Joint Director of Education, promoting respondent No.5 to the post of a Lecturer in Economics with the institution maintained by the Management. Mishra has further prayed for the issue of a mandamus to the respondents to promote Mishra to the post of Lecturer in Sanskrit with the institution, apparently against the 50% quota reserved for promotion.

33. In the logical sequence of things, it would be apposite to take up Writ-A No.62515 of 2017 at this stage as it is this petition and Writ-A No.19042 of 2022, that now encapsule all of Mishra's claims to be determined by this Court.

34. In Writ-A No.62515 of 2017, we may notice that a counter affidavit has been filed on behalf of the DIOS, to which there is no rejoinder. There is a supplementary counter affidavit on behalf of the DIOS, which has been answered in terms of a supplementary rejoinder by Mishra. There is a separate counter affidavit on behalf of the Management answering Mishra's writ petition. Mishra has filed a rejoinder in answer to the Management's case.

35. Now, there are two facets to Mishra's claim in this petition, to wit, the grant of selection grade from the date of his entitlement as an Assistant Teacher L.T. Grade, and, the other is consideration of his case for promotion to the post of a Lecturer in Sanskrit. The impugned order denies both the claims. This we have already noticed while referring to Mishra's claim involved in Writ-A No.42077 of 2016 that Mishra has indeed been granted a selection grade w.e.f. 01.07.2019 vide order dated 25.07.2023 passed by the DIOS. This order proceeds on the basis that Mishra was awarded his last adverse entry on 30.06.2009 and 10 years of satisfactory service were completed on 01.07.2019, when he was granted the selection grade. Mishra has claimed it w.e.f. 19.01.2015, inasmuch as he joined the institution maintained by the Management as an L.T. Grade Teacher w.e.f. 20.09.2005. It is, therefore, apparently the adverse entries, that Mishra was awarded, which form the foundation or the basis to deny him selection grade as an L.T. Grade Teacher for a period as long as four years. It has, therefore, to be examined if the adverse entries awarded to Mishra are in accordance with law or these are vitiated by illegalities, that may entitle this Court to interfere.

36. A reading of the impugned order dated 12.10.2017 shows that Mishra was awarded adverse entries for the years 2005-06, 2006-07, 2007-08 and 2008-09 by the Principal of the institution, besides being given a warning by the Manager for indulging in 'anti-institutional activities', described in the order impugned as *'sanstha virodhi karya'*. The impugned order records the fact that Mishra was not only awarded these adverse entries, but duly communicated the same. This fact was brought to the notice of the DIOS by the Management vide their letter dated 29.12.2015.

37. Mishra, in paragraph No.17 of the writ petition, has asserted that adverse entries for the years 2005-06, 2006-07, 2007-08 and 2008-09 were neither awarded nor communicated to him and the same cannot be taken into consideration for that reason. It is also asserted that opportunity to show cause regarding the adverse entries awarded has not been given to Mishra till date, but the Manager has set up this story in order to resist Mishra's claim for promotion. Apparently, not only promotion, the adverse entries as the Management say, which mar Mishra's service record are the basis to deny him for a considerable period of time, the award of selection grade. Paragraph No.17 of the writ petition has been answered in the Management's counter affidavit vide paragraph No.39, where replying to it along with paragraph Nos.18, 19 and 20 of the writ petition, all that is said on the issue is that Mishra's service is unsatisfactory and bad entries are there on record. In his service book, those bad entries are available and Mishra cannot deny this fact. It is also asserted that all adverse entries are recorded lawfully and Mishra has never challenged the adverse entries in any earlier writ petition.

38. Be that as it may, the Management do not deny the fact that has been asserted in paragraph No.17 of the writ petition that the adverse entries were never communicated to him. The finding of the DIOS that these entries were duly communicated to Mishra, therefore, suffers from an error apparent. The fact that the adverse entries were there in the service book is not sufficient notice to Mishra as it is nowhere asserted that he was given a copy of the service book at the relevant time, when the entries were made or the entries otherwise brought to his notice. We are of opinion, therefore, that the adverse entries for the four years, mentioned hereinabove, were never communicated to Mishra.

39. In this connection, reference may be made to Regulations 72 and 73 of Chapter III of the Regulations framed under the Intermediate Education Act, 1921 (for short, 'the Act of 1921'), which apply to the Management and the institution, where Mishra served. Regulations 72 and 73 aforesaid read:

"72. In the case where an adverse entry is made in the Character Roll of a person in a particular year, the entire entries of the year, both adverse and favourable shall be communicated to him within 30 days of the making of such an entry and an acknowledgment obtained, information about the withholding of the integrity certificate shall be communicated likewise.

73. A representation against an adverse entry in the character Roll may be made to the Committee of Management whose decision thereon shall be final."

40. In view of the specific provisions, requiring an adverse entry in the character roll to be communicated to a person employed in an institution governed by the Act of 1921, it was

incumbent upon the Management to communicate the four adverse entries that they now cite against Mishra to deny him selection grade for a period as long as four years. Even apart from the statutory provisions contained in Regulations 72 and 73, on general principle, it is not permissible for an employer to rely on adverse entries for the purpose of denying promotion or withholding grant of selection grade or visiting the employee with any other adverse civil consequences, if the relevant adverse entries have not been communicated to the employee concerned. I had occasion to consider this question, both on the terms of Regulations 72 and 73 of the Regulations last mentioned and general principle, in **Surendra Kumar Gupta v. State of U.P. and others, 2022 SCC OnLine All 1918**, where I held:

"37. At this stage, it is of the prime importance to notice the stand of the District Inspector of Schools about the adverse entries awarded to the petitioner during the years 2001-2002, 2002-2003, 2003-2004 and 2004-2005. The stand of the District Inspector of Schools in this regard is disclosed in Paragraph Nos. 17 and 18 of his personal affidavit dated 07.10.2021. The said paragraphs read:

17. That bare perusal of the duplicate service book of the petitioner it clearly transpires that uptill 2000 there was no any adverse entry against him and in the year 2001-2002, 2002-2003, 2003-2004, 2004-2005 adverse remarks were made against the service of the petitioner as the same was not found satisfactory and even his integrity was also found doubtful as such warning as well as adverse entry, withholding of increment as well as deduction from salary, such type of orders were found but there was not a single whisper about this respect that whether prior to awarding the aforesaid punishment due procedure was followed or not and even the petitioner was whether provided opportunity of hearing or not and bare perusal of the said orders it clearly transpires that the then manager and Principal done the alleged proceedings against the petitioner without following any procedure with ill intention as such the said entries are itself void and on the basis of the same no benefit of the petitioner can be stopped on the basis of said illegal entries.

18. That bare perusal of the aforesaid service book it also clearly transpires that vide order dated 29.03.2009 a decision was taken by the respondent No. 6 to suspend the petitioners and the approval of the same was also alleged to be granted by the then D.I.O.S. on 26.05.2009 and later on vide final order dated 28.05.2010 passed by the respondent no. 6 two increment of the petitioner was directed to withheld and even the salary during the suspension period was also directed to be forfieted except the subsistence allowance and later on the petitioner was reinstated in service but as provided under Regulation 21 no approval of the said order was ever done by Secondary Education Service Selection Board as such the said punishment order is also illegal and void."

38. Indeed, the act of the Manager in recording adverse entries behind the petitioner's back, which were never communicated to him, contrary to the provisions of Regulation 72, cast a shadow of grave doubt about the authenticity and the resultant validity of the adverse entries, on which the respondents rely. If statutory regulations require a particular thing to be done in a specified manner, it has to be done in that manner, is a principle too well-known. If a mandatory provision in a statutory regulation, that has adverse civil consequences on the rights of an employee, is observed in breach, there is a clear case of mala fides in law. Here, the District Inspector of Schools has opined breach of the regulation in failing to communicate the adverse entries and getting them signed by the petitioner to be an instance of mala fide in fact. The circumstances, indeed, indicate that the non-communication was mala fide. The mala fides were

clearly on the Management's part in not getting the adverse entries duly acknowledged by the petitioner under his signatures on the service-book, which would be due notice to him. The petitioner could then represent against those adverse entries in the manner provided under Regulation 73. All this has not all been done. Apart from the provisions of Regulations 72 and 73, the law is clear on the point that the remarks entered in the ACRs must be communicated to the employee concerned within a reasonable period of time, as held by the Supreme Court in Sukhdev Singh v. Union of India, (2013) 9 SCC 566. In Sukhdev Singh (supra), it was held:

3. Subsequent to the above two decisions, in Dev Dutt v. Union of India [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771], this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two-Judge Bench [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in U.P. Jal Nigam [U.P. Jal Nigam v. Prabhat Chandra Jain, (1996) 2 SCC 363 : 1996 SCC (L&S) 519 : (1996) 33 ATC 217] and principles of natural justice exposited by this Court from time to time particularly in A.K. Kraipak v. Union of India [(1969) 2 SCC 262]; Maneka Gandhi v. Union of India [(1978) 1 SCC 248]; Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672]; Canara Bank v. V.K. Awasthy [(2005) 6 SCC 321 : 2005 SCC (L&S) 833] and State of Maharashtra v. Public Concern for Governance Trust [(2007) 3 SCC 587] concluded that every entry in the ACR of a public servant must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court observed in paras 17 and 18 of the Report in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] at SCC p. 733:

"17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder."

(emphasis in original)

4. Then in para 22 at SCC p. 734 of the Report this Court in Dev Dutt case [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] made the following weighty observations:

"22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidical

structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.″

5. In paras 37 and 41 of the Report this Court then observed as follows : (Dev Dutt case [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771], SCC pp. 737-38)

"37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

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41. In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.″

6. We are in complete agreement with the view in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] particularly paras 17, 18, 22, 37 and 41 as quoted above. We approve the same.

7. A three-Judge Bench of this Court in Abhijit Ghosh Dastidar v. Union of India [(2009) 16 SCC 146 : (2010) 1 SCC (L&S) 959] followed Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771]. In para 8 of the Report this Court with reference to the case under consideration held as under : (Abhijit Ghosh Dastidar case [(2009) 16 SCC 146 : (2010) 1 SCC (L&S) 959], SCC p. 148)

"8. Coming to the second aspect, that though the benchmark 'very good' is required for being considered for promotion, admittedly the entry of 'good' was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having 'very good' in the previous year. In those circumstances, in our opinion, noncommunication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. Hence, such noncommunication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the abovereferred decision (Dev Dutt case [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771], SCC p. 738, para 41) relied on by the appellant. Therefore, the entries 'good' if at all granted to the appellant, the

same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.″

8. In our opinion, the view taken in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR-poor, fair, average, good or very good-must be communicated to him/her within a reasonable period.

39. The precise point, that uncommunicated adverse ACRs/entries cannot be relied upon for the purpose of consideration for promotion, was subject matter of consideration before the Supreme Court in Rukhsana Shaheen Khan v. Union of India, (2018) 18 SCC 640. Their Lordships in Rukhsana Shaheen Khan (supra) held:

1. The sole issue involved in this appeal is whether the uncommunicated Annual Confidential Reports (ACRs), which are adverse to the appellant, should have been relied upon for the purpose of consideration of the appellant for promotion.

2. In view of the decision of this Court in Sukhdev Singh v. Union of India [Sukhdev Singh v. Union of India, (2013) 9 SCC 566 : (2014) 1 SCC (L&S) 279], there cannot be any dispute on this aspect. This Court has settled the law that uncommunicated and adverse ACRs cannot be relied upon in the process.

3. This appeal is, accordingly, allowed and the impugned judgment [Rukhsana Shaheen Khan v. Union of India, 2006 SCC OnLine Del 1840] is set aside with the following directions:

(a) The competent authority is directed to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with law.

(b) The appellant shall be afforded an opportunity of hearing in the process.

4. It will be open to the appellant to make all available submissions, including the reference to the judgment of this Court in Prabhu Dayal Khandelwal v. UPSC [Prabhu Dayal Khandelwal v. UPSC, (2015) 14 SCC 427 : (2016) 1 SCC (L&S) 825].

40. The legal position being clear that uncommunicated adverse entries cannot form the basis to deny promotion and a fortiori denial of promotion pay scale to an employee, the action of the respondents in seeking to deny consideration for grant of promotion pay scale to the petitioner on the basis of uncommunicated ACRs/entries for the years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005, cannot be countenanced. The District Inspector of Schools in his affidavit has, on larger grounds, opined those entries to be inherently vitiated.

41. Be that as it may, this Court is of the firm opinion that the adverse ACRs/entries in the petitioner's service-book cannot be made the basis of denying him consideration for the grant of promotion pay scale. It is, accordingly, held.″

41. We have already held earlier in this judgment that the adverse entries for the four years in question were never communicated to Mishra. In view of the legal position regarding uncommunicated adverse entries in the matter of consideration of a teacher′s claim for grant of selection grade or promotion, we are of opinion that the order dated 12.10.2017, impugned in Writ-A No.62515 of 2017, passed by the Joint Director of Education, declining Mishra′s claim for grant of selection grade as an Assistant Teacher L.T. Grade w.e.f. 19.01.2015 based on the four adverse entries, deserves to be quashed to that extent. Mishra is entitled to the grant of selection grade, not w.e.f. 01.07.2019, that is to say, when he completed 10 years of service from the date of the last adverse entry awarded to him, but w.e.f. 19.01.2015 upon completion of 10 years service from the date he joined the Management′s institution, to wit, on 20.09.2005. Mishra would be entitled to a revision of his emoluments on that basis as well as his post retiral benefits, accordingly. Mishra would also be entitled to arrears on account of revision of emoluments w.e.f. 19.01.2015 until time these are paid.

42. This takes us to the other question involved in this petition, regarding which Mishra has claimed a mandamus to promote him to the post of Lecturer in Sanskrit.

43. Regarding this part of Mishra′s relief, it must be noticed that he has retired from service pending this petition on 31.03.2024. It was urged on behalf of the respondents that Mishra's claim for promotion has now become infructuous and this part of the relief cannot be granted to him. We do not agree. If Mishra is found entitled to promotion or his case on this score held wrongfully denied by the respondents, entitling him to a quashing of that part of the impugned order with a direction to re-consider it, Mishra would also be entitled to notional promotion from the date he is found by this Court to be entitled or by the Authority to which the matter is remitted, i.e. if his claim is substantiated before the said Authority.

44. The impugned order passed by the Joint Director of Education holds that Mishra's case for promotion to the post of Lecturer in Sanskrit was refused to be recommended by the Management on ground that his services were not satisfactory. The order notes that the post of Lecturer in Sanskrit fell vacant on 30.06.2011 on account of the incumbent retiring, but the resultant vacancy was forwarded to the Board vide requisition dated 12.12.2011. It is then remarked that Mishra has instituted Writ-A No.42077 of 2016 before this Court aggrieved by his non-promotion, which is pending. It is also said that pending the writ petition, Mishra had appealed to the Joint Director, claiming the relief of promotion. It must be remarked here that so far as the pendency of Writ-A No.42077 of 2016 before this Court relating to Mishra's claim for promotion is concerned, the impugned order makes an unnecessary and uncalled for reference to it.

45. Writ-A No.42077 of 2016 claims the inconsequential relief of the issue of a mandamus to the DIOS to decide his representation dated 11.01.2016. The said representation is about claiming selection grade w.e.f. 20.09.2015, a matter which we have already pronounced upon. The writ petition does not claim any substantive relief, either regarding award of selection grade or

promotion to the post of Lecturer. In fact, there is no claim about promotion to the post of Lecturer in the representation dated 11.01.2016, which Mishra has sought a decision of by a command of this Court. The remarks in the impugned order, making an allusion to the aforesaid writ petition, are absolutely unnecessary and ones made deliberately by the Joint Director to confound the issue and lend a hollow buttress to his reasoning, declining Mishra's claim to promotion. We have already held earlier in this judgment that the uncommunicated adverse entries awarded to Mishra are inconsequential, which cannot be relied upon to deny him the benefit of selection grade. A fortiori, the remarks in the impugned order, that Mishra's case for promotion was refused to be recommended by the Management on account of his unsatisfactory service record, too lose their factual basis.

46. With the adverse entries awarded to Mishra being declared inconsequential, there is nothing in his service record that may entitle the Management to say that his services were unsatisfactory. For the same reason, the remarks to this effect carried in the impugned order are also without foundation to rest. It is recorded in the Joint Director's order impugned that the post of a Lecturer in Sanskrit fell vacant on 30.06.2011 and it was recommended for being filled up by direct recruitment to the Board on 12.12.2011. The tenor of the impugned order shows that the Joint Director proceeded on the basis that when the post of Lecturer in Sanskrit fell vacant, that is to say, 30.06.2011, Mishra's service record being not satisfactory, he was not recommended and that, therefore, this vacancy was intimated to the Commission to be filled up by direct recruitment. There is nothing else said in the impugned order in justification for upholding the denial of promotion to Mishra. It is beyond cavil that the validity of an order under challenge is to be judged on its own terms and contents. The reasons cannot be supplemented by affidavit. Nevertheless, in this case, since we propose to rest some substantial issues here, we have looked into the justification offered by the Education Authorities, as well as the Management, to decline Mishra's promotion.

47. In the counter affidavit filed on behalf of the DIOS, which represents the stand of the Education Authorities, it is averred that after re-determination of the sanctioned strength of staff in the college, four posts of Lecturers were held to be there as sanctioned posts. It is said in paragraph No.17 of the counter affidavit filed on behalf of the DIOS that after the man, who was holding the post of Lecturer in Sanskrit, retired on 30.06.2019, an intimation was sent to the Board, inasmuch as the post that fell vacant, falls under the direct recruitment quota. It is then added as the reason to refuse promotion that Mishra's services not being satisfactory, as there were adverse entries recorded in his service-book, he was declined promotion.

48. In the counter affidavit filed on behalf of the Management, it is averred in paragraph No.35, after pleading a denial of paragraph Nos.8, 9, 10, 11 and 12 of the writ petition, that the Management had sent information to the Board to fill up the vacancy of Lecturer in Sanskrit through direct recruitment and Mishra, therefore, cannot claim it by way of promotion. It is asserted by the Management that the vacancy belongs to the direct recruitment quota and not earmarked for promotion. It is then pleaded consistently in paragraph Nos.35, 37, 38, 39, 40, of the Management′s counter affidavit, amongst other things that we would shortly notice, that Mishra's service record is unsatisfactory on account of adverse entries awarded to him. Those entries we have already held to be inconsequential and without force. The effect of our declaration as

aforesaid is that the adverse entries must be regarded as ones that never existed. It is not that these adverse entries can be regarded as existing at the relevant time and in consequence of our order made today, declaring these inconsequential, they would loose force from the date of our judgment. The effect of our declaration is without doubt one that for all intents and purposes renders the entries meaningless, though these were in fact awarded and figured on record.

49. After all, the law about adverse entries is well settled that uncommunicated prejudicial entries cannot be relied upon for the purpose of considering the employee′s case for promotion. Such uncommunicated adverse entries are to be ignored. Reference in this connection may be made to **Dev Dutt v. Union of India and others, (2008) 8 SCC 725** and **Rukhsana Shaheen Khan v. Union of India and others, (2018) 18 SCC 640**. Mishra's service record can, therefore, not be regarded as unsatisfactory.

50. As already remarked, so far as the impugned order regarding denial of promotion is concerned, this would be sufficient to quash it, but the matter would then have to be remitted to the statutory Authority to determine the question of Mishra's entitlement to notional promotion. It is for this reason that we have examined the other plea raised in denial of Mishra's claim through affidavit. This plea is that the post of Lecturer in Sanskrit, which Mishra claims on the basis of promotion, in fact, falls under the direct recruitment quota.

51. In order to justify the aforesaid position, the profile of the cadre of Lecturers in the institution maintained by the Management, that is to say, profile of the cadre on the premise which posts of Lecturer were earmarked for promotion and direct recruitment, we find the Management's stand set forth in paragraph No.36 of their counter affidavit, as hereinafter described. It is asserted that Surendra Kumar Bharti was promoted as a Lecturer in Economics on 16.09.2022 and Rajit Ram Verma was promoted as Lecturer in Geography. The post of Lecturer in Hindi was filled up by direct recruitment and the post of Lecturer in Civics too was filled up by direct recruitment. In the aforesaid manner, the Management have attempted to justify that there was no post available to be filled up by way of promotion, the quota thereof i.e. 50% under the statute being full.

52. It is asserted in paragraph No.36 of the counter affidavit further that in the subject of Sanskrit, the number of students is very less and during certain sessions, students are not at all available. It is for the said reason that the post of Lecturer in Sanskrit was intimated to the Commission for filling up through direct recruitment. There appears to be some conflict in the Management's stand because in paragraph No.36, they do not speak about any post of a Lecturer in Sanskrit being there. They have explained all the posts of Lecturers are filled up, both by way of promotion and direct recruitment, in the subjects of Economics, Geography, Hindi and Civics. Nevertheless, the order impugned passed by the Joint Director of Education shows that one post of Lecturer in Sanskrit is there, which has been intimated to the Board for being filled up by way of direct recruitment. The Management also do not dispute the said fact notwithstanding their confounding assertions about the posts of Lecturers, numbering four, subject-wise. It cannot, therefore, be doubted that there is a post of Lecturer in Sanskrit with the Management's institution, which they have intimated to the Board to be filled up by way of direct recruitment.

53. A supplementary counter affidavit filed on behalf of the DIOS endeavours to give a more accurate description of the Lecturers cadre profile, subject-wise and quota-wise - quota about promotion and direct recruitment. In paragraph No.13 of the supplementary counter affidavit filed by the DIOS, the stand taken is that on 23.12.2022, the Management intimated through a report of that date the fact that the post of Lecturer in Sanskrit had fallen vacant on 30.06.2011 due to retirement of Jagdamba Prasad Mishra and that it was to be filled up by direct recruitment. It is then averred that the said post was filled up by adjustment of Smt. Gayatri Devi, Lecturer (Economics) on transfer from another institution. It is asserted that Rajit Ram Verma, Assistant Teacher, L.T. Grade, was promoted to the post of Lecturer (Geography) on 10.04.2014 and the post of Lecturer (Hindi) was filled up by adjustment of Krishna Kanhaiya Verma upon his transfer. About the post of Lecturer (Economics), which fell vacant due to retirement of Smt. Gayatri Devi on 31.02.2022, it is asserted that Surendra Kumar Bharti was promoted on 30.08.2022 as Lecturer (Economics). The stand in paragraph No.14 of the supplementary counter affidavit is that out of the four sanctioned posts of Lecturers, two have been filled up by way of promotion under the 50% quota, one by direct recruitment, adjusting Krishna Kanhaiya Verma, Lecturer (Hindi) upon his transfer and one post of Lecturer is vacant, which falls under the direct recruitment quota. It is asserted that there is no vacancy of Lecturer under the 50% quota, entitling Mishra to promotion.

54. In the supplementary rejoinder affidavit filed by Mishra in response to the supplementary counter affidavit filed by the DIOS, it is averred in paragraph No.4, answering paragraph Nos.3 and 4 of the supplementary counter affidavit, but in effect answering paragraph Nos.13 and 14 as well, thus:

"4. That the contents of paragraph nos. 3 and 4 of the supplementary counter affidavit are incorrect hence denied. The post of lecturer (Sanskrit) fell vacant on 30.06.2011 due to retirement of Jagdamba Prasad Mishra and on the said date out of 4 posts following person were working:-

A. Sri Krishna Nand Shukla was granted the Lecturer Grade being Physical Education Teacher pursuant to the Govt. order dated 28.02.1990 therefore Sri Shukla cannot be treated under promotion quota.

B. Sri Shyam Lal was granted the Lecturer Grade as Language Teacher pursuant to the Govt. order dated 28.02.1990 therefore he cannot be treated under promotion quota and apart from this the controversy has been decided that awarding the lecturers grade the person is not entitled to be treated as lecturers. True copy of the service book are being filed herewith and marked as ***Annexure No. 1*** *to this supplementary rejoinder affidavit.*

C. Sri Gajadhar Nath Mishra was promoted as lecturer under 50% quota therefore out of 4 posts only one post has been filled up under promotion quota and as such the petitioner was eligible and qualified for the post of lecturer in Sanskrit under promotion quota but his claim was rejected."

55. The most crucial fact to be seen in order to determine Mishra's right to be considered for promotion to the post of a Lecturer is the date when the right accrued to him. The post of Lecturer in Sanskrit fell vacant on 30.06.2011 and the right to be considered for promotion for Mishra is to be seen with reference to the relevant recruitment year, as defined under Section 2(l) of the Uttar

Pradesh Secondary Education (Services Selection Boards) Act, 1982 (for short, 'the Act of 1982'). Section 2(l) of the Act of 1982 defines year of recruitment as follows:

*"**2. Definitions**.- In this Act,-*
x x x x

(l) Year of recruitment' means a period of twelve months commencing from first day of July of a calendar year."

56. Rule 14 of the Uttar Pradesh Secondary Education Services Selection Board Rules, 1998 (for short, 'the Rules of 1998'), dealing with the procedure for recruitment by promotion, reads:

"***14. Procedure for recruitment by promotion**.-(1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications, prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same.*

Notes-For the purposes of this sub-rule, regular service rendered in any other recognised institution shall be counted for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the proforma given in Appendix 'A'.

(4) Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary, The Joint Director shall place the records before the Selection Committee referred to in sub- section (1) of Section 12 and after the committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management.

(6) Within ten days of the receipt of the panel from the Joint Director under sub-rule (5), the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorisation under its resolution issue the appointment order in the proforma given in Appendix 'F' to the such candidate."

(emphasis by Court)

57. Section 12 of the Act of 1982 provides:

"12. Procedure of selection by promotion.-

(1) For each region, there shall be a selection Committee, for making selection of candidates for promotion to the post of a teacher, comprising:-

(i) Regional Joint Director of Education – Chairman

(ii) Senior most Principal of Government Inter college - member in the region;

(iii) Concerned District Inspector of School - member /secretary

(2) The procedure of selection of candidates of promotion to the post of a teacher shall be such as may be prescribed."

58. The procedure for selection of a candidate by promotion, we have already alluded to by making a reference to Rule 14 of the Rules of 1998, quoted in extenso hereinabove. Considering the provisions of the Act of 1982 and the Rules of 1998, it is pellucid that Mishra was eligible for promotion when the vacancy of Lecturer in Sanskrit came into existence on 30.06.2011, as by then he had completed five years continuous and regular service as a Teacher in the Trained Graduates Grade. There is no issue that he did not possess the requisite qualifications prescribed for the post. The reason why Mishra was not considered for promotion was unsatisfactory service record, marred as it was, by adverse entries for the years 2005-06, 2006-07, 2007-08 and 2008-09. These adverse entries, we have already held, were fit to be ignored. In the circumstances, we are of considered opinion that after the post of Lecturer fell vacant on 30.06.2011, Mishra was eligible to be considered for promotion, as he rightly says, on 01.07.2011 or as soon thereafter as might have been, 01.07.2011 being the commencement of a new recruitment year following the occurrence of vacancy.

59. Admittedly, when the post of Lecturer in Sanskrit fell vacant on 30.06.2011 upon the retirement of Jagdamba Prasad Mishra, there were six sanctioned posts of Lecturers. Mishra's entitlement and his right to be considered for promotion crystallized at that time. By then, the sanctioned strength had not at all been revised in terms of the Government Order dated 22.02.2013, bringing down the sanctioned strength of Lecturers to four from six. The case of the DIOS is that in the relevant recruitment year, that is to say, the one commencing 01.07.2011, when the post of Lecturer in Sanskrit fell vacant on the then sanctioned strength of six in the Lecturers' cadre, three Lecturers, to wit, Krishna Chandra Shukla, Shyam Lal Verma and Gajadhar Nath Mishra, were working under the promotion quota and, therefore, the vacancy of Lecturer in Sanskrit, that occurred due to Jagdamba Prasad Mishra's retirement on 30.06.2011, would go to the direct recruitment quota.

60. In the supplementary rejoinder affidavit, it is pointed out by the learned Counsel for Mishra that Krishna Chandra Shukla was never promoted to the post of a Lecturer, but was granted the Lecturers' grade in terms of a Government Order dated 28.02.1990. He was a Physical Education Teacher. The grant of the Lecturers' grade did not constitute his promotion to the cadre of Lecturers. Similarly, Shyam Lal Verma too was granted the Lecturers' Grade as a language teacher in terms of the Government Order dated 28.02.1990. It is urged that he cannot be treated ever to have been promoted to the post of a Lecturer, the award of the Lecturer's grade in terms of the G.O. last mentioned notwithstanding.

61. In order to resolve this part of the controversy, we summoned the service records of these two teachers, to wit, Krishna Chandra Shukla and Shyam Lal Verma, in order to find out if they

were indeed promoted to the post of a Lecturer or were merely given the Lecturer's grade. We have also looked into the terms of the Government Order dated 28.02.1990, on the basis of which it is said that these two teachers were simply given the Lecturer's grade, but never promoted as such. Shyam Lal Verma's service book has been produced in original, whereas a xerox copy of Krishna Chandra Shukla's service-book attested by the Manager and the Principal of the institution has been produced. None of the parties dispute the genuineness of these documents, including the State.

62. A perusal of Shyam Lal Verma's service-book shows that he was appointed on the basis of the Management's resolution dated 07.07.1972 in the C.T. Grade. Later on, in terms of an order dated 03.03.1981, he was placed in the L.T. Grade. A perusal of page No.5 of the service-book shows that Verma functioned as an Assistant Teacher L.T. Grade and Physical Education up to 31.07.1990. However, w.e.f. 01.08.1990, he was granted the Lecturer's grade upon completion of 10 years continuous service in terms of the Government Order dated 28.02.1990. The following order has been endorsed in red ink in the service-book:

"10 वर्ष की निरन्तर सेवा पर शा० सं० 2111/8-5-90/3087/89 दिनांक 28-2-90 के अनुसार दिनांक 1-8-90 से प्रवक्ता वेतनक्रम दिया गया एवं दिनांक 1-8-90 को रु० 1650=00 वेतन निर्धारित किया गया।"

Just beyond where the aforesaid order is endorsed in Verma's service-book, in the left hand column, he is described as Pravakta Vyayam Shiksha.

63. It would be apposite to refer to the Government Order dated 28.02.1990 issued by a Joint Secretary to the Government of Uttar Pradesh and addressed to the Director of Education, Lucknow/ Allahabad. The said Government Order reads:

"प्रेषक,
श्री शरदिन्दु,
संयुक्त सचिव,
उत्तर प्रदेश शासन।
सेवा में,
शिक्षा निदेशक,
उत्तर प्रदेश,
लखनऊ/इलाहाबाद
शिक्षा [8] अनुभाग लखनऊ : दिनांक फरवरी 28, 1990
विषय-- वेतन पुनरीक्षण समिति, उत्तर प्रदेश, 1989 की संस्तुतियों पर लिये गये निर्णयानुसार अशासकीय सहायता प्राप्त उच्चतर माध्यमिक विद्यालयों/इन्टर कालेजों में शैक्षिक पदों पर पुनरीक्षित वेतनमानों की स्वीकृति।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या 4749/15-8-89/3087/89 दिनांक 4 अक्टूबर, 1989 के पैरा-3 के अनुक्रम में मुझे यह कहने का निर्देश हुआ है कि कला, व्यायाम, भाषा, गृह विज्ञान, शिल्प, संगीत, त्रिभाषा, पेंटिंग, टंकण, आशुलिपि तथा क्राफ्ट विषयों को कक्षा 9-10 में पढ़ने वाले सी० टी० ग्रेड में निर्धारित अर्हता के आधीन नियुक्त अध्यापकों को जब कक्षा 9-10 में पढ़ते हुए 10 वर्ष पूरे हो जायें तो उन्हें एल० टी० ग्रेड के साधारण वेतनमान रु० 1400-40-1800-द० रो०-50-2300 दिया जाये ।

2--उक्त विषयों को कक्षा 11-12 में पढ़ने वाले एल० टी० ग्रेड के ऐसे अध्यापकों को जिनकी नियुक्ति निर्धारित अर्हता के अधीन हुई है--जब कक्षा 11-12 में पढ़ाते हुये 10 वर्ष पूरे हो जायें तो उन्हें प्रवक्ता वेतनमान रु० 1600-50-2300-द० रो०-60-2600 दिया जाये ।

3--भविष्य में उपर्युक्त विषयों को पढ़ाने वाले अध्यापकों को एल० टी० एवं प्रवक्ता वेतनमान में नियुक्ति कि लिये सम्बन्धित व्यवसाय की अर्हता के साथ क्रमशः स्नातक/स्नातकोत्तर अर्हता निर्धारित की जाती है।

4--ये आदेश वित्त (वेतन आयोग) अनुभाग-2 के अशासकीय संख्या-वे० आ० (2) 55/10-90 दिनांक 28 फरवरी, 1990 में प्राप्त उनकी सहमति से जारी किये जा रहे है।

भवदीय

(शरदिन्दु)

संयुक्त सचिव"

64. A perusal of paragraph Nos.1 and 2 of the Government Order dated 28.02.1990 shows that it is about sanction of revised pay scale based on the recommendations of the U.P. Wages Revision Committee, 1989 for teaching posts in non-government aided higher secondary schools/ inter colleges. A conjoint perusal of paragraph Nos.1 and 2 of the Government Order under reference shows that in modification of an earlier Government Order dated 04.10.1989, L.T. Grade Teachers inter alia in Physical Education, who have been appointed in accordance with Rules and taught Classes XI and XII for ten years, would be entitled to be paid the Lecturer′s Grade in the pay scale of Rs.1600-50-2300-EB-60-2600. By no means does the Government Order dated 28.02.1990 speak of any kind of promotion to an L.T. Grade Teacher. Rather, the Government Order speaks of provision of the Lecturer′s pay scale to L.T. Grade Teachers, teaching certain subjects to Classes XI and XII for a period of ten years. Physical Education is one of the subjects, where an incumbent L.T. Grade Teacher would be entitled to receive the pay scale of a Lecturer, upon completion of ten years′ service.

65. The order in the service-book and the relative entry shows that Shyam Lal Verma was given the Lecturer′s pay scale or grade in terms of the Government Order dated 28.02.1990. He was never promoted to the post of a Lecturer. If there were any kind of doubt about the fact, the statute obviates the possibility. Rule 14 of the Rules of 1998 read with Section 12 of the Act of 1982 provides a procedure for promotion of L.T. Grade Teachers, staking claim to be appointed a Lecturer, in a private aided intermediate college. The procedure involves, amongst other things,

consideration of the candidature by the Selection Committee envisaged under Section 12 of the Act of 1982. Apparently, Verma was never promoted to the post of a Lecturer following the procedure prescribed. He was just given the Lecturer's pay scale in terms of the Government Order dated 28.02.1990.

66. So far as Krishna Chandra Shukla is concerned, he appears to have been a substantively appointed L.T. Grade Language Teacher, who was given the Lecturer's pay scale in accordance with the Government Order dated 28.02.1990. A perusal of his service-book shows that he was an L.T. Grade Teacher until 30.06.1990 and was given the Lecturer's pay scale in terms of the Government Order dated 28.02.1990 w.e.f. 01.07.1990, placing him in the pay scale of Rs.1600/-. Though the subsequent entries show and describe him as Pravakta Hindi, but it is apparent that Krishna Chandra Shukla was granted the Lecturer's pay scale as a Language Teacher. There is nothing to show that he was promoted to the post of a Lecturer. There is no reference to a promotion order in the service-book, promoting him to the Lecturer's cadre. It must, therefore, be held that Krishna Chandra Shukla was given the Lecturer's pay scale, though he was an L.T. Grade Teacher. He was, therefore, not part of the Lecturer's cadre. The Management have also sent along a seniority list of Lecturers for the session 2010-11, where Shyam Lal Verma and Krishna Chandra Shukla have been shown as Lecturers.

67. We are of opinion that the said lists are flawed. These teachers were L.T. Grade Teachers, who were given the Lecturer's grade, but, by no means, promoted to the post of Lecturers. There is also a list of Assistant Teachers for the year 2010-11. The said list ranks thirteen Assistant Teachers L.T. Grade, senior to Mishra in the year 2010-11. There is no case that any of the Assistant Teacher L.T. Grade, senior to Mishra in the year 2011, were entitled to be promoted on the post of Lecturer in Sanskrit vacated by Jagdamba Prasad Mishra on 30.06.2011. Therefore, in the year 2011, there was only one teacher Gajadhar Nath Mishra, who was promoted as Lecturer under the 50% quota. The other posts to the extent of 50% had to be filled up by promotion. The number of posts being six way back on 01.07.2011, when that recruitment year commenced, Mishra was apparently entitled to be considered for promotion.

68. We notice that the stand in paragraph No.13 of the supplementary counter affidavit filed on behalf of the DIOS is that the vacancy on the post of Lecturer in Sanskrit, that occurred on 30.06.2011, was filled up by direct recruitment on 30.06.2013 by adjustment of Smt. Gayatri Devi, Lecturer (Economics) on transfer from another institution. The settled principle is that the 50% promotion quota in the higher cadre of Lecturers is to be filled first and the remainder of 50% posts then filled in through direct recruitment. In this connection, reference may be made to **Rakesh Bhardwaj v. State of U.P., 2007 (5) ALJ 39**, where it has been held:

"17. .....It is only after promotion quota of 50 per cent stands exhausted, the management is empowered to determine the vacancy to be filled in by way of direct recruitment"

69. The DIOS in paragraph No.13 of the supplementary counter affidavit has said that the post of Lecturer in Sanskrit, that fell vacant on 30.06.2011 on account of retirement of Jagdamba Prasad Mishra, was to be filled up by direct recruitment, and for that reason, it was filled up on 30.06.2013 by adjustment of Smt. Gayatri Devi, Lecturer (Economics) on transfer from another institution. The

fact that the vacancy, that occurred on 30.06.2011, was to be filled by direct recruitment, is apparently a flawed stand. The reason is that this assertion proceeds on the supposition that on the date the vacancy occurred, two Lecturers were functioning in the cadre in the promotion quota, to wit, Shyam Lal Verma and Krishna Chandra Shukla. We have already held that these teachers were not Lecturers, but merely given the Lecturers pay scale in terms of the Government Order dated 28.02.1990. There presence on the faculty would not account for a Lecturer duly appointed to the cadre. They would still be regarded as L.T. Grade Teachers, who were receiving the Lecturers' pay scale in terms of the Government Order dated 28.02.1990. Thus, on 30.06.2011, or rather 01.07.2011, there was ample vacancy within the 50% quota for promotion to consider Mishra's case, which the respondents did not. They apparently did not consider Mishra's claim for the post of Lecturer in Sanskrit because they banked upon his service record, which had been marred by adverse entries across four years.

70. We have already held that the adverse entries are inconsequential because they were never communicated. These could not have been taken into account to deny consideration of promotion to Mishra. We also notice that one Surendra Kumar Bharti was promoted on 30.08.2022 on the post of Lecturer (Economics) consequent upon the retirement of Smt. Gayatri Devi. There is no reason why at this point of time, Mishra could not have been considered for promotion, considering the cadre profile of Lecturers divided on the basis of promotion quota and direct recruitment. There is no justification in any view of the matter for denying consideration of Mishra's case for promotion right from the year 2011 until the date he retired, except that the Management relied throughout on poor service record based on the uncommunicated adverse entries that they could not have done, as already held. In our opinion, therefore, the impugned order passed by the Joint Director of Education, declining Mishra's case for promotion, cannot be sustained. That part of the impugned order passed by the Joint Director of Education too has to be quashed.

71. The question that survives is that what relief can be extended to Mishra in the matter of promotion. He has retired from service on 31.03.2024. Mishra's right to be considered for promotion crystallized way back on 01.07.2011, or so to speak during the aforesaid recruitment year. He was wrongfully denied promotion relying mostly on his service record, which we have held, could not have been done. Mishra, now being a retired employee, cannot be granted actual promotion. But, that does not deprive him of the opportunity to be considered for promotion and if found fit by the Selection Committee, bearing in mind the guidance in this judgment, granted notional promotion w.e.f. 01.07.2011. The Selection Committee would, therefore, proceed to consider Mishra′s case for promotion ignoring the adverse entries and if found fit, he would be given notional promotion w.e.f. 01.07.2011 or such date as the Joint Director of Education may determine. Mishra, however, will not be entitled to salary for the promotion post of Lecturer, on whichever date he is granted the notional promotion because he did not actually work on that post till his retirement. He would be granted the status of a Lecturer, if found fit by the Selection Committee, as above directed, and shall be entitled to a suitable revision of his post retiral benefits, including pension, worked out on the basis of the Lecturer′s grade. Of course, he would be entitled to arrears of pension and other post retiral benefits on account of the revision, but nothing by way of salary arrears or other in-service benefits.

72. In the view that we take regarding denial of salary for the promotion post to Mishra in the event he is found fit, we are fortified by **S.D. Raghunandan Singh v. State of Karnataka and others, 1994 Supp (2) SCC 526; State of Haryana and others v. O.P. Gupta and others, (1996) 7 SCC 533; V.N. Meenakshi v. Union of India and others, 1999 SCC (L&S) 669; A.K. Soumini v. State Bank of Travancore and another, (2003) 7 SCC 238; Union of India v. B.M. Jha, (2007) 11 SCC 632;** and**, Abhijit Ghosh Dastidar v. Union of India and others, (2009) 16 SCC 146.** In some of the above authorities the principle has been laid down whereas in others, the principle has been regarded as settled and directions for the grant of notional promotion alone given, where the employees had not worked on the promotion post on account of retirement or any other reason.

73. Now, so far as Writ-A No.19042 of 2022 is concerned, the thrust of Mishra′s challenge is to the promotion of Surendra Kumar Bharti, Assistant Teacher, as a Lecturer vide order dated 30.08.2022 passed by the Joint Director of Education, Basti Region, Basti. The other relief claimed is a mandamus directing the respondents to promote Mishra to the post of Lecturer (Sanskrit) in the institution maintained by the Management. Mishra has admittedly retired from service on 31.03.2024. Therefore, he has no right, in the changed circumstances, to seek quashing of Surendra Kumar Bharti′s promotion as a Lecturer with the institution. So far as his claim for a direction to promote him to the post of Lecturer in the said institution is concerned, we have already held that he is entitled to limited relief by way of a consideration for the grant of notional promotion, may be from a much earlier date, in accordance with rules. No orders are, therefore, required to be made in this petition, which deserves to be consigned to record.

74. Likewise, Writ-A No.42077 of 2016 seeks no more than a relief for the issue of a mandamus directing the DIOS to consider Mishra′s representation dated 11.01.2016. That representation, annexed as Annexure No.1 to the writ petition, is about the grant of selection grade. We have already held Mishra entitled to that relief by our orders made during the course of this judgment in Writ-A No.62515 of 2017. Therefore, no orders are required to be made in this petition, which is fit to be consigned to record. We, accordingly, proceed to decide the four writ petitions in terms of the following order:

A. Writ-A No.5197 of 2024 preferred by the Management shall stand **dismissed with costs of Rs.50,000/-**, payable by the Management to Mishra. The costs shall be paid to Mishra in account within a period of one month of receipt of this judgment by the Manager of the institution. In the event, the costs, as above directed, are not paid, it will be open to Mishra to move an application before the Registrar General, who will cause the costs to be recovered as arrears of land revenue from the Management through the District Magistrate, Basti and credited to Mishra′s bank account.

B. Writ-A No.62515 of 2017 stands **allowed**. The impugned order dated 12.10.2017 passed by the Joint Director of Education, Basti Region, Basti is hereby **quashed**. A mandamus is issued to the Management, the DIOS and the Joint Director of Education, Basti Region, Basti to ensure amongst themselves grant of selection grade to Mishra w.e.f. 19.01.2015, revise his emoluments and post retiral benefits accordingly, after doing a re-fixation for him and pay all arrears together with 6% simple interest within a period of **three months** from the date of receipt of this order by either of these three respondents. A mandamus is further issued to the Joint Director

of Education, Basti Region, Basti to consider Mishra's case for promotion to the post of Lecturer on a notional basis by placing the same before the statutory Selection Committee within a month of receipt of this order. In case Mishra is found fit to be promoted by the Committee, he would be entitled to promotion to the Lecturer's grade on a notional basis w.e.f. 01.07.2011 or as soon thereafter as may be, but no emoluments for the promotion post shall be payable to him. He would be shown in the records notionally promoted as a Lecturer and entitled to a revision of his post retiral benefits, including pension, arrears whereof alone reckoned from the date of his superannuation shall be payable to him. In the event Mishra is found fit to be promoted, he will be sanctioned and paid his due and revised post retiral benefits together with arrears within a period of **three months** of the date of receipt of a copy of this order by the respondents. There shall be no order as to costs.

C. Writ-A No.42077 of 2016 and Writ-A No.19042 of 2022 are **consigned to record**. There shall be no order as to costs in both these writ petitions.

75. Let a copy of this judgment be communicated to the Joint Director of Education, Basti Region, Basti, the District Inspector of Schools, Basti, the Manager and the Principal of Sri Shiv Mohar Nath Pandey Kisan Janta Inter College, Nagar Bazar, Basti by the Registrar (Compliance).

76. A copy of this order shall be placed before the Registrar General.

(2026) 2 ILRA 582
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.02.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 7036 of 1982

Smt. Jaijulla **...Petitioner**
Versus
D.D.C. **...Respondent**

विचारणीय विशय

1. याचिनी के तलाकशुदा होने के बारे में मृतक के चचेरे भाई (नातेदार) के बयान की भारतीय साक्ष्य अधिनियम की धारा 50 के अन्तर्गत सुसंगतता।
2. विपक्षी द्वारा दाखिल उजुरदारी (आपत्तिं) की धारा–12 चकबन्दी अधिनियम के दरख्वास्त के रूप में मान्यता।
3. चकबन्दी अधिनियम में अभिवचन का नियम लागू होने की सीमा।

सार–टिप्पणी (हेडनोट्स)

क. चकबन्दी कानून – जोत चकबन्दी मामला – नामान्तरण विवाद – मृतक के विधवा होने का दावा करने वाली याचिनी जैजुला एवं भांजे हबीबुल्लाह के मध्य विवाद – भांजे द्वारा दावा किया गया कि मृतक ने याचिनी को पहले ही तलाक दे दिया है – दावे की सच्चाई – नातेदार के रूप में मृतक के चचेरे भाई के बयान की सुसंगतता :

अभिनिर्धारित : मो0 जुबेर जोकि लियाकत हुसैन के चचेरे भाई हैं, के बयान से यह भलीभांति सिद्ध है कि लियाकत हुसैन ने अपने जीवनकाल में याची जैजुला को तलाक दे दिया था और उसके बाद जैजुला ने मो0 जुबेर से निकाह किया, परन्तु कुछ समय बाद मो0 जुबेर ने भी जैजुला को तलाक दे दिया। उसके बयान से यह भी सिद्ध है कि लियाकत हुसैन का तनहा वारिस

हबीबुल्लाह है – भारतीय साक्ष्य अधिनियम, 1872 की धारा 50 के अनुसार मो0 जुबेर का बयान विवाद के निर्णय में सुसंगत तथ्य है, जिसको नजरअन्दाज नहीं किया जा सकता है – चकबन्दी अधिकारी ने विपक्षी संख्या–3 हबीबुल्लाह के मौखिक साक्ष्य को बिना सही रूप से विचार करते हुए अपना निर्णय दिया है, जोकि कानूनी रूप से उचित नहीं है। बन्दोबस्त अधिकारी चकबन्दी ने दोनों पक्षों के मौखिक साक्ष्यों का सही परीक्षण करते हुए विपक्षी संख्या–3 हबीबुल्लाह के अपील को स्वीकार किया है, जोकि अपीलीय क्षेत्राधिकार का उचित इस्तेमाल है। (पैरा 17, 19 एवं 20)

ख. चकबन्दी कानून – जोत चकबन्दी मामला – विपक्षी द्वारा दाखिल उजुरदारी – महत्व – धारा–12 चकबन्दी अधिनियम के दरख्वास्त के रूप में विपक्षी के उजुरदारी को मान्यता देने पर आपत्ति – स्वीकार्यता :

अभिनिर्धारित : विपक्षी संख्या 3 मो0 हबीबुल्लाह द्वारा दाखिल उजुरदारी अपने नाम को दर्ज करने हेतु धारा–12 चकबन्दी अधिनियम के अन्तर्गत उचित कार्यवाही मानी जाएगी तथा याची के वरिश्ठ अधिवक्ता की बहस कि विपक्षी संख्या–3 हबीबुल्लाह की उजुरदारी को धारा–12 चकबन्दी अधिनियम की दरख्वास्त नहीं माना जा सकता, को स्वीकार नहीं किया जा सकता है। (पैरा 23)

ग. अभिवचन का नियम – अनुप्रयोग – सीमाएं – चकबन्दी अधिनियम में अभिवचन का नियम पूरी तरह लागू नहीं होता है। (पैरा 24) (ई–1)

उद्धृत निर्णयविधि (केस लॉ)

Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar, AIR 2017 SC 5494; Madhusudan Das Vs. Smt. Narayani Bai and others, AIR 1983 SC 114; Bachhaj Nahar Vs. Nilima Mandal and Ors., AIR 2009 SC 1103; Shamim Ara Vs. State of U.P., 2002(7) SCC 518; Nazia Begum Vs. Shoaib Ahmad, 2019 (6) ADJ 626; Mohammad Zirgham Vs. Shamima Begum, 2019 (4) ADJ 661; Anarkali Vs. State of U.P. & others, 2025(169) RD 388; Krishnanand (Dead) through legal representatives and others Vs. Deputy Director of Consolidation, (2015) 1 SCC 553; Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. And others, (2006) 6 SCC 94; Bhagwati Vs. Chandramaul, AIR 1966 SC 735 (V 53 C 139); Vaikuntam Vs. Puppala AIR 1971 Orissa 49; Madhusudan Das Vs. Smt. Narayani Bai AIR 1983 SC 114; Mundrilal Vs. Sushila Rani 2007 (8) SCC 609; Narayan Prasad Vs. State of M.P. 2007 (11) SCC 738; Anand Pal and others Vs. Deputy Director Consolidation, Meerut 2011 (113) R.D. 569 – **संदर्भित।**

अन्तर्निहित कानून

चकबन्दी अधिनियम – धारा 12; भारतीय साक्ष्य अधिनियम, 1872 – धारा 50।

मूल–भाब्द (कीवर्ड) की सूची

आधार वर्श का इन्द्राज; जबानी साक्ष्य; अभिलेखीय साक्ष्य; वरासत; द्वितीय विवाह; तलाक; निकाह; वं ाावली; मौखिक साक्ष्य; सुसंगत तथ्य; उजुरदारी।

मामले का उद्भव

बन्दोबस्त अधिकारी चकबन्दी के **आदेश** दिनांक 11.12.1981 एवं उप संचालक चकबन्दी के **आदेश** दिनांक 26.04.1982 के विरूद्ध।

पक्षकारों की ओर से उपस्थिति

याची के अधिवक्ता : आर. सी. सिंह, वरिश्ठ अधिवक्ता; बृजे ा भुक्ला; भोख मोहम्मद मुजीबुर रहमान; मोहम्मद रा िाद; मोहम्मद सलमान।

विपक्षीगण के अधिवक्ताः वजाहत हुसैन खां, वरिश्ठ अधिवक्ता; त्रिपाठी बी. जी. भाई; जावेद हुसैन खां; भारद चंद्र सिंह, अतिरिक्त मुख्य स्थाई अधिवक्ता।

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

१. श्री आर. सी. सिंह विद्वान वरिष्ठ अधिवक्ता को सहयोगी अधिवक्तागण श्री बृजेश शुक्ला, श्री शेख मोहम्मद मुजीबुर रहमान, श्री मोहम्मद राशिद, श्री मोहम्मद सलमान के साथ याचीगण संख्या १/३ की तरफ से सुना गया तथा श्री त्रिपाठी बी. जी. भाई विद्वान अधिवक्ता को याची संख्या १/१ एवं १/२ की तरफ से सुना गया। श्री वजाहत हुसैन खां विद्वान वरिष्ठ अधिवक्ता को सहयोगी अधिवक्ता श्री जावेद हुसैन खां के साथ विपक्षीगण संख्या 3/१ की तरफ से सुना गया तथा श्री शरद चंद्र सिंह विद्वान अतिरिक्त मुख्य स्थाई अधिवक्ता को राज्य विपक्षीगण की तरफ से सुना गया।

२. वर्तमान वाद के मुख्य तथ्य यह है कि विवाद चक संख्या २ व ३२० स्थित ग्राम करही, तप्पा-उजियार, परगना मगहर पूर्व, तहसील खलीलाबाद, जिला बस्ती का है। चकबंदी के आधार वर्ष में हाजी लियाकत हुसैन पुत्र अशरफ का नाम विवादित चक संख्या-२ पर सहखातेदार तथा विवादित चक संख्या-३२० पर तनहा खातेदार के रूप में दर्ज था। हाजी लियाकत हुसैन की मृत्यु दिनांक ०१.०४.१९७२ को हुई। आधार वर्ष के इन्द्राज के विरुद्ध हाजी लियाकत हुसैन की मृत्यु के उपरांत याची जैजुला ने अपने को बेवा लियाकत हुसैन कहते हुए एक प्रार्थना पत्र दिनांकित ०२.०४.१९७२ को (मृत्यु के दूसरे दिन) अंतर्गत धारा १२ उत्तर प्रदेश जोत चकबंदी अधिनियम १९५३ (जिसको आगे चकबंदी अधिनियम कहा जाएगा), दाखिल किया और यह प्रार्थना किया कि उसका नाम विवादित आराजी पर हाजी लियाकत हुसैन की बेवा के रूप में दर्ज किया जाए। सहायक चकबंदी अधिकारी ने किसी प्रतिवाद की अनुपस्थिति में आदेश दिनांक २५.०४.१९७२ द्वारा याची जैजुला का नाम मृतक हाजी लियाकत हुसैन की जगह दर्ज करने का आदेश दिया। सहायक चकबंदी अधिकारी के आदेश दिनांक २५.०४.१९७२ के विरुद्ध विपक्षी संख्या ३ हबीबुल्लाह ने अपील बंदोबस्त अधिकारी चकबंदी के समक्ष प्रस्तुत किया जिसको आदेश दिनांकित २४.०२.१९७३ द्वारा स्वीकार करते हुए सहायक चकबंदी अधिकारी के आदेश दिनांकित २५.०४.१९७२ को निरस्त किया गया तथा प्रकरण को चकबंदी अधिकारी के समक्ष सुनवाई हेतु भेजा गया। प्रकरण चकबंदी अधिकारी के समक्ष वाद संख्या ६२०/६६१ धारा १२ चकबंदी अधिनियम के रूप में दर्ज हुआ। चकबंदी अधिकारी के समक्ष तीन वाद बिंदु विरचित किए गए तथा पक्षकारों ने अपने केस के समर्थन में जबानी साक्ष्य प्रस्तुत किए एवं कुछ अभिलेखीय साक्ष्य भी प्रस्तुत किए गए। चकबंदी अधिकारी ने अपने आदेश दिनांकित ०४.०५.१९८१ के द्वारा विपक्षी संख्या ३ हबीबुल्लाह की उजुरदारी खारिज करते हुए याची जैजुला का नाम विवादित आराजी पर लियाकत हुसैन की बेवा के रूप में दर्ज करने का आदेश दिया। चकबंदी अधिकारी द्वारा पारित आदेश दिनांकित ०४.०५.१९८१ के विरुद्ध विपक्षी संख्या ३ हबीबुल्लाह द्वारा अपील अंतर्गत धारा ११(१) चकबंदी अधिनियम बंदोबस्त अधिकारी चकबंदी के समक्ष योजित की गई, जो कि अपील संख्या २३३/१३४० के रूप में दर्ज हुई। उपरोक्त अपील बंदोबस्त अधिकारी चकबंदी द्वारा आदेश दिनांक ११.१२.१९८१ द्वारा स्वीकार हुई, चकबंदी अधिकारी का आदेश दिनांक ०४.०५.१९८१ निरस्त किया गया तथा विवादित आराजी पर मृतक लियाकत हुसैन के स्थान पर विपक्षी संख्या ३ हबीबुल्लाह सगे भांजे का नाम वरासत के आधार पर दर्ज करने का

आदेश दिया। बंदोबस्त अधिकारी चकबंदी के आदेश दिनांक ११.१२.१९८१ के विरुद्ध याची जैजुला द्वारा निगरानी अंतर्गत धारा ४८ चकबंदी अधिनियम उप संचालक चकबंदी के समक्ष योजित की गई, जो कि निगरानी संख्या ३७ के रूप में दर्ज हुई। उप संचालक चकबंदी द्वारा आदेश दिनांक २६.०४.१९८२ द्वारा याची द्वारा योजित निगरानी खारिज की गई। अतः वर्तमान याचिका निम्नलिखित अनुतोष हेतु योजित की गईः-

"१- एक रिट आदेश या निर्देश उत्प्रेषण प्रकृति का विवाद की पत्रावलियाँ मँगाने हेतु और विवादित निर्णय को निरस्त करने हेतु जो उ०स०च० एवम् ब०अ०च० के निर्णय और आदेश क्रमशः इस रिट के संलग्नक १ और २ है।

२- एक रिट आदेश और निर्देश महादेश प्रकृति का प्रतिवादीगण के हेतु समादेशित करते हुए कि वे चकबन्दी अधिकारी के निर्णय को पुनः स्थापित करें, जो इस याचिका का संलग्नक ३ रूप में है और याचिनी को लियाकत हुसैन की बेवा घोषित करें।

३- एक रिट आदेश या निर्देश जो यह माननीय न्यायालय विवाद की परिस्थिति को देखते हुए न्याय की दृष्टि में उचित समझें।

४- याचिनी को खर्च विपक्षीगण से दिलावें।"

३. वर्तमान याचिका इस न्यायालय द्वारा आदेश दिनांक २१.०५.१९८२ द्वारा अंगीकृत की गई तथा उप संचालक चकबंदी के आदेश दिनांक २६.०४.१९८२ के क्रियान्वयन को स्थगित किया गया।

४. इस न्यायालय के आदेश दिनांक ३०.०७.१९८६ द्वारा पूर्व पारित अंतरिम आदेश दिनांक २१.०५.१९८२ को निरस्त किया गया। इस न्यायालय द्वारा दिनांक ०५.०५.१९८७ पूर्व पारित अंतरिम आदेश दिनांक २१.०५.१९८२ को पुनः संशोधित किया गया।

५. इस न्यायालय के आदेश के अनुपालन में पक्षकारों ने प्रति शपथ पत्र तथा प्रति उत्तर शपथ पत्र दाखिल किए।

६. याचीगण के वरिष्ठ विद्वान अधिवक्ता का कथन है कि चकबंदी अधिकारी ने साक्ष्यों का परिशीलन करने के बाद यह सही निष्कर्ष दिया कि याची जैजुला का नाम हाजी लियाकत हुसैन की जगह उनकी कानूनी वारिस/बेवा के रूप में दर्ज किया जाए। उनका यह भी कथन है कि बंदोबस्त अधिकारी चकबंदी ने याची जैजुला के द्वितीय विवाह की उपधारणा मानकर स्पष्ट भूल की है। उनका यह भी कथन है कि बंदोबस्त अधिकारी चकबंदी ने जबानी साक्ष्यों का सही विश्लेषण नहीं किया तथा विपक्षी संख्या ३ हबीबुल्लाह को हाजी लियाकत हुसैन का भांजा मानते हुए हाजी लियाकत हुसैन की जगह विवादित आराजी पर नाम दर्ज करने का आदेश पारित किया है, जो कि नियम विरुद्ध है। अतः अपीलीय आदेश दिनांक ११.१२.१९८१

निरस्त होने योग्य है। उनका यह भी कथन है कि किसी भी साक्ष्य से विपक्षी संख्या ३ हबीबुल्लाह हाजी लियाकत हुसैन का भांजा सिद्ध नहीं है, अतः विपक्षी संख्या ३ हबीबुल्लाह का नाम हाजी लियाकत हुसैन के स्थान पर वरासत के आधार पर दर्ज नहीं किया जा सकता है। याची के विद्वान वरिष्ठ अधिवक्ता का यह भी कथन है कि विपक्षी संख्या ३ ने धारा १२ चकबंदी अधिनियम के अंतर्गत नियमानुसार कोई कार्यवाही नाम दर्ज कराने की नहीं किया, बल्कि याची की धारा १२ चकबंदी अधिनियम की कार्यवाही में उजुरदारी दाखिल किया था, अतः अपीलीय आदेश दिनांक ११.१२.१९८१ गैरकानूनी है। याची के विद्वान वरिष्ठ अधिवक्ता ने निम्नलिखित निर्णयों को अपने बहस के समर्थन में पेश कियाः-

i. AIR 2017 SUPREME COURT 5494; (Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar)

ii. AIR 1983 SUPREME COURT 114; (Madhusudan Das Vs. Smt. Narayani Bai and others)

iii. AIR 2009 SUPREME COURT 1103; (Bachhaj Nahar Vs. Nilima Mandal and Ors.)

iv. Shamim Ara Vs. State of U.P., 2002(7) SCC 518

v. Nazia Begum Vs. Shoaib Ahmad, 2019 (6) ADJ 626

vi. Mohammad Zirgham Vs. Shamima Begum 2019 (4) ADJ 661

vii. 2025(169) RD 388 Anarkali Vs. State of U.P. & others

७. याची संख्या १/१ व १/२ के विद्वान अधिवक्ता ने भी उपरोक्त तर्कों के आधार पर अपीलीय आदेश दिनांक ११.१२.१९८१ व निगरानी अदालत के आदेश दिनांक २६.०४.१९८२ के निरस्तीकरण की प्रार्थना की।

८. विपक्षी संख्या ३/१ के विद्वान वरिष्ठ अधिवक्ता ने कथन किया कि हाजी लियाकत हुसैन की मृत्यु दिनांक ०१.०४.१९७२ को हुई तथा याची जैजुला द्वारा धारा १२ चकबंदी अधिनियम की दरख्वास्त दूसरे दिन ०२.०४.१९७२ दाखिल कर दिया गया, जो कि विश्वास करने योग्य नहीं है कि पति की मृत्यु के बाद पत्नी दूसरे दिन अपना नाम चढ़वाने की कार्यवाही करेगी। उनका यह भी कथन है कि हाजी लियाकत हुसैन ने अपनी जिंदगी में ही याची जैजुला को तलाक दे दिया था तथा तलाक के बाद जैजुला ने मोहम्मद जुबैर से निकाह कर लिया था, अतः याची जैजुला का नाम हाजी लियाकत हुसैन की बेवा के रूप में दर्ज नहीं हो सकता। उनका यह भी कथन है कि विपक्षी संख्या ३ हबीबुल्लाह, हाजी लियाकत हुसैन का सगा भांजा है तथा कानूनी वारिस के रूप में दर्ज करने का उचित आदेश अपीलीय अदालत ने पारित किया है। उनका कथन है कि चकबंदी अधिकारी ने सभी साक्षीगण के साक्ष्यों का सही विश्लेषण नहीं किया परन्तु बंदोबस्त अधिकारी चकबंदी ने सभी साक्षीगण के साक्ष्यों का सही विश्लेषण करके विपक्षी संख्या ३ हबीबुल्लाह का नाम सगे भांजे के आधार पर दर्ज करने का उचित आदेश पारित किया है। विपक्षी संख्या ३/१ के विद्वान वरिष्ठ अधिवक्ता यह भी कथन है कि विपक्षी संख्या ३ ने उचित प्रार्थना पत्र देकर अपना नाम वरासत के आधार पर दर्ज करने की

प्रार्थना की तथा याची जैजुला की दरख्वास्त नाम दर्ज करने हेतु को निरस्त करने की प्रार्थना की। विपक्षी संख्या ३/१ के विद्वान वरिष्ठ अधिवक्ता ने निम्नलिखित निर्णयों को अपने बहस के समर्थन में पेश किया:-

i. (2015) 1 Supreme Court Cases 553; (Krishnanand (Dead) through legal representatives and others Vs. Deputy Director of Consolidation)

ii. (2006) 6 Supreme Court Cases 94; (Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. And others)

iii. AIR 1966 Supreme Court 735 (V 53 C 139); (Bhagwati Vs. Chandramaul)

iv. Vaikuntam Vs. Puppala AIR 1971 Orissa 49

v. Madhusudan Das Vs. Smt. Narayani Bai AIR 1983 SC 114

vi. Mundrilal Vs. Sushila Rani 2007 (8) SCC 609

vii. Narayan Prasad Vs. State of M.P. 2007 (11) SCC 738

viii. Anand Pal and others Vs. Deputy Director Consolidation, Meerut 2011 (113) R.D. 569

९. मैंने उभय पक्ष के विद्वान अधिवक्ताओं के तर्कों को सुना तथा पत्रावली का अवलोकन किया।

१०. यह निर्विवाद तथ्य है कि चकबंदी अधिकारी ने याची जैजुला के धारा १२ चकबंदी अधिनियम के दरख्वास्त को स्वीकार करते हुए याची का नाम हाजी लियाकत हुसैन के स्थान पर उसकी बेवा के रूप में दर्ज करने का आदेश दिया तथा विपक्षी संख्या ३ हबीबुल्लाह का सगे भांजे के आधार पर नाम दर्ज करने की प्रार्थना को अस्वीकार कर दिया। यह भी निर्विवाद है कि बंदोबस्त अधिकारी चकबंदी ने विपक्षी संख्या ३ हबीबुल्लाह की अपील स्वीकार करते हुए चकबंदी अधिकारी का आदेश निरस्त कर दिया तथा विपक्षी संख्या ३ हबीबुल्लाह का नाम हाजी लियाकत हुसैन के सगे भांजे होने के आधार पर दर्ज करने का आदेश दिया। यह भी निर्विवाद है कि याची जैजुला द्वारा दाखिल निगरानी अंतर्गत धारा ४८ चकबंदी अधिनियम उप संचालक चकबंदी द्वारा निरस्त कर दी गई।

११. विपक्षी संख्या-३ हबीबुल्लाह ने चकबन्दी अधिकारी के समक्ष दाखिल अपने उजुरदारी में परिवार की जो वंशावली प्रस्तुत की थी, वह निम्न है:-

अशरफ

लियाकत हुसैन	सिराजुलहक	श्रीमती मिसरा खातून (लड़की)
		हबीबुल्लाह

१२. याची जैजुला के अनुसार श्रीमती मिसरा खातून नाम की कोई लड़की अशरफ की नहीं थी तथा याची जैजुला लियाकत हुसैन की बेवा है।

१३. चकबन्दी अधिकारी के समक्ष निर्मित तीन वाद बिन्दु का परिशीलन आवश्यक होगा, जो कि निम्नलिखित हैंः-

१- उक्त उजुरदारी हबीबुल्लाह दिनांक २.४.७३ श्रीमती जैजुला की लियाकत हुसैन ने अपनी जिन्दगी में ही तलाक दे दिया था और अब अनुसार दफा ३ उजुरदारी मु० जुबेर की औरत हैं?

२. क्या मु० जैजुला बतौर बेवा मृतक लियाकत हुसैन की वारिस है?

३.फरीकेन श्रीमती जैजुला व हबीबुल्ला ने मृतक लियाकत हुसैन का और वारिस है किसी अन्य तनकीह में नहीं कहा गया।

१४. याची जैजुला की तरफ से मौखिक साक्ष्य में साक्षी अतीकुर्ररहमान व नजीर अहमद तथा स्वयं को पेश किया।

१५. विपक्षी संख्या-३ हबीबुल्लाह की तरफ से मौखिक साक्ष्य में निम्न छः गवाहों को पेश किया गयाः-

(i). सिराजुलहक
(ii). मो० जुबैर
(iii) हस्मतुल्ला.
(iv). शौकत अली
(v). अब्दुल वहीद
(vi). हबीबुल्लाह

१६. विपक्षी संख्या-३ हबीबुल्लाह के गवाह मो० जुबेर रिश्ते में लियाकत हुसैन के चचेरे भाई हैं, अतः उनके बयान के प्रमुख अंश का परिशीलन आवश्यक होगा जोकि निम्नवत् हैः-

"जेरे कार्यवाही २०-३-७९

<u>प्रतिलिपि ब्यान श्री मो० जुबेर</u>

ब इजलास मुजहर के नाम अपना श्री मोहम्मद जुबेर बाप का नाम मो० खलील कौम साकिन करही उम्र ५० साल पेशा खेती बहलफ बयान किया कि मेरे चचेरे भाई लियाकत हुसैन थे लियाकत हुसैन मर गये। मरने से पहले लियाकत हुसैन की बीबी का नाम जैजुला था। मरने के एक साल पहले उन्होंने जैजुला को तलाक दे दिया था। मैंने जैजुल्ला के साथ निकाह सानी किया व तलाक के चार महीने बाद। उसके बाद एक साल बाद लियाकत हुसैन मर गए। जैजुल्लाह अब हमारे साथ नहीं है हमने भी तलाक दे दिया क्योंकि उसका चाल चलन ठीक नहीं था फिर तलाक के बाद मेरे गाँव में खानदान के भतीजा से जैजुल्लाह ने तीसरा निकाह

किया। लियाकत को मरे आज से ५ साल से कुछ ज्यादा हुआ। उनको मरने के वक्त उनका तनहा वारिस हबीबुल्लाह था। लियाकत हुसैन की जायदाद पर व मकान पर हबीबुल्लाह का भी वहैसियत वारिस व कब्जा है। x x x x x x

लियाकत के बाप अशरफ और हमारे बाप खलील दोनों सगे चचाजात भाई थे। खलील के बाप का नाम बाबूलाह। बाबूल्लाह तीन भाई थे नाम नहीं बता सकता। बाबूल्लाह के जो हकीकी भाई थे उनके लड़के अशरफ थे। जो लियाकत के बाप थे।"

१७. मो० जुबेर जोकि लियाकत हुसैन के चचेरे भाई हैं, के बयान से यह भलीभाँति सिद्ध है कि लियाकत हुसैन ने अपने जीवनकाल में याची जैजुला को तलाक दे दिया था और उसके बाद जैजुला ने मो० जुबेर ने निकाह किया, परन्तु कुछ समय बाद मो० जुबेर ने भी जैजुला को तलाक दे दिया। उनके बयान से यह भी सिद्ध है कि लियाकत हुसैन का तनहा वारिस हबीबुल्लाह है।

१८. भारतीय साक्ष्य अधिनियम, १८७२ की धारा-५० का परिशीलन भी आवश्यक होगा। जोकि निम्नवत् हैः-

"५०. नातेदारी के बारे में राय कब सुसंगत है- जबकि न्यायालय को एक व्यक्ति की किसी अन्य के साथ नातेदारी के बारे में राय बनानी हो, तब ऐसी नातेदारी के अस्तित्व के बारे में ऐसे किसी व्यक्ति के आचरण द्वारा अभिव्यक्त राय, जिसके पास कुटुम्ब के सदस्य के रूप में या अन्यथा उस विषय के संबंध में ज्ञान के विशेष साधन हैं, सुसंगत तथ्य हैं:

परन्तु भारतीय विवाह-विच्छेद अधिनियम, १८६९ (१८६९ का ४) के अधीन कार्यवाहियों में या भारतीय दण्ड संहिता (१८६० का ४५) की धारा ४९४, ४९५, ४९७ या ४९८ के अधीन अभियोजनों में ऐसी राय विवाह साबित करने के लिए पर्याप्त नहीं होगी।"

१९. भारतीय साक्ष्य अधिनियम १८७२ की धारा-५० के अनुसार मो० जुबेर का बयान विवाद के निर्णय में सुसंगत तथ्य है, जिसको नजरअन्दाज नहीं किया जा सकता है।

२०. चकबन्दी अधिकारी ने विपक्षी संख्या-३ हबीबुल्लाह के मौखिक साक्ष्य को बिना सही रूप से विचार किए हुए अपना निर्णय दिया है, जोकि कानूनी रूप से उचित नहीं है। बन्दोबस्त अधिकारी चकबन्दी ने दोनों पक्षों के मौखिक साक्ष्यों का सही परीक्षण करते हुए विपक्षी संख्या-३ हबीबुल्लाह की अपील को स्वीकार किया है, जोकि अपीलीय क्षेत्राधिकार का उचित इस्तेमाल है।

२१. विपक्षी संख्या-३ हबीबुल्लाह द्वारा चकबन्दी अधिकारी के समक्ष दाखिल उजुरदारी अंतर्गत धारा-१२ चकबन्दी अधिनियम का परिशीलन भी आवश्यक होगा, जोकि निम्न हैः-

"१- यह कि दसख्वास्त दाखिल खारिज सायला सरीहन खिलाफ कानून खिलाफ वाकया है और लायक खारिजी के है।

२- यह कि श्रीमती जैजूला सायला हरगिज लियाकत हुसैन मुतवल्फी बेवा नहीं है और न उनका कोई कब्जा दखल ही तरकए लियाकत हुसैन मुतवल्फी पर है।

३- यह कि श्रीमती जैजूला सायला को लियाकत हुसैन ने अपने जिन्दगी में ही तलाक दे दिया था और श्रीमती जैजुला ने उसी वक्त वाद गुजरने इद्दत मु० जुबेर साकिन करही से निकाहसानी कर लिया।

४- यह कि हम उजुरदारान लियाकत हुसैन मुतवल्फी का सगा भान्जा है और उनकी जिन्दगी से ही उनकी खिदमत व फरमाबरदारी करते रहे हैं और वाद वफात लियाकत हुसैन मुतवल्फ तरकए लियाकत हुसैन पर बहैसियत सगा भान्जा और कानूनी जायज वारिस काबिज दाखिल है।

५- यह कि सजरा खानदान लियाकत हुसैन मुतवल्फी हस्व जैल है।

६- यह कि सरपन्च हाजी अब्दुल मजीद साकिन से मरिवाहां सायला को रंजिशन लड़ा रहे हैं हालांकि श्रीमती जैजुला का न कोई हक है और न कोई हिस्सा है।

७- यह कि दरख्वास्त सायला दाखिल खारिज है और लायक खारिजी है।

अतः उजुरदारी दाखिल करके उम्मीदवार की दरख्वास्त सायला खारिज फरमायी जावे और तरकए लियाकत हुसैन मुतवल्फी पर हम उजुरदार का नाम बतौर वारिस दर्ज किया जावे।"

अशरफ प्रार्थी

हबीबुल्लाह उजुरदार

लियाकत हुसैन	सिराजुलहक	श्रीमती मिसरा खातून (लड़की)
बेवा जैजुलाह		हबीबुल्लाह

२२. इस न्यायालय द्वारा निर्गत निर्णय आनन्दपाल (पूर्व लिखित पहले) के प्रस्तर सं०-८ का परिशीलन आवश्यक होगा, जोकि निम्न हैः-

"8. The technical objection that has been taken by the Deputy Director of Consolidation appears to be on a misreading of the document dated 20.1.2006. The objection filed by the petitioners did begin with, in the shape of a written statement against the objection of Kewal, but the prayer clause clearly recites that the name of the recorded tenure holders be expunged and that their objections be allowed and the petitioners be recorded as tenure holders. The Deputy Director of Consolidation should not have gone by the literal form of the objection raised by the petitioners

but by its pith and substance. The prayer and the nature of the pleadings are clearly an objection under Section 9A(2) of the U.P.C.H. Act 1953."

२३. विपक्षी संख्या-३ हबीबुल्लाह द्वारा दाखिल उजुरदारी तथा इस न्यायालय के निर्णय जो कि आनन्द पाल (पूर्व लिखित पहले) में निर्गत किया गाय है, से यह भलीभांति सिद्ध है कि विपक्षी संख्या-३ हबीबुल्लाह द्वारा दाखिल उजुरदारी अपने नाम को दर्ज करने हेतु धारा-१२ चकबन्दी अधिनियम के अन्तर्गत उचित कार्यवाही मानी जाएगी तथा याची के वरिष्ठ अधिवक्ता की बहस कि विपक्षी संख्या-३ हबीबुल्लाह की उजुरदारी को धारा-१२ चकबन्दी अधिनियम की दरख्वास्त नहीं माना जा सकता, को स्वीकार नहीं किया जा सकता है।

२४. यहाँ यह भी कहना प्रासंगिक होगा कि चकबन्दी अधिनियम में अभिवचन का नियम पूरी तरह से लागू नहीं होता है, अतः यह कहना कि याची की उजुरदारी को धारा-१२ चकबन्दी अधिनियम के अन्तर्गत की दरख्वास्त के रूप में मान्यता नहीं दी जा सकती पूर्णतया गलत है, क्योंकि विपक्षी संख्या-३ हबीबुल्लाह ने अपने उजुरदारी में हर बात को वंशावली के साथ इंगित किया है।

२५. उपसंचालक चकबन्दी के आदेश दिनांक २६-०४-१९८२ के प्रस्तर-५ का परिशीलन भी आवश्यक होगा, जोकि निम्नवत् हैः-

"५- इस संबंध में सबसे महत्वपूर्ण बयान स्वयं श्रीमती जैजुला का है, उसने अपने बयान में कहा है कि उसके दोनों हाथों में चूड़ियाँ हैं, वह सिर पर दुपट्टा ओढ़े हुए है और कुरान उठाकर वह यह नहीं कह सकती कि उसने शकील अहमद से निकाह नहीं किया है। यह बात सर्वविदित है कि मुस्लिम विधवाएँ भी हाथों में चूड़ियाँ नहीं पहनती हैं। जैजुला का पुनः शकील से निकाह करने के प्रश्न पर शपथ लेने से कतराना भी इस बात का प्रबल साक्ष्य है कि उसने शकील से पुनः निकाह कर लिया है और इसलिए वह शपथ खाकर इस बात से इनकार नहीं कर सकी। इस बात का तीसरा सबूत यह है कि माननीय उच्च न्यायालय में शकील के भतीजे इफ्तखार ने जैजुला की ओर से पैरवी की थी जो याचिका की प्रमाणित प्रतिलिपि से स्पष्ट है। इस बात का चौथा सबूत यह है कि विद्वान अतिरिक्त जिलाधिकारी के यहाँ इसी वरासत से संबंधित एक दूसरे ग्राम के पुनरीक्षण में जैजुला की ओर से श्री तारकेश्वर उपाध्याय वकील के नाम जो वकालतनामा दाखिल किया गया, उसमें जैजुला पत्नी जुबेर लिखा हुआ था। यह सही है कि बाद में इसको गलत कहकर वकालतनामे को शुद्ध करने का प्रार्थना पत्र दिया गया, किंतु वास्तव में यह गलती नहीं थी, बल्कि असावधानी से सही बात लिख दी गई थी। दिनांक १३.१२.७८ के ट्यूवेल ऑपरेटर की रसीद पर जैजुला की जौजियत शकील अहमद अंकित है, इन तथ्यों के आधार पर विद्वान बंदोबस्त अधिकारी चकबंदी ने यह सही निष्कर्ष निकाला है कि जैजुला ने पुनर्विवाह कर लिया और हबीबुल्ला भांजे के रूप में मृतक का वारिस है।"

२६. उपसंचालक चकबन्दी ने मौखिक साक्ष्य तथा अभिलेखीय साक्ष्य का सही विश्लेषण करते हुए याची जैजुला की निगरानी को खारिज किया तथा बन्दोबस्त अधिकारी चकबन्दी के निर्णय को सही माना, जोकि धारा-४८ चकबन्दी अधिनियम के अन्तर्गत उचित निर्णय है।

२७. वाद के समस्त तथ्यों एवं परिस्थितियों पर विचार करने के उपरान्त उपरोक्त विवादित आदेशों को जो कि हक प्रक्रिया में पारित है, को निरस्त करने का कोई उचित आधार नहीं बनता है।

२८. तदनुसार वर्तमान याचिका **निरस्त** की जाती है।

२९. वाद व्यय के बारे में कोई आदेश नहीं किया जाता है।

(2026) 2 ILRA 592
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.02.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 33 of 2020

Anurag Agarwal **...Petitioner**
Versus
I.O.C. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to the legality and validity of termination of petroleum dealership by the respondent Indian Oil Corporation on allegations of tampering with dispensing units, in the absence of proof of dealer's complicity and in violation of principles of natural justice due to non-supply of relied upon technical reports.

Headnotes

Indian Penal Code, 1860 - ss. 265, 267, 420, 120-B and 34 - Legal Metrology Act, 2009 - ss. 12 and 30 - The petitioner was appointed as a retail outlet dealer of respondent - Oil Corporation under a dealership agreement dated 06.12.1996 for the sale of petroleum products - Pursuant to certain inspections conducted in 2016 and thereafter, the dispensing units at the petitioner's outlet were initially found to be functioning correctly with intact seals and no deficiency in delivery, however, a subsequent inspection dated 01.05.2017 alleged the presence of unauthorized fittings in pulsar of dispensing units and noted stock variations - On the basis of these allegations, a show cause notice was issued, to which the petitioner submitted a detailed reply denying any tampering and asserting that the sealed units were beyond his access or control - Notwithstanding the reply, the competent authority, by order dated 30.01.2018, terminated the dealership and forfeited the security deposit, primarily relying upon certain OEM reports which were not furnished to petitioner prior to the decision - The petitioner's statutory appeal before Dispute Resolution Panel was dismissed on 23.05.2019, leading to institution of instant writ petition challenging both termination order and appellate order on grounds inter alia

of absence of cogent evidence, non-supply of material documents, and violation of principles of natural justice.

Held: In the instant case, the material on record clearly indicates that the termination order has been passed in breach of procedural safeguards contained in Marketing Discipline Guidelines, 2012 as well as the principles of natural justice, inasmuch as the petitioner was not supplied with the OEM reports forming the basis of impugned action prior to passing of termination order - Consequently, the appellate authority, while dismissing the petitioner's appeal by order dated 23.5.2019, also failed to consider the procedural infirmities and merely affirmed the decision of original authority without independently examining whether the allegations against the petitioner had been established in accordance with law - The impugned order dated 30.1.2018 terminating the petitioner's retail outlet dealership agreement and appellate order dated 23.5.2019 passed by Dispute Resolution Panel are hereby quashed - The respondents are directed to permit the petitioner to continue to operate the retail outlet in accordance with law and strictly in terms of the dealership agreement, subject to compliance of all applicable conditions - It is left open to competent authority of respondent -Corporation to proceed afresh from the stage of issuance of show cause notice, after supplying to petitioner all documents, including the reports of Original Equipment Manufacturers - In case show cause notice is issued in accordance with law, necessary order in accordance with law shall be passed after affording opportunity of hearing to the petitioner. [Paras 32, 33, 35, 36] (E-13)

Case Law Cited

Indian Oil Corporation Limited v. Pullareddy Service Center **[2021 SCC OnLine AP 2909];** *M/s Prakash Automobiles Indian Oil Dealer v. Indian Oil Corporation Ltd. Lucknow* **[Writ-C No.558 of 2020];** *R.S. Filling Station Indian Oil Corporation Ltd. Kheri v. ICOL and others* **[Writ-C No.4944 of 2023];** *Chaudhary Filling Point v. State of U.P.* **[2019 SCC OnLine All 3620];** *M/s M.K. Fuel Centre v. IOCL and others* **[Writ-C No.31629 of 2021];** *M/s Maharashi Filling Station (Indian Oil Dealer) v. Indian Oil Corporation Ltd and another* **[Writ-C No.20271 of 2018];** *M/s Shree Rajendra Agro Service Centre v. Indian Oil Corporation Ltd. and others [High Court of Judicature for Rajasthan at Jodhpur* **(Writ No.456/2023)];** *State of U.P. and others v. Rajit Singh* **[Civil Appeal Nos.2049-2050 of 2022] - referred to**

Indian Oil Corporation Ltd. & another v. T. Natarajan **[Civil Appeal No.6748 of 2018];** *M/s Kisan Sewa Kendra v. Union of India and others* **[Writ-C No.32973 of 2018] - distinguished**

List of Acts

Indian Penal Code, 1860; Legal Metrology Act, 2009

List of Keywords

Termination of dealership agreement; Retail outlet dealership; Appellate order; Dispute Resolution Panel; Show cause notice; Fact finding letter; Inspection report; Random inspection; Forensic Science Laboratory; Joint inspection team; Unauthorized fittings; Additional wire in pulsar; Tampering of seal; Stock variation; Short delivery; Seals intact; Weights and measures seals; Legal Metrology Department; OEM report; Test report; Non-supply of OEM reports; Reply to show cause; Forfeiture of security amount; Violation of principles of natural justice; Procedural infirmities; Dealership agreement conditions; Marketing Discipline Guidelines (MDG); Competent authority; Appellate authority; Arbitrariness; Illegality; Fairness in terminating the dealership agreement; Petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Writ - C No. - 33 of 2020

From the Judgment and Order dated 31.01.2018 passed by respondent No.2 terminating the retail outlet dealership agreement dated 6.12.1996 and order dated 23.5.2019, passed by Dispute Resolution Panel of Oil Industry (respondent No.3), dismissing the Appeal No.DRP/ IOC/ RET/0014/2018 filed by petitioner against the termination order dated 31.1.2018.

Appearances for Parties

Advs. for the Petitioner:
Subhash Vidyarthi, Anshuman Singh, Ashok Kumar Singh, Geetika Yadav, Prabhat

Adv. for the Respondent:
Manish Jauhari

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Ms. Geetika Yadav, learned counsel for the petitioner in presence of Mr. Prashant Chandra, learned Senior Advocate and Mr. Manish Johari, learned counsel for the respondent-Corporation.

2. By means of the present writ petition, the petitioner is challenging the order dated 30.1.2018, passed by respondent No.2 (Annexure-1 to the writ petition), terminating the petitioner's retail outlet dealership agreement dated 6.12.1996 and order dated 23.5.2019, passed by the Dispute Resolution Panel of Oil Industry (respondent No.3), dismissing the Appeal No.DRP/ IOC/ RET/0014/2018 filed by the petitioner against the termination order dated 30.1.2018.

3. Factual matrix of the case is that the respondent No.1 entered into a petrol/ HSD pump dealer agreement (Annexure-3 to the writ petition), appointing the petitioner has its dealer for retail sale of petrol/ high speed diesel/ motor oil/ grease and other petroleum products. On 28.6.2016, the corporation conducted a random inspection, in which it was found that the weights and measures seals and the totaliser seals of all the 16 nozzles put on all the four dispensing units installed at the petitioner's retail outlet were intact and all the 16 nozzles were delivering correct quantities of the product.

4. On 7.12.2017, the Legal Metrology Department verified the seals and quantity of products being delivered from the dispensing units after charging a fee of Rs.16,000/- from the petitioner. On 1.5.2017, an inspection was carried out by a joint team, which had no representative of respondent No.1-corporation. During the inspection, the weights and measurement seals were found to be OK and the team found no irregularity in the quantity of the product being delivered. After the report had been signed by all the persons, it was inserted at the bottom of the report that a tampered pulsar having a resistance was taken from the Dresser Wayne dispensing unit and the pulsar of Midco contained an additional wire.

5. On 1.5.2017, the Regional Food Inspector, who was a member of inspection team, submitted an inspection report (Annexure-7) to the District Supply Officer, stating that upon stock verification, it was found that the stock of petrol was less by 2016 litres and the stock of high speed diesel was less by 1280 litres.

6. On 23.5.2017, the Senior Divisional Retail Sales Manager of the Corporation sent a fact finding letter (Annexure-8), asking the petitioner to submit reply on the following points :-

(i) Additional/ unauthorised fittings/ gears found in dispensing unit/ tampering with dispensing unit (violation of clause 5.1.4 of MDG 2012)

(ii) Stock variation of MS/ HSD (beyond permissible limits) fuels (violation of clause 5.1.11)

7. The petitioner sent a reply on 1.6.2017 that no extra chip/ fitting was found affixed to any of the machines installed at its outlet during the inspection. The Weights and Measurements Department seals put on all the machines were found intact at the time of inspection, indicating that no manipulation had been done by the petitioner. The petitioner is responsible for delivery and Weights and Measurements Department seals and both were found OK. Since the delivery and seals were found to be correct, no allegation of manipulation/ tempering of the machines can be imposed upon him. Regarding stock reconciliation, the petitioner stated that it was not done as per the norms and specifications of MDG 2012.

8. On 7.7.2017, the Chief Divisional Retail Sales Manager of the respondent-Corporation sent a show cause notice to the petitioner alleging that at its retail outlet, tampering/ unexpected wires were found in pulsar. A copy of the inspection report was enclosed with the show cause notice but copies of the testing report of the Original Equipment Manufacturers were not provided to the petitioner. The allegation of stock variation, which was there in the fact finding letter, had been dropped from the show cause notice.

9. On 20.7.2017, the petitioner sent a reply to the show cause notice stating that maintenance and repairing of the dispensing units was the responsibility of the respondent No.1 as per the dealership agreement as also as per the Marketing Discipline Guidelines and the allegation of tampering or the presence of an extra wire in pulsar card cannot be imputed on the petitioner when the weights and measurement seals were found intact/ perfect at the time of inspection and there was no allegation of short delivery.

10. On 30.1.2018, the respondent No.2 passed an order (Annexure-1) that the competent authority has decided to terminate the petitioner's RO agreement and accordingly, the dealership of the petitioner is terminated with immediate effect and the security amount is forfeited. A copy of the undated test report issued by Midco was enclosed with the aforesaid order alongwith a covering letter dated 25.9.2017 and a perusal of the report indicates that it was prepared merely on a visual inspection of the pulsar without providing power to the received material under test. Although the test report was prepared on or before 25.9.2017, its copy was not provided to the petitioner prior to passing of the termination order. The analysis report of the other OEM i.e. Dresser Wayne was provided to the petitioner only on 24.4.2019 i.e. long after passing of the termination order, during the pendency of the appeal before the Dispute Resolution Panel.

11. On 27.2.2018, the petitioner filed an appeal before the Executive Director, Retail Sales of the respondent No.1- corporation. On 1.6.2018, the Deputy Director, Forensic Science Laboratory, U.P. at Lucknow has written a letter clarifying the procedure for testing of pulsar of petrol pumps, which was not followed for testing of the pulsar.

12. On 16.1.2018, the Deputy Controller, Legal Metrology, Haryana has informed that the fuel dispensers should be checked physically and in operational mode and parts are to be checked on power and the visual checking report is not final as per the Legal Metrology (General) Rules, 2011.

13. A new dispensing unit was being installed at another retail outlet in which extra fittings (a wire and a diode) were found on the motherboard that was fitted in the new machine. When additional fittings have been found in new unused machine, the petitioner cannot be held guilty of any alleged additional fitting found in a properly sealed machine.

14. Submission of learned counsel for the petitioner is that when additional fitting has been found in new unused machine, the petitioner cannot be held guilty of any alleged additional fitting found in a properly sealed machine. She next submitted that the officers of the respondent No.1-corporation made e-mail correspondence with the Original Equipment Manufacturer Company regarding the additional wire found on the motherboard of a new machine and the representative of the OEM admitted having installed an additional wire.

15. Learned counsel for the petitioner submitted that the petitioner has been acquitted in a complaint case under Sections 12/30 and 26 of the Legal Metrology Act on the same allegations as are contained in the inspection note dated 1.5.2017. On the same allegations as are mentioned in the inspection report dated 1.5.2017, a First Information Report was registered in Police Station PGI, Lucknow under Sections 265, 267, 420, 120-B and 34 IPC and Sections 12 and 30 of the Legal Metrology Act, which was registered as Case Crime No.401/2017. After investigation, the police has filed the final report in the court of First Additional Chief Judicial Magistrate, Court No.25, Lucknow and the Supply Inspector also filed an application requesting that the final report be accepted. On 24.7.2019, the final report was accepted.

16. It is also submitted by petitioner's counsel that upon inspection at the petitioner's outlet, the weights and measurement seals were found OK and the inspection team found no irregularity in the quantity of the product being delivered. Without tampering with the seals put by Legal Metrology Department, the petitioner did not have access to any part inside the unit and he was not liable for any alleged tampering found inside the sealed unit. Further submission is that while issuing show cause notice to the petitioner, no OEM report was made available to the petitioner, therefore, the petitioner could not reply properly in regard to the allegations levelled. It is next submitted that on the date of making inspection, the testing reports were not supplied to the petitioner. Her submission is that due to not supplying the OEM report, the principles of natural justice have been violated, therefore, the impugned orders ware liable to be set aside. It has also been submitted that the appellate court has also not considered this aspect of the matter that report of OEM was not made available to the petitioner while issuing the show cause notice.

17. In support of the submissions advanced, learned counsel for the petitioner placed reliance upon the following judgments :-

(i) **Indian Oil Corporation Limited Vs. Pullareddy Service Center [2021 SCC OnLine AP 2909]**. Relevant paragraphs 16, 18 to 27 are being quoted below :-

"16. The whole controversy centers around the crucial observation in the inspection report dated 05.02.2015 about the presence of additional/double gear, which is not in dispute. While it is the contention of the appellants that since the dispensing unit and other equipment are in the care and custody of the petitioner/dealer, the responsibility lies with it and the benefit by virtue

of such additional gear coupled with variations in stock would enure to the dealer, the same is opposed by the petitioner contending that it is well-nigh impossible to meddle with the dispensing unit when there is no allegation of tampering of seals, which in fact, undisputedly are intact, as per the inspection report. Further, the dealer cannot be held responsible for the presence of additional equipment as it is the authorities alone who have access to the dispensing unit.

18. In Ram Lal Agarwal's case (referred 2 supra), wherein reliance was placed on the judgment in P. Laxmikanth Rao's case (referred 1 supra) which was later upheld by the Division Bench in W.A. No. 318 of 2011, the learned Single Judge was examining more or less similar factual situation, but there is no allegation of stock variation as pointed out by the learned Senior Counsel. In the said case, the Inspecting Team observed the presence of double gear in one of the dispensing units. However, they did not find any irregularity or illegality in the functioning of the dispensing units, no differentiation was noted in dispensing of fuel nor the quantity of petroleum products was found to be deficient in any manner. It was inter alia contended on behalf of the Oil Company/respondent therein that mere existence of double gear in the dispensing unit is sufficient to hold a dealer responsible as double gear gets installed only to manipulate delivery and actual shortage of delivery is not material.

19. The learned Single Judge while interpreting Clause 5.1.4 of MDG which is pressed into service in the present case also, opined that double gear in dispensing unit would assume critical irregularity only if deficiency is noticed in the quantity of fuel dispensed with. The said clause reads thus:

"5.1.4 Additional/unauthorized fittings/gears found in dispensing unit/tampering with dispensing unit:

Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery…"

20. At para 27 of the judgment, the learned Single Judge opined as follows:

"……If the material available on record does not necessarily lead to the conclusion that the tampering and tinkering has taken place at the hands of the writ petitioner, it will be totally unjust to penalize him. It is a fundamental principle of law that no innocent person should be penalized for no fault of his. That would be contrary to cannons of justice. In the absence of linkage of the presence of the additional gear with 39 teeth in the equipment at the premises of the retail outlet run by the petitioner to him, it will not be safe to infer that he is guilty of tampering with the equipment. If there is no reasonable substratum to a conclusion that the petitioner is guilty of tampering with the equipment, no adverse action of termination of his dealership agreement could have been drawn against him. The petitioner therefore could not have been faulted unnecessarily."

21. It may be trite to observe here that it is not the case of the appellants that by virtue of presence/or help of double gear, less quantity of petrol/diesel is dispensed with on testing at the time of the inspection conducted on 05.02.2015. No doubt, no satisfactory explanation is forthcoming with regard to the stock variations. However, in the absence of any evidence to the effect that additional gear was inserted by/or at the behest of the petitioner/dealer and as a result of the same, there was stock variation which reaps benefit to the petitioner, no conclusion can be arrived at for penalizing the petitioner. In this regard, it may be apt to refer to the judgment of the Division Bench cited by Mr. N. Ashwani Kumar in support of his contentions. In W.A. No. 318 of

2011, the Hon'ble Division Bench while confirming the orders of the learned Single Judge in P. Laxmikanth Rao's case (referred 1 supra) vide orders dated 21.07.2011 elaborately dealt with the similar issues. In the said case, the dealership of the petitioner therein was terminated on the allegation that a spurious gear was found to have been introduced into the unit resulting in the short supply of High Speed Diesel (HSD). It is the case of the Oil Company that the dealer committed malpractice/irregularity of short supply by tampering with the Corporation's equipment, namely, dispensing unit by using unauthorized fittings/gears and that the said act of the dealer putting additional gear to the dispensing unit resulting in short supply tantamount to tampering with the dispensing unit. It was contended before the learned Single Judge that once the seal is found to be intact, the dealer cannot be held responsible for any error or defect as to the measurement and further that the dealer has no control over the dispensing unit and the Corporation and the Maintenance Agency are in complete control over the units.

22. While upholding the judgment of the learned Single Judge, the Division Bench held as follows:

"On the basis of the charge, it is appropriate that before any conclusion as to misconduct or malpractice or tampering by the dealer is arrived at, it must be demonstrated by the appellants by the standards of preponderance of probabilities (no lesser standard known to law exists) that the dealer could access the internal mechanism of the unit and could introduce the spurious gear. Alternatively, a compelling inference as to tampering by or on behalf of the dealer could have perhaps been legitimately arrived at if the respondents could establish that proper gear was in fact installed in the unit on an earlier occasion and the dealer or his agents could have substituted the gear with a spurious one, even while the seal to the unit was intact. In the absence of officials of Weights and Measures Department and by obtaining only their telephonic approval, the seals were broken by agents of the appellants and the Metering Unit opened. It is the admitted factual scenario that the seals of the dispensing unit were intact and as observed by the learned Single Judge it is not the case of the appellants that the dealer or any other individual could gain access to the unit where the ?spurious gear? was introduced even while the seal of the unit was intact. It is not the case of the appellants that the seals of the unit were tampered with or duplicate seals substituted for the seals put by officials of the Legal Metrology Department. Neither the show cause notice nor the final order impugned in the writ petition unravels the mystery of the closed unit and metaphysical entry of the spurious gear into the unit. This was a fatal error in the order of termination of the dealership, on account of which the learned Single Judge was persuaded to invalidate the order of termination of the respondent's dealership, by the appellants."

23. Further, with regard to the presence of the spurious gear, the Hon'ble Court recorded its conclusions as follows:

"Responding to a query from this Court as to how the appellants could explain the curious case of the spurious gear inside a locked unit, the learned senior counsel would urge that since the authorized dealer of the gears supplied by Larsen and Turbo had through a letter, dated 10.05.2010, informed the appellants that the gear found in the dealer's unit was an unauthorized gear and not manufactured and supplied by the authorized supplier, the inference is compelling that since it was only the dealer who stood to gain from short delivery of HSD, he must have introduced the gear notwithstanding that the unit was sealed and despite absence of an explanation

as to how a spurious gear could have been introduced into the sealed unit. His contention does not commend acceptance by this Court as it suffers from the logical fallacy of an undistributed middle. The letter of the supplier to the appellants, dated 10.05.2010, is not conclusive of the fact that a standard gear was in place till the inspection nor it is to be construed by any principle of law that a spurious gear was not installed.

Since the HSD vended by the dealer is clearly found to be in short supply and that is an undisputed fact, and since a spurious gear having 39 teeth instead of 38 was also found embedded inside the HSD unit, the conclusion is irresistible in a world governed by physical laws that someone or some agent introduced a non-standard gear into the HSD unit. But from this fact to take a logical leap to infer that it was introduced by the dealer, is irrational. The chain of circumstances is not complete and merely because the dealer alone would stand to benefit from the short supply, no such inference could legitimately be drawn.

It is the admitted position that the supplier of the gears is a private agent. Neither the State nor an instrumentality of the State is the accredited supplying agent of the appellants. There is nothing in the pleadings, including in the counter affidavit of the appellants herein before the learned Single Judge that establishes that the introduction or replacement of the gears is by the respondent dealer."

24. While disposing of the writ appeal, the Division Bench opined that "the conclusion as to the dealer's malfeasance was arrived at by the appellants therein on the singular fact that there was short supply of HSD and on the opening of the seal of the unit after breaking it, the spurious gear was found.? It was further observed that ?the basis of these two facts found is inadequate and is flawed for the reason that the fact that a spurious gear was introduced by the dealer was not legitimately inferred and the fact of the external seals of the unit being intact was not adverted to nor explained in the order of termination."

25. This Court is of the considered view that the above said judgment of the Hon'ble Division Bench applies to the facts of the case in principle and is, therefore, not persuaded to take any different view in the facts and circumstances of the case, wherein no material/evidence was brought on record to the effect that the additional gear was inserted by the dealer with a view to manipulate the delivery of petrol/diesel. It is neither the case of the appellants that unauthorized fittings/additional gears in the dispensing units were inserted by the dealer in collusion with the authorities nor any such allegations were made to that effect. In the absence of which, nothing adverse against the petitioner/dealer can be inferred. This Court is, therefore, inclined to uphold the submissions made by the learned counsel for the respondent and reject the contentions contra of the learned Senior Counsel for the appellant No. 1/Corporation.

26. In Indian Oil Corporation's case relied on by the learned counsel for the appellants, the Hon'ble Supreme Court looking to the facts and circumstances of the case and on perusing the material on record held that acknowledgment of inspection report by putting seal and signature cannot be allowed to be resiled on the ground that the same were signed in good faith and the officials of the Oil Company cannot take advantage of the same. The said Judgment, in the considered view of this Court, is not applicable to the facts of the present case. Signing of the

inspection report acknowledging the presence of additional gear would not ipso facto amount to accepting the insertion of the same by the petitioner. The burden lies on the appellants to establish that the same was inserted to manipulate the delivery of the fuel. In the present case, respondent No. 3/the Original authority arrived at the conclusions to the effect that being custodian of the outlet/equipment, the petitioner is responsible for presence of additional/unauthorized gear without adverting to the plea that it is not possible to do so when seals are intact. Even the appellant No. 2/appellate authority based its findings on assumptions and presumptions while opining that termination of the dealership was based on established fact of unauthorized fitting alone and the issue of excess stock of MS and negative stock in HSD is of no further consequence, is not being dealt with. As pointed out by the Division Bench, no finding was recorded as to how a spurious gear can be inserted in the dispensing unit when the seals are intact. It may be pertinent to note here that Clause 8.5.2 of MDG provides as follows:

"All cases of irregularities needs to be established before any action is taken against a dealer."

27. Against the back ground of the above stated factual and legal position, the orders impugned in the writ petition cannot stand to legal scrutiny."

(ii) **M/s Prakash Automobiles Indian Oil Dealer Vs. Indian Oil Corporation Ltd. Lucknow [Writ-C No.558 of 2020].** Relevant paragraphs 12, 14 to 24, 25, 26, 27, 29 are being quoted below :-

"12. The facts in between the parties is not much in dispute. It is not disputed that on 17.04.2017 a maintenance report was generated by the OEM, a copy of which is on record as Annexure no. 5 which did not find anything suspicious addition or party or fitting in the DUs nor there was any material to indicate that any of the DUs were making short delivery.

14. It is also not disputed that during the inspection on 04.05.2017, the seals placed by the Department of Weights and Measures were found to be intact.

15. It is also not disputed that the petitioner was issued with a show cause notice on 13.06.2017, a copy of which is on record as Annexure 8 WRIT C No. - 558 of 2020 no. 10 and apart from the copy of the inspection report, no other document was annexed with the show cause notice nor any other report was provided to the petitioner which was sought to be relied upon by the respondents while taking a decision.

16. It is also not disputed that the petitioner submitted his reply on 30.06.2017 and it was only in context with the points raised in the show cause notice and by that given time it was only the inspection dated 04.05.2017 which had been provided to the petitioner to respond.

17. Later, the petitioner was required to be present at the Lab of the OEM where the pulsar cards were to be examined and in this regard it was stated that the petitioner was present but in his presence no such inspection was done and on 30.01.2018, the termination order was passed along with which the report dated 26.07.2017 issued by Gilbarco Veeder Root (GVR) was

provided to the petitioner. Admittedly, the said report was never provided to the petitioner prior to the passing of the order.

18. It is also not disputed that the petitioner filed an appeal where these issues were raised regarding not providing of the copy of the report which was relied upon by the Authorities while passing the termination order yet it did not find favour with the appellant.

19. Now, in the aforesaid background, the copy of the analysis report dated 26.07.2017 issued by the OEM GVR, a copy of which has been placed on record at running page 204 to 205 of the paper-book, at the outset, would indicate that on visual inspection, it appeared that a replaced micro controller had been placed on the pulsar which could lead to variation in delivery. It also concluded that the said micro controller was not part of the OEM and the same can lead to variation in the delivery.

20. In so far as the other report of the OEM dated 24.11.2017 which is at running page 206 to 212 is concerned, it would reveal that though it observed that there was an alternation/addition in the pulsar card, however, it was further observed that there were some technical aspects i.e. to say an 8 pin SMD IC has been mounted (glued) on the PCB and jumper wires from that IC were connected to pulsar sensors. This was found in two pulsars and for the remaining three pulsars, there was no malfunctions or abnormality detected.

21. It also noticed that all operational pulsar units were checked for accuracy test and it was found to be in permissible limits and finally it concluded that it could not be said whether any abnormality could affect the delivery.

22. In the given fact scenario, what this Court finds that admittedly the seals of the Weights and Measures Department were found to be intact. There was no material to suggest that the petitioner had tampered with the seal or could have tampered with the pulsar cards.

23. In order for the Corporation to have terminated the dealership of the petitioner on the aforesaid ground, it was necessary to have established that the petitioner had tampered with the seals and was responsible for incorporating any additional part which is not part of the OEM in the pulsar cards, coupled with the fact that such anomaly could have affected the delivery.

24. It is also relevant to notice that the only basis for passing the impugned orders is the report by the OEM and as noticed above, the report of the OEM is also inconclusive for the reason the OEM also could not state with certainty that the said alien part as detected in the pulsar card was responsible for any short delivery. The report merely draws a conclusion but it does not indicate how and what tests were done to arrive at such a conclusion, apart from the fact that the said report of the OEM was not even put or given to the petitioner before passing of the impugned order of termination.

25. Learned counsel for the IOC could not dispute that the show cause notice was based merely on the basis of the inspection report and at that point of time, the report of the OEM was not there and the show cause notice also did not indicate that the Corporation would be relying

upon the said report and even if they proposed to do so then it was a duty of the Corporation to have provided the copy of the report to the petitioner prior to the passing of the order to enable the petitioner to meet the reasons or contest the same and having not done so it has resulted in deprivation of an opportunity of hearing especially when the proposed action was in the nature of termination which impacted the rights of the petitioner to run the dealership which was a right to do business and earn livelihood.

26. The submission of learned counsel for the respondents Corporation that the additional part was responsible for manipulation in the pulsar card and it was beneficial for the petitioner, hence, it should be held against him, is also misconceived for the reason that the pulsar card could not have been inserted in the DU without the presence of theofficials of the OEM and the representative of the IOC as well as the officials of the Department of Weights and Measures and no such material or evidence was brought on record to indicate the complicity of the petitioner in the said act of manipulation of the pulsar cards.

27. The seals of the Weights and Measures Department was found to be intact and once the position was so obtained then any anomaly or irregularity found in the pulsar card ought to have been explained by the respondent corporation and establish as to what material was available with them which could give rise to a clear finding with sufficient certainty that in a particular manner the dealer could have tampered with the pulsar card which had a direct impact on short delivery of the petrol and this is conspicuously absent. Thus, for the aforesaid reason, this Court is not inclined to accept the submission of the learned counsel for the IOC regarding the involvement of the petitioner in manipulation without any cogent material.

29. Similarly, another coordinate Bench of this Court in R.S. Filling Station Indian Oil Corporation Ltd. Vs. Indian Oil Corporation; 2025:AHC-LKO:19838, after taking note of the relevant clauses of the MDG and taking note of a decision of Andhra Pradesh High Court in Indian Oil Corporation Vs. Pullareddy Service Centre (2021) SCC Online AP 2909 and more specifically paragraphs 18 to 27 and then concluded in paragraph 60 as under:-

"60. In the present case, as expressed above, the orders impugned cannot be sustained for the following reasons:

(i). the clarificatory e-mail, relied upon in the two orders was never supplied to the petitioner and was never made a relied upon document in the show cause notice although the same was available prior to the issuance of the show cause notice as claimed by the respondents;

(ii). the finding recorded by the first authority while considering the report of the OEM Dreser Wayne, as noticed in para 42 above, were without any material either alleged in the show cause notice or made available during the course of the proceedings, the said view appears to be a personal view and is perverse in absence of any material to justify the said view.

(iii). the appellate authority while invoking the 'deeming provisions' in para 5.1.4 of the MDG has taken two diametric views in respect of similar reports submitted by the OEM and the

second view taken by the appellate authority in the case of M/s Firozabad Fuels has been accepted by the Corporation and thus, two different views interpreting a similar provision are arbitrary; and

(iv). the Para 5.1.4 of the MDG, is divided into two parts, the first being there being an additional, removal, replacement of manipulation, however the same has to be read in conjunction with the likelihood of manipulating delivery in order to gain undue benefit, to substantiate the second part of clause 5.1.4, no material exists except the clarificatory e-mail which was never made a part of the show cause notice and was never proposed to be relied upon.""

(iii) **R.S. Filling Station Indian Oil Corporation Ltd. Kheri Vs. ICOL and others [Writ-C No.4944 of 2023].** Relevant paragraphs 47, 48, 54, 60 are being quoted below :-

"47. It is also essential to notice at this stage that para 5.1.4 of the MDG, prescribes that if any unauthorised fittings etc. are found in the dispensing unit, which are likely to manipulate the delivery, the material should be existent to demonstrate that the irregularities noticed in the pulsar card could have led to manipulation of delivery. To substantiate on the said allegations with regard to second part of para 5.1.4 of the MDG, the Corporation has founded the two impugned orders, based upon the clarificatory e-mail of MIDCO, referred to in the order as well the opinion expressed by the licensing authority while analysing the report of Dresser Wayne, as extracted above. The clarificatory e-mail, even as per the orders impugned, was available with the Corporation before the issuance of the first show cause notice, however, the same was not made a 'relied upon document' or 'document proposed to be relied upon' in the show cause notice, which is evident from the perusal of the show cause notice. At no point, even after remand from the Supreme Court was any fresh show cause notice issued indicating that the respondents were intending to rely upon the said document (clarificatory e-mail) to establish the allegations levelled against the petitioner.

48. The submission of the counsel for the respondents that the clarificatory e-mail was supplied during the appellate proceedings at the first instance and thus, was available, cannot be accepted to be sufficient compliance of principals of natural justice for the sole reason that for a material to be relied upon in the show cause notice and providing the material during the course of the hearing are two different things. When the material proposed to be relied upon, is indicated in the show cause notice, the dealer is confronted and is aware of the materials proposed to be relied upon and thus, would be entitled to challenge the said material including by way of right of cross examination. Making a person aware of the material during the course of the appellate proceedings without there being anything to indicate that the said material is proposed to be relied upon, is clearly in violation of principles of natural justice as, the person against whom the document is relied upon is never given an opportunity to defend the said evidence or to controvert it in any manner. Thus, I have no hesitation in holding that the reliance on the clarificatory e-mail which was available to the corporation even before issuance of the first show cause notice and the same not being made a part of the document relied upon in the show cause notice, has resulted in violation of the principle of natural justice.

54. The next judgment cited is in the case of Hindustan Petroleum Corporation Limited v. Super Highway Services, (2010) 3 SCC 321. In the said case, the Supreme Court had noticed that

the cancellation of the dealership agreement of a party is a serious business and cannot be taken lightly. Para 31 to 33 of the Supreme Court judgment is quoted herein below:

"31. The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before the termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that Respondent 1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement.

32. In the instant case, we are inclined to agree with Mr. Bhatt's submissions that the High Court did not commit any error in allowing the writ petition filed by Respondent 1 herein, upon holding that notice of the laboratory test to be conducted at Barauni Terminal had not been served upon Respondent 1, which has caused severe prejudice to the said respondent since its dealership agreement was terminated on the basis of the findings of such test. Admittedly the dealership agreement was terminated on the ground that the product supplied by the petitioner Corporation was contaminated by the respondent. Such contamination was sought to be proved by testing the TT retention sample in the laboratory at Barauni Terminal.

33. The guidelines being followed by the Corporation require that the dealer should be given prior notice regarding the test so that he or his representative also can be present when the test is conducted. The said requirement is in accordance with the principles of natural justice and the need for fairness in the matter of terminating the dealership agreement and it cannot be made an empty formality. Notice should be served on the dealer sufficiently early so as to give him adequate time and opportunity to arrange for his presence during the test and there should be admissible evidence for such service of notice on the dealer. Strict adherence to the above requirement is essential, in view of the possibility of manipulation in the conduct of the test, if it is conducted behind the back of the dealer."

60. In the present case, as expressed above, the orders impugned cannot be sustained for the following reasons:

(i). the clarificatory e-mail, relied upon in the two orders was never supplied to the petitioner and was never made a relied upon document in the show cause notice although the same was available prior to the issuance of the show cause notice as claimed by the respondents;

(ii). the finding recorded by the first authority while considering the report of the OEM Dreser Wayne, as noticed in para 42 above, were without any material either alleged in the show cause notice or made available during the course of the proceedings, the said view appears to be a personal view and is perverse in absence of any material to justify the said view.

(iii). the appellate authority while invoking the 'deeming provisions' in para 5.1.4 of the MDG has taken two diametric views in respect of similar reports submitted by the OEM and the

second view taken by the appellate authority in the case of M/s Firozabad Fuels has been accepted by the Corporation and thus, two different views interpreting a similar provision are arbitrary; and

(iv). the Para 5.1.4 of the MDG, is divided into two parts, the first being there being an additional, removal, replacement of manipulation, however the same has to be read in conjunction with the likelihood of manipulating delivery in order to gain undue benefit, to substantiate the second part of clause 5.1.4, no material exists except the clarificatory e-mail which was never made a part of the show cause notice and was never proposed to be relied upon.47. It is also essential to notice at this stage that para 5.1.4 of the MDG, prescribes that if any unauthorised fittings etc. are found in the dispensing unit, which are likely to manipulate the delivery, the material should be existent to demonstrate that the irregularities noticed in the pulsar card could have led to manipulation of delivery. To substantiate on the said allegations with regard to second part of para 5.1.4 of the MDG, the Corporation has founded the two impugned orders, based upon the clarificatory e-mail of MIDCO, referred to in the order as well the opinion expressed by the licensing authority while analysing the report of Dresser Wayne, as extracted above. The clarificatory e-mail, even as per the orders impugned, was available with the Corporation before the issuance of the first show cause notice, however, the same was not made a 'relied upon document' or 'document proposed to be relied upon' in the show cause notice, which is evident from the perusal of the show cause notice. At no point, even after remand from the Supreme Court was any fresh show cause notice issued indicating that the respondents were intending to rely upon the said document (clarificatory e-mail) to establish the allegations levelled against the petitioner."

(iv) **Chaudhary Filling Point Vs. State of U.P. [2019 SCC OnLine All 3620]**. Relevant paragraphs 13 to 19 are being quoted below :-

"13. It has also been averred in the writ petition that after termination of the dealership, a First Information Report was also lodged on 25.6.2017 bearing case Crime No. 232 of 2017 under Section 419/420/409 IPC read with Section 3 and 7 of the Legal Metrology Act against the petitioner.

14. Counsel for the petitioner has vehemently argued that the impugned order of termination has been passed in blatant disregard of the principles of natural justice and statutory procedure as laid down in the MDG-2012. The entire exercise of termination was a sham transaction as the OEM report dated 10.2.2018 and 30.4.2018 came into existence much after the passing of the order of termination. Moreover, the constitution of Inspection Team for inspecting the RO was not in accordance with the provision of Government Order dated 5.8.2008 read with the Government Order dated 2.5.2017 and as such it has been asserted that the alleged Inspection and the consequential action for cancellation of the applicant's dealership is patently in breach of the aforesaid Government Orders.

15. Pointing out the defect in the termination order, it has been urged that in sheer violation of clause 5.1.4 of MDG, no independent opinion of OEM regarding the alleged extra wire and extra soldering marks in the pulsar card of the Midco and Gilbaro was obtained prior to taking punitive action against the petitioner. Moreover, the allegation of tampering of seal as levelled by the Weight and Measurement Department was not found correct by the competent court

as the charges under Section 26 and 44 of the Legal Metrology Act were not found proved and the complaint filed by the Department was rejected by the competent court vide order dated 16.8.2018. The defects/irregularities which have been pointed out by the Counsel for the petitioner can be summarized as under:

1. The allegation of tampering of W & M seal was not made in accordance with Clause 5.1.2(b) of MDG inasmuch as the allegation in the show cause notice did not specifically provide as to under which of the three types of tampering of seal as provided in clause 5.1.2(b) is applicable on the petitioner.

2. Prior to issuance of the termination order of the petitioner's RO independent opinion of the W & M authorities was not taken by IOCL, which is clear violation of clause 5.1.2(B) of the MDG.

3. Similarly, prior to issuance of the termination order of the petitioner's retail out, independent opinion of the OEM as provided in clause 5.1.4 of the MDG was not obtained by the IOCL and the dealership was terminated solely on the basis of the joint inspection report itself.

4. In Clause 8.5.2 of the MDG, it has been provided that "all cases of irregularities need to be established before any action is taken against a dealer", however prior to terminating the petitioner's RO no steps were taken by the IOCL for establishing any irregularity and merely on the basis of the inspection report dated 2.6.2017, the exercise of termination was undertaken.

5. The IOCL authorities, did not provide any ?pre decisional hearing? to the petitioner, which is mandated in clause 8.6 of the MDG and stipulates that in case of critical irregularities leading to termination, like that of seal tampering, the Head of the State Office/Regional Office/Zonal Office of the concerned OMC or their nominee before recommending/approving the termination of Dealership will provide a personal hearing to the signatories of the dealership or their nominees.

16. Thus, it is crystal clear that the IOCL authorities have disregarded and blatantly violated the mandatory procedure prescribed in the MDG and the appellate authority before whom all these pleas were raised has also rejected the appeal in a cursory manner without appreciating all these aspects of the matter in its correct prospective, has not applied its independent mind and upheld the order of termination in a cursory manner.

17. Refuting the assertion of the petitioner, learned Counsel for the Indian Oil Corporation submitted that on 2.6.2017 when the inspection team checked the retail outlet of the petitioner, several irregularities were found for which a fact finding letter dated 3.6.2017 was issued to the petitioner together with the Inspection note to which no reply was tendered and as such a show cause notice dated 20.6.2017 was issued to show cause why his retail outlet dealership may not be terminated. The petitioner responded to the said show cause notice by tendering reply on 3.7.2017 which was duly considered by the competent authority, who did not find the reply submitted by the petitioner to be satisfactory with regard to breaking/tamper of W & M seal of meter assembly, which is a serious irregularity. Thus, the petitioner/retailer committed breach of

clause 5.1.2(b) and clause 15, 16, 19 & 44 read with clause 58 of dealership agreement and as the reply was not found satisfactory, the impugned order of termination was passed.

18. It has been urged that the pleas which have been raised by the petitioner have been considered by the appellate authority, who after considering the evidences has come to the conclusion that the termination of the dealership is in accordance with the provisions of MDG-2012 and clauses of dealership agreement. It has also been added that the appeal was decided after giving opportunity of hearing. Therefore, there is no illegality or irregularity in the impugned orders and the writ petition is liable to be dismissed.

19. First of all, we would like to mention that the very purpose of enacting Marketing Discipline Guidelines was to maintain discipline in the operation of retail network and provide high customer service standards. For the First time, the Marketing Discipline Guidelines (MDG) were formulated in the 1981-82. Recently, when the Government as well as Industry felt the need to review the MDG in view of the changing circumstances and market scenario, Marketing Discipline Guidelines-2012 were introduced."

(v) **M/s M.K. Fuel Centre Vs. IOCL and others [Writ-C No.31629 of 2021]**. Relevant paragraphs 23 to 29, 31, 33 and 35 are being quoted below :-

"23. The order of termination has also been attacked with vehemence on the ground of not affording opportunity of oral hearing before passing the said order. There is no denial of the said fact by the IOCL. It is settled principle of law that any order, which entails civil consequences, must be in conformity with the principles of natural justice. The Hon'ble Supreme Court in D.K. Yadav v. J.M.A. Industries Ltd.11 has held that an order involving civil consequences must be made consistently with the rules of natural justice. Clause 8.6 of the MDG-2012 provides in clear words that in case of critical irregularities leading to termination, like that of seal tampering, the Head of the State Office/Regional Office/Zonal Office of the Oil Manufacturing Company concerned or their nominee before recommending/approving the termination of dealership will provide personal hearing to the signatories of dealership or their nominee. Principles of natural justice require that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by such a decision.

24. Thus, there is clear non-compliance of Clause 8.6 of the MDG by the respondent Authorities. Moreover, the respondents have failed to show any rule or regulation to demonstrate that when the dealership is terminated as per terms and conditions of the agreement, provisions of the MDG would not be applicable. The MDG has been enacted for such dealership agreements as the one involved in the instant case and therefore, we are of the view that these guidelines need to be strictly construed by both the parties. Further, any dealership agreement cancelled by the respondent Corporation cannot be effected on the basis of dealership agreement itself as the MDG have to be followed while taking recourse to such action. The respondent Corporation cannot act arbitrarily at its own sweet will like a private individual and deal with any person it pleases, but rather its action must be in conformity with standards or norms, which are not irrational or irrelevant. Therefore, respondents cannot be exempted from the application of MDG merely by following the dealership agreement.

25. It may be observed here that the respondent Corporation has departed from the standard norms laid down in the Marketing Discipline Guidelines and the standard norms of natural justice and fair play and such departure was clearly unreasonable and discriminatory. It may be noted that the manufacturer of the unit calibrates the equipment ensuring proper delivery of the product and the relevant part of the machinery is sealed by the Department concerned after verification of the accuracy. The very purpose of sealing of the equipment by the department is to ensure that the dealer does not tamper with the same. As seen from the reading of the impugned order, the only reason assigned for being not satisfied with the explanation offered by the petitioner was that there was manipulation in the software of the dispensing unit at the RO with an intention to manipulate the delivery of the fuel. However, what was not considered by the competent authority was that at what point of time this unauthorised tampering/soldering was done in the dispensing unit and how the dealer is manipulating the distribution of fuel. No material, much less credible one has been brought on record by the respondents to disclose the unauthorised access to the equipment by the petitioner.

26. It was specific stand of the petitioner that periodically the Weights and Measurements Department officials inspected the seals and they were found to be intact. Further more, what is the impact of tampering/manipulating the software of the dispensing unit is not disclosed by the respondent. How the dealer can manipulate delivery of fuel by inserting such unit is also not explained. The only objective of a dealer to tamper with dispensing unit is to manipulate delivery of fuel. In this case, the delivery of fuel was found to be accurate prior to checking of unit and after the checking. Merely on assumptions, that the tampering/manipulating the software of the dispensing unit was found, the petitioner dealer cannot be visited with severe consequence of termination of dealership. Thus, the action of the respondent Corporation, in the facts of this case, in terminating the dealership of the petitioner on the sole ground that manipulation of the software was found in the dispensing unit is illegal, unreasonable and excessive.

27. Another point, which has been canvassed by the petitioner, is that a perusal of the show-cause notice dated 4-1-2021 would indicate that the basis for the entire proceedings initiated against the petitioner is the inspection note dated 16-7-2020 and there was no other material before the competent authority to proceed against the petitioner. He had submitted that the inspection report dated 16-7-2020 has been made a sole basis of passing the impugned termination order, which was in fact no ?actionable evidence?, since the allegations contained therein were mere suspicions raised by the authorities and has not been verified by the experts before the impugned termination order was passed.

28. A perusal of the show-cause notice would indicate that the petitioner was asked to reply to the allegations regarding the tampering with the dispensing unit for manipulating the delivery. The inspection report itself could not be taken as to make any short selling of fuel by the petitioner. The inspection report could not have been made a basis for initiating proceedings against the petitioner, inasmuch as from the said report it could not have been concluded that the petitioner was involved in any action, which could be said to be infringement of the guidelines with regard to the tampering of the machines and short selling of the fuel.

29. Identical issue came up for consideration before High Court of Chhattisgarh in case of Mahamaya Service Centre v. Indian Oil Corpn. Ltd.12, wherein Chhattisgarh High Court held that provisions of Clause 8 of the Order, 2005 read with MDG, 2005 have not been complied with, thus, the respondents cannot claim any sanctity in law and the court is well within its jurisdiction to declare such an act illegal and invalid. Chhattisgarh High Court also observed as under:

"26. It is a duty cast on the authorities of the State and the instrumentalities of the State that they should follow the proper procedure prescribed in the rules and regulations. The contravention of the same cannot be permitted. It is uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all."

31. Hon'ble Supreme Court in Hindustan Petroleum Corpn. Ltd. v. Super Highway Services9, has considered the similar issue of termination of dealership in the similar set of facts and circumstances, wherein the Supreme Court has held as under : (SCC pp. 328-329, paras 28-36)

"16. Having carefully considered the submissions made on behalf of the respective parties and also having considered the various decisions referred to by learned counsel, we are of the view that the case made out on behalf of Respondent 1 is more probable. Although, the transporter's representative was present at the terminal at the stipulated time on 29-5-2008, that by itself cannot give rise to a presumption that service had been effected also on Respondent 1, in the absence of any proof in that regard. Except for the endorsement on the handwritten notice said to have been given by Mr Dash, there is nothing else on record to even suggest that notice had been sent to Respondent 1 and that the same had been refused. It is also rather difficult to accept that in respect of a test to be conducted on 29-5-2008, at 3.00 p.m., an attempt was made to serve the said notice on the representative of Respondent 1 on the date of the proposed test itself. Although, the notice is dated 28-5-2008, the endorsement alleged to have been made by the representative of Respondent 1 is dated 29-5-2008, and we would be justified in assuming that Respondent 1 could not have arranged for being represented at the laboratory in the Barauni Terminal of the petitioner Corporation on such short notice. Nothing has been shown by the petitioner to disprove the allegation made on behalf of Respondent 1 that the notice alleged to have been tendered to the representative of Respondent 1 was not in the manner and the form in which such notice is required to be given to a dealer. It is obvious that the same had been made out in haste to indicate that service had been attempted on Respondent 1.

17. The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the Rules/Guidelines framed for the said purpose. The non-service of notice to the aggrieved person before termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that Respondent 1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement.

18. In the instant case, we are inclined to agree with Mr Bhatt's submissions that the High Court did not commit any error in allowing the writ petition filed by Respondent 1 herein, upon holding that notice of the laboratory test to be conducted at the Barauni Terminal had not been served upon Respondent 1, which has caused severe prejudice to the said respondent since its dealership agreement was terminated on the basis of the findings of such test. Admittedly the dealership agreement was terminated on the ground that the product supplied by the petitioner Corporation was contaminated by the respondent. Such contamination was sought to be proved by testing the TT retention sample in the laboratory at Barauni Terminal. The guidelines being followed by the corporation require that the dealer should be given prior notice regarding the test so that he or his representative also can be present when the test is conducted. The said requirement is in accordance with the principles of natural justice and the need for fairness in the matter of terminating the dealership agreement and it cannot be made an empty formality. Notice should be served on the dealer sufficiently early so as to give him adequate time and opportunity to arrange for his presence during the test and there should be admissible evidence for such service of notice on the dealer. Strict adherence to the above requirement is essential, in view of the possibility of manipulation in the conduct of the test, if it is conducted behind the back of the dealer. In the present case, there is no admissible evidence to prove service of notice on the respondent or refusal of notice by the respondent. Further, the notice dated 28-5-2008 which was allegedly refused by respondent, did not give him adequate time to arrange for the presence of himself or his representative during the test to be conducted at 3.00 p.m. on 29-5-2008. It is also to be noted that the endorsement regarding the alleged refusal is dated 29-5-2008 itself. Thus, the termination of the dealership agreement of the respondent was arbitrary, illegal and in violation of the principles of natural justice.

19. Although, Clause 68 of the Dealership Agreement refers to arbitration, it is unfortunate that the said question was not raised before the High Court. It is now too late in the day for the petitioner Corporation to contend that in view of Clause 68 of the Dealership Agreement, Respondent 1 was not entitled to seek its remedy before the writ court. In any event, by filing appeal against the order of the learned Single Judge, the petitioner herein also submitted to the jurisdiction of the writ court, without objecting to the same.

20. In the aforesaid circumstances, we are not inclined to admit the special leave petition, which is, accordingly, dismissed, without, however, any order as to costs."

(emphasis supplied)

33. The Hon'ble Supreme Court in Allied Motors Ltd. v. Bharat Petroleum Corpn. Ltd.5 while dealing with a similar matter, wherein the Marketing Discipline Guidelines were not followed and termination was held to be illegal, held as under :

"In the instant case, samples were taken on 15-5-2000. On the very next day i.e. on 16-5-2000, without even giving a show-cause notice and/or giving an opportunity of hearing, the respondent Corporation terminated the dealership of the appellant. The appellant had been operating the petrol pump for the respondent for the last 30 years and was given 10 awards declaring its dealership as the best petrol pump in the entire State of NCT of Delhi. During this

period, on a number of occasions, samples were tested by the respondent and were found to be as per specifications.

In the instant case, the haste in which 30 years old dealership was terminated even without giving show-cause notice and/or giving an opportunity of hearing clearly indicates that the entire exercise was carried out by the respondent Corporation non-existent, irrelevant and on extraneous considerations. There has been a total violation of the provisions of law and the principles of natural justice. Samples were collected in complete violation of the procedural laws and in non-adherence of the guidelines of the respondent Corporation.

On consideration of the totality of the facts and circumstances of this case, it becomes imperative in the interest of justice to quash and set aside the termination order of the dealership. We, accordingly, quash the same. Consequently, we direct the respondent Corporation to handover the possession of the petrol pump and restore the dealership of petrol pump to the appellant within three months from the date of this judgment.

The appeal is consequently allowed with costs which is quantified at Rs 1,00,000 (Rupees one lakh only) to be paid by the respondent-Corporation to the appellant within four weeks from today."

35. In Chaudhary Filling Point case6 it has been held by this Court as under:

"As regard the arbitration, it has rightly been asserted that the arbitrator has no power to restore the distributorship, in the event the termination is found unlawful. The Supreme Court in Indian Oil Corpn. Ltd. v. Amritsar Gas Service17; E. Venkatakrishna v. Indian Oil Corpn. Ltd.18 and Sanjana M. Wig v. Hinsustan Petroleum Corpn. Ltd.19 has held in explicit words that an arbitration forum does not have the jurisdiction for the restoration of dealership, which was earlier terminated. All that the arbitrator could do, if he found that the termination of the distributorship was unlawful, was to award damages, as any civil court would have done in a suit. In Navin Filling Station v. Indian Oil Corpn. Ltd.20, this Court observed as under:

"The presence of the arbitration clause, is not to drive away a genuine grievance arising out of disproportionate action of the corporation, to the Arbitral Tribunal which in any case will not have the authority to give an award to restore the dealership. In the present case the Indian Oil Corporation terminated the agreement relying upon the clauses, which were not attracted and on the Marketing Discipline Guidelines framed for facilitating the marketing of the petroleum products on the principles of good governance and excellent customary service. The preamble to the guidelines itself provide that the guidelines need to be constantly updated to meet the customer satisfaction and to the discipline dealership network and for preventing malpractices in the sale of petroleum products."

In these circumstances, we find force in the arguments advanced by the learned counsel for the petitioner that arbitration between the parties is not an efficacious and proper remedy in such cases"

18. On the other hand, learned counsel for the respondents submits that the impugned orders are just and valid and they do not require interference by this Court, thus, he submits that the writ petition may be dismissed. He placed reliance upon the following judgments :-

(i) **Indian Oil Corporation Ltd. & another Vs. T. Natarajan [Civil Appeal No.6748 of 2018]**. Relevant paragraph(s) is/ are being quoted below :-

"In our opinion, the writ court (Single Judge) was, therefore, justified in dismissing the respondent's writ petition and upholding the rejection on the ground that the High Court cannot interfere in the administrative decision of IOC and nor can it substitute its decision by acting as an appellate court over such decision in exercise of writ jurisdiction. It is more so when such decision is based on reasons involving no arbitrariness of any nature therein which may call for any interference by the High Court."

(ii) **M/s Maharashi Filling Station (Indian Oil Dealer) Vs. Indian Oil Corporation Ltd and another [Writ-C No.20271 of 2018].** Relevant paragraph(s) is/ are being quoted below :-

"19. The competent authority of the Indian Oil Corporation considered the reply of the show cause notice submitted by the petitioner and passed the impugned order dated 29.7.2017 wherein finding has been recorded that Midco Engineer was present at the time of inspection on 6.5.2017 and he has submitted his report that additional fitting was found in the dispensing unit at the retail outlet dealership of the petitioner therefore, there is no need for any subsequent report. Since any additional fitting inside the dispensing unit is in violation of the provisions made in the Marketing Discipline Guidelines, 2012 and also is in violation of the provisions of the dealership agreement accordingly, petitioner's retail outlet dealership and dealership agreement have been terminated."

(iii) **M/s Kisan Sewa Kendra Vs. Union of India and others [Writ-C No.32973 of 2018]**. Relevant paragraph(s) is/ are being quoted below :-

"20. In view of the aforesaid test report, it is evident that the pulsar assemblies that were obtained from the dealership from the four dispensing units, were reflected as tampered with in the test reports by the OEM, which, as per clause 5.1.4 of the Guidelines would be deemed as tampering of the dispensing unit, and thus the same would be covered under the definition ?malpractices? as defined in the Order, 2005. The aspect of tampering of pulsar assemblies would definitely be violation of directive of the respondent Oil Corporation as provided in its guideline and, therefore, it would come within the ambit of 'unauthorized sale' as defined in the Order, 2005."

(iv) **M/s Shree Rajendra Agro Service Centre Vs. Indian Oil Corporation Ltd. and others [High Court of Judicature for Rajasthan at Jodhpur (Writ No.456/2023)].** Relevant paragraph(s) is/ are being quoted below :-

"18. Having regard to Clause 5.1.4 of the Guidelines of 2012, this Court is of the opinion that the term mentioned in the aforesaid Clause i.e. manipulation in the tempering Dispensing Unit

is wide enough and action on the part of the dealer of disconnecting the original E-Cal connector of the Dispensing Unit very well comes within the definition of tempering with the Dispensing Unit."

(v) **State of U.P. and others Vs. Rajit Singh [Civil Appeal Nos.2049-2050 of 2022].** Relevant paragraph(s) is/ are being quoted below :-

"It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice inasmuch as the documents mentioned in the charge-sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the enquiry officer/disciplinary authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge-sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India Vs. A. Masilamani (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in para 16 as under :

"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , Hiran Mayee Bhattacharyya v. S.M. School for Girls [Hiran Mayee Bhattacharyya v. S.M. School for Girls, (2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , U.P. State Spg. Co. Ltd. v. R.S. Pandey [U.P. State Spg. Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264 : 2006 SCC (L&S) 78] and Union of India v. Y.S. Sadhu [Union of India v. Y.S. Sadhu, (2008) 12 SCC 30])"

9. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in A. Masilamani [LIC v. A. Masilamani, (2013) 6 SCC 530 : (2013) 2 SCC (L&S) 608] to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the disciplinary authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated i.e. after the issuance of the charge-sheet, is unsustainable."

19. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as the judgments relied upon by the parties.

20. From the pleadings on record, the primary allegation against the petitioner relates to the alleged presence of an additional wire and tampered pulsar in the dispensing units at the

petitioner's retail outlet, which according to the respondent-Corporation amounted to violation of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012 (MDG-2012). It is not in dispute that during the inspection carried out on 1.5.2017, the seals of the Weights and Measures Department on the dispensing units were found intact and the inspection team did not find any discrepancy in the quantity of petroleum products being delivered through the nozzles. The controversy thus essentially revolves around whether the presence of the alleged additional fitting inside the dispensing unit, in absence of any evidence of tampering of seals or short delivery of fuel, could justify the extreme penalty of termination of the dealership.

21. Another aspect which assumes significance in the present case is that the termination order dated 30.1.2018 was passed primarily relying upon the reports of the Original Equipment Manufacturers (OEM), namely Midco and Dresser Wayne. The material on record indicates that the report of Midco was enclosed along with the termination order and the report of Dresser Wayne was supplied to the petitioner only during the pendency of the appeal before the Dispute Resolution Panel in the year 2019. Admittedly, these reports were not supplied to the petitioner prior to the issuance of the show cause notice or before passing of the termination order.

22. Learned counsel for the petitioner has vehemently contended that non-supply of the OEM reports prior to passing of the termination order has resulted in denial of adequate opportunity to the petitioner to rebut the allegations levelled against him. In this regard, reliance has been placed upon the judgments in Indian Oil Corporation Limited vs. Pullareddy Service Centre (2021 SCC OnLine AP 2909), M/s Prakash Automobiles Indian Oil Dealer vs. Indian Oil Corporation Ltd., and R.S. Filling Station vs. IOCL, wherein it has been held that where the termination of dealership is based upon technical reports or materials which were not supplied to the dealer at the stage of show cause notice, such action is violative of the principles of natural justice.

23. In M/s Prakash Automobiles (supra), this Court observed that where the OEM report forms the sole basis of termination and the said report was never supplied to the dealer prior to passing of the termination order, the action of the Corporation would suffer from violation of principles of natural justice. The Court further held that when the seals of the Weights and Measures Department are found intact and no material is brought on record to demonstrate how the dealer could have accessed the internal mechanism of the dispensing unit, the inference that the dealer himself introduced the additional fitting cannot be sustained.

24. Similarly, in Indian Oil Corporation Ltd. vs. Pullareddy Service Centre (supra), the Andhra Pradesh High Court held that merely because an additional gear or fitting is found in the dispensing unit, it cannot automatically lead to the conclusion that the dealer is responsible for the same, particularly when the seals of the unit are intact and there is no evidence that the dealer had access to the internal mechanism of the machine.

25. The same principle has also been reiterated by this Court in R.S. Filling Station vs. IOCL, wherein it was held that any material sought to be relied upon against the dealer must be made part of the show cause notice so that the dealer may effectively defend himself. Supplying such material at the appellate stage cannot cure the defect as it deprives the dealer of an opportunity to rebut the evidence at the appropriate stage.

26. In the present case, it is evident from the record that the show cause notice dated 7.7.2017 was issued only on the basis of the inspection report dated 1.5.2017. The reports of the OEMs, which subsequently formed the foundation of the termination order, were neither referred to in the show cause notice nor supplied to the petitioner before passing of the order dated 30.1.2018. Therefore, the petitioner had no opportunity to contest the conclusions drawn in those reports.

27. Another circumstance which cannot be ignored is that during inspection the seals of the Weights and Measures Department were found intact and there was no allegation of short delivery of fuel. In the absence of any material to establish that the petitioner had access to the internal mechanism of the dispensing unit or had tampered with the seals, the mere presence of an additional wire inside the pulsar card cannot automatically lead to the conclusion that the petitioner was responsible for the alleged manipulation.

28. The submission of the petitioner that the testing of the pulsar was not carried out in accordance with the procedure prescribed under the Legal Metrology (General) Rules, 2011 also finds support from the letter issued by the Deputy Controller, Legal Metrology, Haryana and the communication from the Forensic Science Laboratory, which indicate that such components are required to be tested in operational mode with power supply. In the present case, the report of Midco indicates that the examination was carried out merely through visual inspection without providing power to the device.

29. Learned counsel for the respondents has relied upon the judgment of the Supreme Court in Indian Oil Corporation Ltd. vs. T. Natarajan to contend that the writ court should not interfere with administrative decisions of the Corporation unless the same are arbitrary or perverse. There can be no dispute regarding the said proposition of law. However, the said judgment is distinguishable on facts as in the present case the termination order is found to be based upon materials which were not supplied to the petitioner prior to the passing of the order and thus the decision-making process itself stands vitiated.

30. The reliance placed by the respondents upon the judgment in M/s Kisan Sewa Kendra vs. Union of India is also of no assistance to them in the present case. In that case, the OEM reports had clearly established tampering with the pulsar assemblies and the same had been made part of the proceedings. In contrast, in the present case the reports relied upon by the respondents were neither supplied to the petitioner prior to the passing of the termination order nor do they conclusively establish that the alleged additional fitting had resulted in manipulation of delivery.

31. It is well settled that termination of a petroleum dealership has serious civil and financial consequences. The Supreme Court in Hindustan Petroleum Corporation Ltd. vs. Super Highway Services has emphasized that such action must strictly comply with the procedure prescribed in the applicable guidelines and the principles of natural justice.

32. In the present case, the material on record clearly indicates that the termination order has been passed in breach of the procedural safeguards contained in the Marketing Discipline Guidelines, 2012 as well as the principles of natural justice, inasmuch as the petitioner was not

supplied with the OEM reports forming the basis of the impugned action prior to passing of the termination order.

33. Consequently, the appellate authority, while dismissing the petitioner's appeal by order dated 23.5.2019, also failed to consider the aforesaid procedural infirmities and merely affirmed the decision of the original authority without independently examining whether the allegations against the petitioner had been established in accordance with law.

34. In view of the aforesaid discussion, this Court is of the considered opinion that the impugned orders dated 30.1.2018 passed by respondent No.2 and 23.5.2019 passed by the Dispute Resolution Panel cannot be sustained in the eyes of law. Accordingly, the writ petition deserves to be allowed.

35. The impugned order dated 30.1.2018 terminating the petitioner's retail outlet dealership agreement as well as the appellate order dated 23.5.2019 passed by the Dispute Resolution Panel are hereby quashed. The respondents are directed to permit the petitioner to continue to operate the retail outlet in accordance with law and strictly in terms of the dealership agreement, subject to compliance of all applicable conditions.

36. However, it is left open to the competent authority of the respondent-Corporation to proceed afresh from the stage of issuance of show cause notice, after supplying to the petitioner all documents proposed to be relied upon, including the reports of the Original Equipment Manufacturers. In case show cause notice is issued in accordance with law, necessary order in accordance with law shall be passed after affording fullest opportunity of hearing to the petitioner.

37. The aforesaid exercise shall be completed expeditiously, preferably within a period of four months from the date a certified copy of this order is produced before the concerned authority.

38. The writ petition is accordingly **allowed**. No order as to costs.

(2026) 2 ILRA 616
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 107 of 2026

Anil Kumar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

Whether the Prescribed Authority has to act in accordance with the majority opinion of the Members of the concerned Gram Panchayat while nominating the officiating Pradhan?

Headnotes

A. Panchayat Election Law – U.P. Panchayat Raj Act, 1947: Section 12-J - The Prescribed Authority has to act in accordance with the majority opinion of the Members of the concerned Gram Panchayat while nominating the officiating Pradhan. The law laid down is in consonance with the spirit of the provisions of Chapter IX inserted in our Constitution by the Constitution (Seventy third) Amendment Act 1992 which provides for constitution of Panchayats at the village, empowering the villagers to manage their affairs at the local level themselves. (Para 9, 10)

B. The requirement of consultation with the members cannot be said to be contrary to the intent of the legislature or adding words which have not been provided by the Statute. The office of Pradhan of a village is filled in by elections. The legislature, aware of this position, has made a specific provision under the Act, conferring powers on the Prescribed Authority to nominate a member to discharge the duties and exercise the powers of Pradhan until the vacancy of the office of Pradhan is filled in. This exercise is for the purpose of seeing that the functions of the Panchayat proceed smoothly and that there is no vacancy in the post till the vacancy is filled, as the Panchayat constitutes the basic unit of our democratic structure. Those in majority, shall have their nominee elected as an elected Pradhan should have the confidence of the members. (Para 11)

C. Longstanding precedents should not ordinarily be interfered with. Even the Hon'ble Supreme Court does not ordinarily interfere with the long standing precedents of High Courts regarding State legislations. (Para 16 to 18)

D. The rule of reservation has to be applied even while making nomination of a member of a village Panchayat u/s 12-J of the U. P. Panchayat Raj Act to perform the duties of a Pradhan against a casual vacancy of Pradhan. (Para 21)

It is apparent that the arrangement made for filling up temporary vacancy in the office of Pradhan which may cause, because of certain factors including removal of Pradhan **would not mean that the office of Pradhan is filled up by a person or member or Up-Pradhan who is otherwise not eligible or was not eligible to contest for the seat of Pradhan in a particular reserved constituency.** This being only a simple arrangement during a temporary vacancy, no exception of the same can be taken and it cannot be read in derogation with the provisions regarding reservation made under the Act and prescribed under the Rules. (Para 20)

The impugned order dated 26.06.2025, passed by the District Panchayat Raj Officer, Sitapur, whereby the District Panchayat Raj Officer has nominated the opposite party No. 4 to perform the duties of Gram Pradhan of Gram Panchayat, Sikauha, Development Block Reusa, District Sitapur until further orders, or until a Pradhan is appointed, is unsustainable in law and the same is quashed. The District Magistrate/District Panchayat Raj Officer, Sitapur is directed to make a fresh appointment of officiating Pradhan, keeping in view the observations made in this judgment. (Para 22)

Writ petition allowed. (E-4)

Case Law Cited

1. Savitri Devi Vs. State of U.P. and 4 others, 2017:AHC:70818 (Para 4)
2. Udaivir Vs. State Election Commission of U.P., 2008 SCC OnLine All 2132 (Para 6)
3. Pushpendra Kumar Vs. State of U.P., 2010 SCC OnLine All 3140 (Para 6)
4. Shyamu Vs. State of U.P. & Ors., 2010 SCC OnLine All 1250 (Para 6)
5. Smt. Usha Singh Vs. District Magistrate, Gorakhpur & Ors., 1992 RD 337; 1992 SCC OnLine All 184 (Para 6)
6. Kusma Devi Vs. State of U.P., 1992 RD 337 (Para 11)

7. Union of India Vs. Dharmendra Textile Processors, (2008) 13 SCC 369 (Para 13)
8. Dattatraya Ganesh Kulkarni Vs. Appa Tukaram Mude, (1998) 8 SCC 717 (Para 17)
9. Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra, (2001) 8 SCC 509 (Para 18)
10. Brij Rani Singh Vs. State of U.P., 2000 SCC OnLine All 1249; 2000 All LJ 1854 (Para 20)

List of Acts

U.P. Panchayat Raj Act, 1947.

List of Keywords

Pradhan, nomination, reservation, majority, panchayat, prescribed authority.

Appearances for Parties

For Petitioner(s): Prabhat Kumar, Lalla Ji Maurya
For Respondent(s): C.S.C., Narsingh, Satish Kumar Sharma

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

1. Heard Sri Prabhat Kumar Advocate, the learned counsel for the petitioner, and Shri Rahul Shukla, the learned Additional Chief Standing Counsel for the State of U.P. and Sri. Anurag Shukla Senior Advocate assisted by Sri. Aman Dwivedi Advocate, the learned Counsel for the opposite party no. 4.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 26.06.2025, passed by the District Panchayat Raj Officer, Sitapur, whereby the District Panchayat Raj Officer has nominated the opposite party No. 4 to perform the duties of Gram Pradhan of Gram Panchayat, Sikauha, Development Block Reusa, District Sitapur until further orders, or until a Pradhan is appointed, as the post had fallen vacant consequent to the death of the Village Pradhan Ori Lal on 06.06.2025.

3. The learned counsel for the petitioner has submitted that the post of Gram Pradhan in question is reserved for persons belonging to the Other Backward Class Category whereas the opposite party No. 4 is not a person belonging to that category. The petitioner is a member of the Gram Panchayat and he belongs to the Other Backward Class Category, and he ought to have been nominated as the officiating Gram Pradhan.

4. The learned counsel for the petitioner has next submitted that the appointment has been made without obtaining the consent of members of the Panchayat. In this regard, he has relied on a judgment dated 19.05.2017 passed by a Coordinate Bench of this court in the case of **Savitri Devi v. State of U.P. and 4 others**: 2017:AHC:70818, wherein this court has held that it is imperative for the District Magistrate to seek opinion of the members of the Gram Panchayat before taking a final decision for nomination of a suitable member to officiate as Gram Pradhan until the vacancy is filled up by a regular election.

5. Shri S.K. Khare, the learned Additional Chief Standing Counsel has opposed the writ petition on the basis of written instructions dated 24.09.2025 and he has submitted that Section 12-J of the U.P. Panchayat Raj Act, 1947, does not provide that the provision for reservation will be

observed even while appointing an officiating Pradhan. Shri Khare has also received supplementary instructions dated 06.10.2025, informing that prior to making the appointment of opposite party No. 4 as officiating Pradhan, the consent of the Village Panchayat Members had not been obtained.

6. Sri. Anurag Shukla, Senior Advocate appearing for the opposite party no. 4 has vehemently opposed the Writ Petition and he too has submitted that Section 12-J of the U.P. Panchayat Raj Act, 1947, does not provide that the provision for reservation will be observed even while appointing an officiating Pradhan and that there is no statutory requirement for obtaining consent of the members of gram panchayat before nominating any person to perform the duties of village pradhan in case of any casual vacancy. IN support of his contentions, the learned Counsel for the opposite party no. 4 has placed reliance upon the judgments in the cases of **Udaivir v. State Election Commission of U.P.:** 2008 SCC OnLine All 2132, **Pushpendra Kumar v. State of U.P., 2010 SCC** OnLine All 3140, **Shyamu v. State of U.P. & Ors.**, 2010 SCC OnLine All 1250, **Smt. Usha Singh v. District Magistrate, Gorakhpur & Ors.**, 1992 RD 337 = 1992 SCC OnLine All 184.

7. In **Smt. Usha Singh v. District Magistrate, Gorakhpur & Ors**. (Supra), a Single Judge Bench of this Court held that: -

"7. ... Literally construed the said provisions gives absolute discretion to the Prescribed Authority to nominate any member of the Gaon Panchayat for this purpose. Such an interpretation, however, would make the provision arbitrary and also unconstitutional since no guiding principle has been laid down as to how the discretion of the prescribed authority is to be exercised and in favour of which member of the Gaon Panchayat...."

After so observing, the learned Single Judge, then, proceeded to hold as under: -

"... In my opinion, since the Gaon Sabha and Gaon Panchayat are democratic bodies elected by the people, the proper interpretation of sub-section (2) of Section 12-J would be that in case where the offices of both Pradhan and Up Pradhan are vacant, or when both Pradhan and Up Pradhan are incapable to act, the Prescribed Authority should ask the members of the Gaon Panchayat to hold a meeting, and such members should decide among themselves which member should be nominated as Pradhan for the interim period until regular election, and such member should be nominated as officiating Pradhan under Section 12-J (2). Such an interpretation would be in consonance with the democratic principle underlying the U.P. Panchayat Raj Act, and would also make the statute constitutional."

8. In **Kusma Devi v. State of U.P.**: (Supra), another Single Judge Bench considered the judgment in Smt. Usha Singh, but did not follow the same in view of the following discussion: -

"6. In the aforesaid backdrop, the Court in the case of Smt. Usha Singh (supra) also observed that "Literally construed the said provisions gives absolute discretion to the Prescribed Authority to nominate any member of the Gaon Panchayat for this purpose". However, after opining that the aforesaid Gaon Sabha and Gram Panchayat may be taken into evidence, the Court in para 7 has held that no doubt such an interpretation is to some extent exercise of legislative

functions by the Court, and has relied upon the observations made by the Apex Court in Ratan Chand Hira Chand v. Askar Nawasjung which is as under:

"The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore not only necessary but obligatory on the courts to step in to fill the lacuna.

7. When courts performs this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society, or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society"

8. In my opinion, there is no lacuna in Section 12-J which is required to be filled up by this Court. The provision of Section 12-J sub clause (2) is clear that temporary Gram Pradhan is to be nominated by the Prescribed Authority. Nothing can be added by reading in between the lines or to give strength one's own opinion. The Prescribed Authority has power to nominate any person under the Act which cannot be said to be arbitrary and the Registrar has acted in its wisdom as conferred under the Act."

9. In **Udaivir v. State Election Commission of U.P.**, 2008 SCC OnLine All 2132, a Division Bench of this Court held that: -

"4. Considering the basic concept of the democracy set up for the Panchayat Raj under the provisions of Article 243 of the Constitution, we are of the opinion that respondent No. 3, i.e. District Magistrate, Aligarh ought to have ascertained the wishes of the elected members of the Gram Panchayat, as to who should be the officiating Pradhan for the period till the regular election of the Gram Pradhan is held. Further every attempt should be made to elect the new Pradhan at the earliest possible."

10. The aforesaid judgment was followed by another Division Bench of this Court in the case of **Pushpendra Kumar v. State of U.P.**, 2010 SCC OnLine All 3140, wherein it was held that: -

"9. .....The provisions of section 12-J came up for consideration before a Division Bench in the case of Udaivir (supra) and this Court has held that the Prescribed Authority has to act in accordance with the majority opinion of the Members of the concerned Gram Panchayat while nominating the officiating Pradhan. The law laid down in the aforesaid case is in consonance with the spirit of the provisions of Chapter IX inserted in our Constitution by the Constitution (Seventy third) Amendment Act 1992 which provides for constitution of Panchayats at the village, empowering the villagers to manage their affairs at the local level themselves. ....."

11. In **Shyamu v. State of U.P. & Ors.**: 2010 SCC OnLine All 1250 yet another Division Bench of this Court noted the contradictory judgments given by coordinate Benches in **Smt. Usha Singh v. District Magistrate, Gorakhpur & Ors.**, (Supra) and **Kusma Devi v. State of U.P.**1992 RD 337 (Supra) and the Division Bench held that: -

"8. It is a cardinal principle of our jurisprudence, that if a learned Single Judge disagrees with the view taken by another learned Judge on the interpretation of a provision, in the normal course, the learned Judge should refer the matter to a larger Bench unless the ratio of the

judgment is clearly distinguishable. Judicial discipline requires such an approach to avoid inconsistency in judicial pronouncements and further to enable the authorities to exercise their powers in terms of the interpretation given by the Court to the provisions. We may gainfully refer to the judgment of the Supreme Court in the case of Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel, AIR 1968 SC 372, wherein the Supreme Court has observed that where a learned Single Judge chooses to take a view different from the view taken by another learned Single Judge, he is ordinarily bound to refer the matter to a Division Bench. We may only quote the following observations:-

"... It has been held time and again that a Single Judge of a High Court is ordinarily bound to accept as correct judgments of courts of coordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law."

9. This principle flows on the proposition that if decisions of the same or a superior Court are ignored, even though directly applicable, by a Judge in deciding a case arising before him, on the view that every Judge is entitled to take such view as he chooses on the question of law arising before him, the law will be bereft of all its utility if it should be thrown into a state of uncertainty by reasons of conflicting decisions. In this regard, the observation of Gajendragadkar, C.J., in Lala Shri Bhagwan v. Shri Ram Chand, (1965) 3 SCR 218, is quoted below:-

"It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

The Division Bench concluded that: -

"14. We have earlier quoted Section 12-J of the Act. The Section, literally read, confers power on the Prescribed Authority alone to nominate a member of the Gram Panchayat. There is no provision for the Prescribed Authority to mandatorily consult the members of the Gram Panchayat. The settled legal principle of the interpretation is, in the first instance, to read the language of the Section in its literal sense. It is only in the event, when the reading of the literal language would result into the absurdity or detract from the intent of the legislature, the Court steps into read the provision in consonance of the intent of the legislature. The intention of the legislation is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also what has not been said. As a consequence, a construction, which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. [(See Shyam Kishori Devi v. The Patna Municipal Corporation & Anr., AIR 1966 SC 1678, and A.R. Antulay v. Ramdas Sriniwas Nayak & Anr., (1984) 2 SCC 500].

The learned Single Judge, who decided Smt. Usha Singh (supra), was of the opinion that the provision gives absolute discretion to the Prescribed Authority and such an interpretation would make the provision arbitrary and also unconstitutional since no guiding principle has been

laid down as to how the discretion of the Prescribed Authority is to be exercised and in favour of which member of the Gram Panchayat. It cannot be said that this was not a possible interpretation considering that the object of the Section is to nominate a member to act as a Pradhan. The member nominated should normally enjoy the confidence of other members and/or atleast the majority of the members so that the functions of the Gram Panchayat can proceed smoothly. Secondly, this view has been holding the field atleast since the year 1992. In these circumstances, ***in our opinion, the requirement of consultation with the members cannot be said to be contrary to the intent of the legislature or adding words which have not been provided by the Statute. We, therefore, overrule the view taken in Smt. Kusma Devi.***

15. The office of Pradhan of a village is filled in by elections. The legislature, aware of this position, has made a specific provision under the Act, conferring powers on the Prescribed Authority to nominate a member to discharge the duties and exercise the powers of Pradhan until the vacancy of the office of Pradhan is filled in. This exercise is for the purpose of seeing that the functions of the Panchayat proceed smoothly and that there is no vacancy in the post till the vacancy is filled, as the Panchayat constitutes the basic unit of our democratic structure.

To that extent, the observations made by the learned Division Bench in Udaivir (supra), in our opinion, can be said to reflect this basic concept of our democratic body that those in majority, shall have their nominee elected as an elected Pradhan should have the confidence of the members."

(Emphasis added)

12. The learned counsel for the opposite party no. 4 has submitted that as Section 12-J of the U.P. Panchayat Raj Act does not contain any provision mandating the prescribed authority to take into consideration the views of majority of members as expressed in a meeting held for this purpose, for nominating a person to discharge the duties of pradhan in a case of a casual vacancy, the casus omissus cannot be supplied by the courts except in the case of clear necessity and except where reason for the same is found in the corners of the statute itself but at the same time a casus omissus should not be readily inferred and for this purpose all the parts of statute or sections must be construed together and every clause of a section should be construed with reference to the context with other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. He has submitted that for the aforesaid reasons, this Court should refer the point decided in the aforesaid cases for reconsideration by a larger Bench.

13. The learned Counsel for the opposite party no. 4 has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Union of India versus Dharmendra Textile Processors**: (2008) 13 SCC 369, wherein the Hon'ble Supreme Court held that: -

"18. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole, appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of

the whole statute. This would be more 45 so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopiou (1965) 3 ALL ER 539 (All ER p. 544 I) "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC (1963) AC 557 where at AC p. 577 he also observed: (All ER p.664 I) "This is not a new problem, though our standard of drafting is such."

(The above paragraph has been quoted from the text of the judgment available on the web portal of the Hon'ble Supreme Court because there is an error in paragraph numbering in SCC)

14. Having gone through the law laid down in **Udaivir** (supra) and affirmed by two different division benches in **Pushpendra Kumar** (supra) and **Shyamu** (supra), I find myself bound by the proposition of law laid down by the Division Benches in the aforesaid cases.

15. I agree with the submission made by Sri. Anurag Shukla, the learned Senior Counsel for the opposite party no. 4 that a Single Judge Bench can refer the decision rendered by a Division Bench for reconsideration to a larger Bench, but this can only be done when the Single Bench doubts correctness of the view taken by the Division Bench. However, I am in respectful agreement of the view taken by the Single Judge Bench in the case of **Smt. Usha Singh v. District Magistrate, Gorakhpur & Ors.**, (Supra) decided way back in the year 1992, which view was also taken by the Division Benches in the cases of **Udaivir** (supra) and affirmed in **Pushpendra Kumar** (supra) and finally explained and settled in **Shyamu** (Supra) and I find no ground for making a reference for reconsideration of the issue by a larger Bench.

16. It is also a settled principle of law that longstanding precedents should not ordinarily be interfered with. Even the Hon'ble Supreme Court does not ordinarily interfere with the long standing precedents of High Courts regarding State legislations.

17. In **Dattatraya Ganesh Kulkarni v. Appa Tukaram Mude**: (1998) 8 SCC 717, the Hon'ble Supreme Court held that: -

"Those judgments are in the nature of stare decisis insofar as the interpretation of the local legislation on the subject is concerned. These having remained in the field for decades would not warrant us now to be giving a different interpretation as sought by the learned counsel for the appellant."

18. In **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra**: (2001) 8 SCC 509, the Hon'ble Supreme Court again held that:

"7. ...This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the

High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law."

19. In view of the foregoing discussion, I am unable to accept the request of the learned Senior Counsel for the opposite party no. 4 for referring the aforesaid well settled issue for reconsideration by a larger Bench and this request of the learned Counsel for the opposite party no. 4 is turned down.

20. Regarding the other submission of the learned Counsel for the petitioner that even while filling up a casual vacancy of Pradhan under Section 12-J of the Panchayat Raj Act, the principle of reservation has to be followed, the judgment of a coordinate Bench of this Court in **Brij Rani Singh v. State of U.P.**: 2000 SCC OnLine All 1249 : 2000 All LJ 1854 had as follows: -

"25. ...it is apparent that the arrangement made for filling up temporary vacancy in the office of Pradhan which may cause, because of certain factors including removal of Pradhan would not mean that the office of Pradhan is filled up by a person or member or Up-Pradhan who is otherwise not eligible or was not eligible to contest for the seat of Pradhan in a particular reserved constituency. This being only a simple arrangement during a temporary vacancy, no exception of the same can be taken and It can not be read in derogation with the provisions regarding reservation made under the Act and prescribed under the Rules...."

21. Therefore, the rule of reservation has to be applied even while making nomination of a member of a village Panchayat under Section 12-J of the U. P. Panchayat Raj Act to perform the duties of a Pradhan against a casual vacancy of Pradhan.

22. In view of the foregoing discussion, I am of the considered view that the impugned order dated 26.06.2025, passed by the District Panchayat Raj Officer, Sitapur, whereby the District Panchayat Raj Officer has nominated the opposite party No. 4 to perform the duties of Gram Pradhan of Gram Panchayat, Sikauha, Development Block Reusa, District Sitapur until further orders, or until a Pradhan is appointed, is unsustainable in law and the same is quashed. The District Magistrate/District Panchayat Raj Officer, Sitapur is directed to make a fresh appointment of officiating Pradhan, keeping in view the observations made in this judgment.

23. With the aforesaid observations/directions the petition stands ***allowed.***

(2026) 2 ILRA 624
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.02.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ C No. 526 of 2026

Jag Prasad & Ors. ...Petitioners

Versus

Additional Commissioner, Administration, 2nd, Devi Patan Division, Gonda & Ors. ...Respondents

Issue(s) for consideration

Whether in case, notices were served to the legal heirs of the deceased respondent would amount to effective service on the parties to the proceedings?

Headnotes

A. Land Law – Section 24 of U.P. Revenue Code / 41 of Land Revenue Act - Service of notice on persons who are not parties to the proceedings is of no value, as they cannot participate in such proceeding despite service. Once some of the petitioners who are the legal heirs of Swami Deen were never substituted and hence they were never the contesting parties before the SDM and their status of necessary party would accrue only when the application for substitution if had been filed in accordance with law would have been allowed by the SDM. (Para 9)

There is no dispute w.r.t. the facts, but only the infirmity claimed by the petitioners is w.r.t. not giving adequate opportunity of hearing to the petitioners by the SDM at the stage of confirming the revenue report dated 02.01.2020 and passing of the order dated 20.05.2022. It is noticed that Swami Deen who was a respondent before the SDM and a recorded tenure holder of Plot No. 23 situated at Village Madhavpar, Pargana, Tehsil and District Gonda was a necessary party in proceedings for demarcation. He had died on 12.09.2020 and no application for substitution was preferred by the private respondents before the SDM at any stage prior to passing of the order dated 20.05.2022. The infirmity in the said proceedings is said to have cured when notices were issued on the fresh revenue report dated 02.01.2020 which was served on some of the petitioners who are the legal heirs of Swami Deen. (Para 8)

In the present case, service of notice on the legal heirs prior to their being substituted as parties in the regular proceedings cannot be deemed to be effective service curing the defect of non-substitution of the deceased respondent. Accordingly, the service on the legal heirs of Swami Deen will(not) cure the defect of non-substituting Swami Deen with his legal heirs and hence the infirmity which was existing at the stage of passing of the impugned order by the SDM dated 20.05.2022 cannot be cured by assuming the service to be effective service on the parties to the proceedings. Therefore, this Court finds that the revisional authority has incorrectly appreciated the law and dismissed the revision filed by the petitioner. (Para 10)

The impugned orders dated 06.05.2025 and 20.05.2022 are set aside. The matter is remitted to the SDM to proceed afresh from the stage of receipt of the report dated 02.01.2020. (Para 11)

Writ petition allowed. (E-4)

List of Acts

U.P. Revenue Code/Land Revenue Act.

List of Keywords

Land, demarcation, infirmity, adequate, opportunity, substitution, service, legal, heir, deceased.

Appearances for Parties

For Petitioner(s): Faiz Ahmad Khan
For Respondent(s): C.S.C., Chandra Shekhar Shukla, Pankaj Gupta, Vijay Shankar Trivedi

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

1. Heard Sri Faiz Ahmad Khan, learned counsel for petitioners as well as learned Standing Counsel for respondent Nos. 1 to 3 and Sri Vijay Shankar Trivedi, learned counsel for respondent Nos. 5 to 8.

2. The dispute in the present case pertains to demarcation of the land situated at Gata No. 32 measuring 0.870 hect. recorded in the name of predecessor in interest of the private respondents. The petitioners are recorded tenure holders of land situated at Gata No. 23 situated at Village Madhavpar, Pargana, Tehsil and District Gonda which is adjacent to Gata No. 32 and accordingly were necessary parties in proceedings U/S 24 of U.P. Revenue Code / 41 of Land Revenue Act.

3. The proceedings were initiated sometimes in 2015 and the report of the revenue officials were also called for but subsequently during the proceedings after hearing the objections another fresh report of revenue officials were called which were submitted on 02.01.2020. It seems that when the case was next listed on 20.05.2022, the petitioners did not put in appearance nor did they filed their objections against the report dated 02.01.2020 and consequently the Sub-Divisional Magistrate, Devi Patan Mandal, Gonda confirmed the demarcation report as per the report of the revenue officials dated 02.01.2020 and directed for actual demarcation proceedings to be conducted (Patharnasin). The petitioners thereafter had preferred a revision before Additional Commissioner (Administration-II) stating that after filing of the second revenue report on 02.01.2020 no opportunity was given to them.

4. Apart from the fact that one of the parties to the case namely, Swami Deen had died on 12.03.2020 and accordingly the order dated 20.05.2022 has been passed against a dead person. The revisional authority has duly considered the objections filed by the petitioner and found that the Sub-Divisional Magistrate had issued notices on a receipt of the revenue report dated 02.01.2020. He has further observed that no doubt that Swami Deen had died in the meanwhile during the proceedings but the notice was received by petitioner Nos. 2 to 5 who are the legal heirs of Swami Deen and accordingly once the legal heirs were served then the infirmity with regard to death of Swami Deen stood cured and accordingly declined to interfere in exercise his judicial power and dismissed the revision filed by the petitioners. It is in the aforesaid circumstances that the writ petition has been filed before this Court assailing the validity of the order dated 20.05.2022 and the order dated 06.05.2025.

5. Learned counsel for petitioner has submitted that once a party to a civil dispute has died then it is incumbent for him to be substituted before the proceedings can be finalized and there is no dispute with regard to legal proposition that any order passed against a dead person is a nullity and void. He submits that undoubtedly even if it is assumed that the notices were served on the legal heir of Swami Deen but they were not parties to the present dispute at that time and such a service on the legal heirs of Swami Deen (deceased) cannot be deemed to be effective service on Swami Deen. He submits that it is only after curing the defect and making necessary substitution of Swami Deen the proceedings could have continued after adequately serving notices on the legal heirs of Swami Deen.

6. Accordingly, in this regard it is stated that the order dated 20.05.2022 is illegal and arbitrary and even the order dated 06.5.2025 passed by Additional Commissioner (Administration) is illegal and arbitrary inasmuch as he has wrongly appreciated the aspect pertaining to substitution of the parties and both the orders deserves to be set aside.

7. Learned counsel for respondents on the other hand has opposed the writ petition and submitted that merely because petitioners were not served or were not properly served cannot be a sole ground for setting aside the impugned order inasmuch as they were fully aware of the proceedings pending before the Sub-Divisional Magistrate and had deliberately not participated in the said proceedings and therefore had supported the impugned orders.

8. Considering the rival submissions of the parties, it is noticed that there is no dispute with regard to the facts, but only the infirmity claimed by the petitioners is with regard to not giving adequate opportunity of hearing to the petitioners by the Sub-Divisional Magistrate at the stage of confirming the revenue report dated 02.01.2020 and passing of the order dated 20.05.2022. It is noticed that Swami Deen who was a respondent before the Sub-Divisional Magistrate and a recorded tenure holder of Plot No. 23 situated at Village Madhavpar, Pargana, Tehsil and District Gonda was a necessary party in proceedings for demarcation. He had died on 12.09.2020 and no application for substitution was preferred by the private respondents before the Sub-Divisional Magistrate at any stage prior to passing of the order dated 20.05.2022. The infirmity in the said proceedings is said to have cured when notices were issued on the fresh revenue report dated 02.01.2020 which was served on some of the petitioners who are the legal heirs of Swami Deen.

9. The aspect which required consideration before this Court is as to whether in case notices were served to the legal heirs of the deceased-respondent would amount to effective service on the parties to the proceedings. There is again no dispute that once some of the petitioners who are the legal heirs of Swami Deen were never substituted and hence they were never the contesting parties before the Sub-Divisional Magistrate and their status of necessary party would accrue only when the application for substitution if had been filed in accordance with law would have been allowed by the SDM. Accordingly, service of notice on persons who are not parties to the proceedings is of no value, as they cannot participate in such proceeding despite service.

10. In the present case, service of notice on the legal heirs prior to their being substituted as parties in the regular proceedings cannot be deemed to be effective service curing the defect of non-substitution of the deceased respondent. Accordingly, the service on the legal heirs of Swami Deen will cure the defect of non-substituting Swami Deen with his legal heirs and hence the infirmity which was existing at the stage of passing of the impugned order by the Sub-Divisional Magistrate dated 20.05.2022 cannot be cured by assuming the service to be effective service on the parties to the proceedings. It is in this regard, this Court finds that the revisional authority has been incorrectly appreciated the law and dismissed the revision filed by the petitioner.

11. With the aforesaid circumstances, the writ petition is **allowed**. The impugned orders dated 06.05.2025 and 20.05.2022 are set aside. The matter is remitted to the Sub-Divisional Magistrate to proceed afresh from the stage of receipt of the report dated 02.01.2020. The petitioners would be at liberty to file their objections within next three weeks and the Sub-Divisional Magistrate shall conclude the proceedings within a period of two months thereafter by speaking and reasoned order in accordance with law.

12. Parties before this Court undertake to cooperate in the proceedings and shall not take any unnecessary adjournments.

13. Till such time as final orders are passed by Sub-Divisional Magistrate, the parties shall maintain status quo over the disputed land as existing today.

14. Affidavit of service filed today is taken on record.

(2026) 2 ILRA 628
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 1113 of 2026

Rajesh Kumar & Anr. ...Petitioner
Versus
State Election Commissioner U.P. Lko. & Ors. ...Respondents

Issue(s) for consideration

Who shall be deemed to be an ordinary resident in the territorial constituency of a Gram Panchayat?

Headnotes

A. Civil Law – U.P. Panchayat Raj Act, 1947: Section 9(3) - The Explanation appended to Section 9(3) of the U. P. Panchayat Raj Act clarifies that a person shall not be treated to be an ordinary resident in the territorial constituency merely on the ground that is in possession of a dwelling house therein, whereas the petitioners are claiming themselves to be residents of Village Panchayat- Kandaari only on the ground that the petitioner no. 1 is in possession of a room in the sahan of Rakesh Kumar, son of Banwari Lal in village Shahzadpur in village Panchayat Kandaari and he has put up his name plate on it portraying it to be his residence, whereas it has come to light in inquiry that that there was no evidence of their actual residence in that room and they are ordinarily residing in village Shahzadpur in village panchayat Bambhauri. (Para 7)

B. Even if the petitioners are absenting themselves temporarily from their place of ordinary residence in Village Panchayat- Bambhauri, they shall not by reason thereof cease to be ordinarily residents of Village Panchayat- Bambhauri. The names of the other family members of the petitioners are recorded in the electoral roll of Village Panchayat- Bambhauri. Several villagers have stated that the petitioners are not residents of Village Panchayat- Kandaari and some of them have given affidavits stating that the petitioners are residents of Village Panchayat- Bambhauri and their names are recorded in the electoral roll of that Village. (Para 9)

C. The S.D.M. has passed the impugned order holding the petitioners to be ordinary residents of Village Panchayat- Bambhauri after proper consideration of all the facts of the case, as required by Explanation (v) appended to Section 9(3) of the Act. (Para 10)

Writ petition dismissed.

List of Acts

U.P. Panchayat Raj Act, 1947.

List of Keywords

Resident, territorial, constituency, gram panchayat, residence, ordinary.

Appearances for Parties

For Petitioner(s): Anshuman Singh, Vipul Singh
For Respondent(s): Anurag Kumar Singh

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

1. Heard Shri Anshuman Singh, the learned counsel for the petitioner and Shri Anurag Kumar Singh, the learned counsel for the State Election Commission representing the opposite party Nos.1, 2 and 3.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 24.12.2025 passed by the S.D.M., Mahmoodabad, District- Sitapur whereby the petitioner's representation dated 08.12.2025 for treating him as a resident of Village Panchayat - Kandaari, has been rejected. The ground of rejection is that earlier the petitioner was a resident of Village Panchayat- Bambhauri and the petitioner's father, wife and children are still continuing as residents of Village Panchayat- Bambhauri. Therefore, the petitioner shall also be treated as a resident of Village Panchayat- Bambhauri.

3. It has been pleaded in the petition that earlier the petitioner was elected as Pradhan of the Village Panchayat- Bambhauri in the elections held in the year 2005. At that time, the said Village Panchayat comprised of eight villages. Subsequently in the year 2015, a new Village Panchayat- Kandaari comprising of 3 villages was carved out from Village Panchayat- Bambhauri. The petitioner was elected as Pradhan of Village Panchayat- Bambhauri in the year 2015 and he held that Office till the year 2021. In the year 2021, the petitioner lost election for Pradhan of Village Panchayat- Bambhauri and the opposite party No.4 was elected as Pradhan. The petitioner claims to have shifted his residence from Village Panchayat- Bambhauri to Shahzadpur, which is a hamlet of Village Panchayat- Kandaari. The petitioner has been issued a domicile certificate by the Competent Authority.

4. On 26.09.2025, the father of the petitioner No.1 had moved an application for striking out the petitioners 'names from the voters′ list of the Village Panchayat- Bambhauri and, accordingly, their names have been struck out from the voters′ list of Village Panchayat- Bambhauri. Thereafter the petitioners sought inclusion of their names in the electoral roll of Village Panchayat- Kandaari. This claim has been rejected by the impugned order 24.12.2025.

5. It is recorded in the order dated 24.12.2025 that the names of other family members of the petitioners, namely, Jwala Prasad- father of the petitioner No.-1, Usha Devi wife of the petitioner No.1, Jyoti Yadav and Manjari Yadav - daughters of the petitioner No.1 and Devendra Singh and Gyanendra Singh - sons of the petitioner No.1, are recorded in the electoral roll of Village Panchayat- Bambhauri. During inquiry, it came to light that Rakesh Kumar, son of Banwari Lal has provided a room in the Sehen of his house to the petitioner No.1 and the petitioner No.1 has put up his name plate on it portraying it to be his residence, but there was no evidence of the residence of

the petitioner No.1 in the said room. Although the petitioner has submitted affidavits of some persons, the affidavits were pre-prepared affidavits. Several villagers have objected stating that the petitioners are not residents of Village Panchayat- Kandaari and some of them have given affidavits stating that the petitioner and his family members are residents of Village Panchayat- Bambhauri and their names are recorded in the electoral roll of that Village.

6. Challenging the validity of the aforesaid order dated 24.12.2025, the learned counsel for the petitioners has submitted that Section 9 (3) of U.P. Panchayat Raj Act, 1947 provides that *"Subject to the provisions of sub-section (4), (5) and (7) every person who has attained the age of 18 years of the first day of January of the year in which the electoral roll is prepared or revised and who is* ***ordinary resident in the territorial constituency of a Gram Panchayat*** *shall be entitled to be registered in the electoral roll for that territorial constituency."* However, the learned Counsel for the petitioners has not placed the explanation appended to Section 9(3) of the Act whereas whenever any provision of law is placed before a Court, it should be placed in its entirety. Therefore, Section 9 (3) of U.P. Panchayat Raj Act, 1947 is being quoted below: -

"(3) Subject to the provisions of sub-sections (4), (5), (6) and (7) every person who has attained the age of 18 years on the first day of January of the year in which the electoral roll is prepared or revised and who is ordinarily resident in the territorial constituency of a Gram Panchayat shall be entitled to be registered in the electoral roll for that territorial constituency.

Explanation (i) ***A person shall not be deemed to be ordinarily resident in the territorial constituency on the ground only that be owns, or is in possession of, a dwelling house therein.***

(ii) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(iii) A member of Parliament or of the Legislature of the State shall not, during the term of his office, cease to be ordinarily resident in the territorial constituency merely by reason of his absence from that area in connection with his duties as such member.

(iv) Any other factor that may be prescribed shall be taken into consideration for deciding as to what persons may or may not be deemed to be ordinarily residents of a particular area at any relevant time.

(v) ***If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case****."*

(Emphasis added)

7. The Explanation appended to Section 9(3) of the U. P. Panchayat Raj Act clarifies that a person shall not be treated to be an ordinary resident in the territorial constituency merely on the ground that is in possession of a dwelling house therein, whereas the petitioners are claiming themselves to be residents of Village Panchayat- Kandaari only on the ground that the petitioner no. 1 is in possession of a room in the sahan of Rakesh Kumar, son of Banwari Lal in village Shahzadpur in village Panchayat Kandaari and he has put up his name plate on it portraying it to be his residence, whereas it has come to light in inquiry that that there was no evidence of their actual residence in that room and they are ordinarily residing in village Shahzadpur in village panchayat Bambhauri.

8. The petitioners have themselves pleaded that earlier the petitioner no. 1 has been elected as Pradhan of Village Panchayat- Bambhauri in the elections held in the year 2005. At that time, the said Village Panchayat comprised of eight villages. Subsequently in the year 2015, a new Village Panchayat - Kandaari comprising of 3 villages was carved out from Village Panchayat- Bambhauri. The petitioner was elected as Pradhan of Village Panchayat- Bambhauri in the year 2015 and he held that Office till the year 2021. In the year 2021, the petitioner lost election for Pradhan of Village Panchayat- Bambhauri and the opposite party No.4 was elected as Pradhan. The petitioner claims to have shifted his residence from Village Panchayat- Bambhauri to Shahzadpur, which is a hamlet of Village Panchayat- Kandaari.

9. The names of the other family members of the petitioners, namely, Jwala Prasad- father of the petitioner No.-1 and husband of the petitioner no. 2, Usha Devi wife of the petitioner No.1 and daughter-in-law of the petitioner no. 2, Jyoti Yadav and Manjari Yadav - daughters of the petitioner No.1 and grand-daughters of the petitioner no. 2 and Devendra Singh and Gyanendra Singh - sons of the petitioner No.1 and grand-sons of the petitioner no. 2, are recorded in the electoral roll of Village Panchayat- Bambhauri. Several villagers have stated that the petitioners are not residents of Village Panchayat- Kandaari and some of them have given affidavits stating that the petitioners are residents of Village Panchayat- Bambhauri and their names are recorded in the electoral roll of that Village. Even if the petitioners are absenting themselves temporarily from their place of ordinary residence in Village Panchayat- Bambhauri, they shall not by reason thereof cease to be ordinarily residents of Village Panchayat- Bambhauri.

10. The S.D.M. has passed the impugned order holding the petitioners to be ordinary residents of Village Panchayat- Bambhauri after proper consideration of all the facts of the case, as required by Explanation (v) appended to Section 9(3) of the Act. The impugned order does not suffer from any error or illegality warranting interference by this Court.

11. The Writ Petition lacks merit and the same is **dismissed**.

(2026) 2 ILRA 631
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 1337 of 2026

Shri Radhey Shyam Yadav ...Petitioner
Versus
Presiding Officer CGIT-cum-Labour Court Lko. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether a belated industrial dispute raised after a long lapse of time can be entertained, although no period of limitation is prescribed under the Industrial Disputes Act.

HEADNOTE

Industrial Disputes Act, 1947 – Delay and laches – No statutory limitation prescribed for raising an industrial dispute – Belated industrial dispute – Re-engagement claim – Justification:

Held: Although law has not prescribed any period of limitation for raising an industrial dispute, it does not mean that the dispute can be raised at any time and without regard to delay and reasons therefor – Power is to be exercised reasonably and in a rational manner and a stale dispute cannot be the subject-matter of reference – What is a reasonable time depends upon the facts and circumstances of each case – Submission of applications after long intervals followed by complete inaction amounts to laches –In the present case, submission of applications for re-engagement in the years 1997 and 2004 and thereafter complete inaction for eleven years, and raising of dispute after about 25 years of disengagement, amounts to laches – Claim for re-engagement was barred by delay and laches – Tribunal did not committed any illegality or error in rejecting the claim on the ground of delay. (Paras 10, 12, 21) (E-5)

CASE LAW CITED

S.M. Nilajkar v. Telecom District Manager (2003) 4 SCC 27;
Nedungadi Bank Ltd. v. K.P. Madhavankutty (2000) 2 SCC 455;
Union of India v. N. Murugesan (2022) 2 SCC 25;
SBI v. M.J. James (2022) 2 SCC 301

List of Acts

Industrial Disputes Act, 1947;
Constitution of India.

List of Keyword

Delay and laches; Industrial dispute; Stale claim; Reasonable time; Re-engagement; Casual labour; Acquiescence; Discretion under Article 226.

CASE ARISING FROM

Order dated 09.04.2025 passed by the Central Government Industrial Tribunal-cum-Labour Court, Lucknow.

Appearances for Parties

Advs For Petitioner: Manju Nagaur, Sushila Pandey.
Advs For Respondents: A.S.G.I.

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

1. Heard Smt. Manju Nagaur, the learned counsel for the petitioner and Shri Dev Rishi Kumar, the learned counsel for the opposite parties.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of a judgment and order dated 09.04.2025 passed by the Central Government Industrial Tribunal-cum-Labour Court, Lucknow in ID Casc No.71 of 2015 whereby the claim of the petitioner-workman under the Industrial Disputes Act, 1947, has been rejected on the ground that the cause of action had accrued to the workman on 30.06.1990 and he raised the Industrial Dispute in the year 2015. The reference was made on 09.11.2015 and a Claim Petition was filed on 25.01.2016. During pendency of the case, the petitioner has attained the age of retirement and for these reasons, he is not entitled for any relief.

3. Assailing validity of the aforesaid order, Smt. Manju Nagaur, the learned counsel for the petitioner has submitted that the Industrial Disputes Act does not lay down any period of limitation for raising an industrial dispute and the provisions of the Limitation do not apply to the proceedings under the Industrial Disputes Act. She has placed reliance on judgments of the Hon'ble Supreme Court in the cases of **Ajaib Singh v. Sirhind Co-op. MKTG.-cum-Processing Service Society Ltd.**: (1999) 6 SCC 82, **Jasmer Singh v. State of Haryana and Anr.**: (2015) 4 SCC 458, **U.P.P.C.L. v. Presiding Officer, Labour Court, Faizabad and another**: 2020 SCC OnLine All 1288, **Vijay Pal Singh v. State of U.P.**: 2020 SCC OnLine All 253 and **Prem Sagar Vishwakarma v. Presiding Officer, Court, Central Industrial Government**: 2023:AHC-LKO:85351.

4. In **Ajaib Singh v. Sirhind Co-op. MKTG.-cum-Processing Service Society Ltd.** (supra), the Hon'ble Supreme Court held that: -

"10. ...the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages…"

5. The aforesaid law was followed in **Jasmer Singh v. State of Haryana and Anr.:** (supra) and **U.P Power Corp. Ltd. v. Presiding Officer** (supra).

6. In **Vijay Pal Singh v. State of U.P.** (supra) a Co-ordinate Bench of this Court set aside an order rejecting an application for condonation of delay in filing an application for substitution of a deceased petitioner by holding that:

"6. The purpose of laws of limitation is to ensure that the parties may remain vigilant to their cause and institute their claim in good time. Laws of limitation are statutes of repose. They are usually triggered in cases of inordinate delay caused by apathy of litigants. The mandate of laws of limitation is not to shut the doors of justice to the parties or decline adjudication on merits. On the contrary it should be the constant endeavour the courts of law to adjudicate issues on merits and dispense justice on a substantive basis.

7. There is good authority to say that the courts should adopt a liberal, pragmatic and a justice oriented approach matters of condonation of delay. Equally the courts should avoid a pedantic view and eschew servitude to procedure in such matters."

7. **Vijay Pal Singh v. State of U.P.** (supra) was altogether on a different point which is not involved n the present case and, therefore, it is not relevnt for adjudication of the present case.

8. In Prem Sagar Vishwakarma (supra), the question before a Co-ordinate Bench of this Court was regarding the effect and applicability of Section 2-A(3) of the U. P. Industrial Disputes Act, which was inserted by Act No. 24 of 2010 with effect from 15.09.2010 and it provided as follows: -

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

9. The industrial dispute in the present case was not instituted on an application under Section 2-A, rather it was instituted on a reference under Section 10 of the Act. Therefore, **Prem Sagar Vishwakarma** (supra) is not applicable to the present case.

10. In **S.M. Nilajkar v. Telecom District Manager**: (2003) 4 SCC 27, the Hon?ble Supreme Court referred to some precedents on the point of belated industrial disputes and held as follows: -

*"**17**. ...It is true, as held in Shalimar Works Ltd. v. Workmen [AIR 1959 SC 1217] that **merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen** and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in Shalimar Works Ltd. v. Workmen. In Nedungadi Bank Ltd. v. K.P. Madhavankutty [(2000) 2 SCC 455] a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In Ratan Chandra Sammanta v. Union of India [1993 Supp (4) SCC 67] it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available…"*

(Emphasis added)

11. In **Nilajkar** case (supra), considering the facts of the case, it was held that the delay in the case had not been so culpable as to disentitle the appellants to any relief. The Hon?ble Supreme Court held that: -

"Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Labour v. Union of India [(1988) 1 SCC 122] the Department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the Scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings

and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

12. In **Nedungadi Bank Ltd. v. K.P. Madhavankutty**: (2000) 2 SCC 455, it was held that: -

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. ***A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. …."***

(Emphasis added)

13. In **Union of India v. N. Murugesan**: (2022) 2 SCC 25, the Hon?ble Supreme Court explained the principles of delay, latches and acquiescence, in the following words: -

"20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word "laches" is derived from the French language meaning ***"remissness and slackness"****. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.*

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

14. In **SBI v. M.J. James**: (2022) 2 SCC 301, the Hon?ble Supreme Court held that: -

"36. ***What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay****. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment [SBI v. James, 2008 SCC OnLine Ker 759]. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case."*

15. In the case of **State of Uttaranchal v. Sri. Shiv Charan Singh Bhandari**: (2013) 12 SCC 179, the Hon?ble Supreme Court held that a mere submission of representation to the competent authority does not arrest time.

16. The aforesaid decision has been relied upon by the Hon?ble Supreme Court in **State of West Bengal v. Debabrata Tiwari**: 2023 SCC OnLine SC 219, where after submitting an application in the year 2005-2006 the petitioners did nothing further to pursue the matter for a period of ten years. The Hon?ble Supreme Court held that such prolonged delay in approaching the High Court may be regarded as a waiver of a remedy and such a delay would disentitle the writ petitioners to the discretionary relief under Article 226 of the Constitution of India.

17. Although the aforesaid judgments were rendered in context of delay in filing of a Writ Petition challenging termination of service, the principles will be applicable to filing of claims under the Industrial Disputes Act also, because no limitation is prescribed either for raising an Industrial Dispute or for filing a Writ Petition.

18. The public welfare also demands that the parties should avail their legal remedies promptly. Salmond in his Jurisprudence has stated that the laws come to the assistance of the vigilant and not of the sleepy. Public interest undoubtedly is a paramount consideration in exercising the courts? discretion. Pursuing stale claims in no manner serves the public interest.

19. In the present case, the petitioner had pleaded in the reference application that he was appointed as a casual labor on 01.06.1976 and he worked till 30.06.1990. He was awarded temporary status in the year 1986-87. His service was terminated orally on 01.07.1990. The petitioner stated that his service was terminated illegally and as per the provisions of law, he should be treated as continuing in service. There was absolutely no averment regarding the delay in filing the reference application. The petitioner has annexed a copy of a letter dated 14.07.1997 written by the Divisional Railway Manager (Personal) to the General Manager, North Eastern Railway rejecting the petitioner?s request for re-employment stating that the petitioner is out of service since 01.07.1990. The D.R.M. has referred to a Circular dated 22.11.1984 issued by the Railway Board, which provides that the names of casual labours who have not worked for two years, will be struck off the live register. The Divisional Railway Manager stated that as some persons junior to the petitioner were working, permission be granted for engagement of the petitioner. Apparently, this request was not accepted and the petitioner did not challenge the rejection of the request.

20. On 10.08.2004, the petitioner gave an application for re-engagement in service and this request was turned down by means of a letter dated 10.12.2004 sent by the Divisional Railway Manager (Personal), stating that the petitioner was out of service for the past fourteen years and his application had been forwarded to the Head Office which was pending consideration. Apparently, the petitioner did not take any action to seek re-engagement in service for more than a decade after receipt of this letter. He raised an industrial dispute in the year 2015, when he had already remained out of service for about 25 years and he had attained the age of 55 years. By the time the reference was decided, the petitioner attained the age of 65 years.

21. Keeping in view the aforesaid facts in light of the law laid down by the Hon'ble Supreme Court in the cases of **S.M. Nilajkar v. Telecom District Manager** (supra) and **Nedungadi Bank Ltd. v. K.P. Madhavankutty** (supra), I am of the considered view that although the law has not prescribed any period of Limitation, the petitioner ought to have filed his claim for re-engagement in service with reasonable promptness. Submission of two applications for re-engagement ? first in the year 1997, i.e., seven years after his dis-engagement and the second in the year 2004, fourteen years since his dis-engagement and thereafter complete inaction for eleven years, amounts to latches and the claim for re-engagement in service filed twenty five years after his dis-engagement, is barred by delay and latches as per the principles laid down in the cases of **Union of India v. N. Murugesan** (supra) and **SBI v. M.J. James** (supra).

22. In these circumstances, the Central Government Industrial Tribunal-cum-Labour Court has not committed any illegality or error in dismissing the petitioner's claim on the ground of delay.

23. The Writ Petition lacks merit and the same is **dismissed** at the admission stage.

(2026) 2 ILRA 638
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.02.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 3630 of 2026

Sarvesh Kumar & Anr. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the Court can exercise its discretionary power u/Art. 226, when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final?
(b) Whether petitioners are entitled for the compensation at the current circle rate?

Headnotes

A. Land Reform Law – Land Acquisition Act, 1894: Section 4 r/w Section 17(4) and Section 6 r/w Section 17(1) - The order or action, if ultra vires the power, becomes void and it does not confer any right. The action need not necessarily be 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. (Para 12)

Where the Court quashes the acquisition on the grounds personal to individual objectors-such as vitiated consideration of their specific objections u/s 5A, the relief operates "*in personam*" and benefits only those parties, who contested the matter before the judicial forum. (Para 16)

In the instant proceeding, the award was made in the year 2010. Even from the date of taking possession, the previous writ petition was preferred with inordinate delay of more than 15 years, as such no interference is required in the instant matter at this belated stage. (Para 13)

B. A writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. (Para 14, 15)

In the instant proceeding, the acquisition proceedings were initiated in the year 1996, the award was made in the year 2010 and first time the writ petition was instituted by the petitioners in the year 2025. As such, there is hardly any scope to exercise our discretionary jurisdiction u/Art.226 of the Constitution of India. (Para 16)

In the instant matter, first time the petitioners approached this Court, without any challenge to the acquisition proceeding, in the year 2025, only asking for the compensation under the Act, 2013. As such, no interference can be made at this belated stage. (Para 17)

No infirmity or illegality is found in the order impugned, which may warrant any interference in writ jurisdiction. However, in the interest of justice, it is provided that in case the petitioners have not lifted the compensation, they are at liberty to move appropriate application before the Special Land Acquisition Officer (SLAO) for disbursement of compensation, which was deposited in view of the award made in the year 2010. (Para 18)

Writ petition disposed of. (E-4)

Case Law Cited

1. Swaran Lata & Ors. Vs. State of Haryana & Ors., (2010) 4 SCC 532 (Para 12)
2. State of Rajasthan Vs. D.R. Laxmi, (1996) 6 SCC 445 (Para 12)
3. Swaika Properties Pvt. Ltd. & Anr. Vs. State of Rajasthan & Ors., 2008 AIR SCW 1574 (Para 14)
4. Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd. & Ors. (1996) 11 SCC 501 (Para 14)
5. Hari Singh & Ors. Vs. State of U.P. & Ors., AIR 1984 SC 1020 (Para 15)

List of Acts

Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

List of Keywords

acquisition, land, validity, compensation, fair.

Appearances for Parties

For Petitioner(s): Raj Kishor Mishra
For Respondent(s): C.S.C., Shiv Prakash Gupta, Yash Padia

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.
& Hon'ble Kunal Ravi Singh, J.)

1. Heard learned counsel for the petitioners; Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondents and Sri Yash Padia, learned counsel for the Kanpur Development Authority (in short "Authority").

2. The instant writ petition under Art.226 of the Constitution of India has been preferred for following reliefs:-

"(1) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.12.2025 passed by respondent no.2/ District Magistrate, District Kanpur Nagar.

(2) Issue a writ, order or direction in the nature of mandamus directing the Prescribed Authority to pass afresh order regarding the compensation of the petitioners of Arazi No.82 area 0.1180 hectare and Gata No.503 area 0.1540 hectare situated at Village Bairi, Akbarpur Kachhar, District Kanpur Nagar at the present circle rate.

(3) Issue a writ, order or direction in the nature of mandamus directing to the respondents to make rehabilitation and resettlement award as per provisions of Act, 2013."

3. The factual matrix giving rise to the instant writ petition is that the proceeding under the Land Acquisition Act, 1894 (in short "Act, 1894) in respect of area notified under Section 4 read with Section 17 (4) and Section 6 read with Section 17 (1) of the Act, 1894 was gazetted for 07 revenue villages of District Kanpur Nagar, Uttar Pradesh. A notification under Section 4 of the Act, 1894 was issued for planned development of New Kanpur City in the official gazette of the State of Uttar Pradesh on 9th August, 1996 in respect of a huge area of land of seven revenue villages. The notification was also published in different newspapers. The last such publication was made on 20.12.1996. The declaration under Section 6 of the Act, 1894 was published on 17.12.1997 in the official gazette. The provisions of Section 17 (1) and 17 (4) of the Act, 1894 were resorted to and as such enquiry under Section 5A of the Act, 1894 was dispensed with. Various writ petitions were preferred by the aggrieved persons questioning the validity of the acquisition proceeding. The Civil Misc. Writ Petition No.66471 of 2005 (Mahavir Sahkari Avas Samiti Ltd. v. State of U.P. & Ors.) was filed challenging the validity of the acquisition proceeding, which was allowed vide order dated 26.09.2006 with following observations:-

".....The result therefore is that the Statutory prescribed period for making the declaration under Section 6 of the Act having lapsed, all actions and consequences subsequent to the notification under Section 4 of the Act stand vitiated. The impugned declaration under Section 6 of the Act dated 03.10.2005 is quashed, so far as the land involved in these petitions are concerned. The writ petitions accordingly succeed and are allowed with no order as to costs."

4. The record reflects that the petitioners' father, who was recorded tenure holder had never challenged the acquisition proceeding during his life time, first time the petitioners had preferred Writ-C No.37666 of 2025 (Sarvesh Kumar & Anr. v. State of U.P. & Ors.) in the year 2025, which was disposed of on 3.11.2025 with following observations:-

"1. Heard learned counsel for the petitioners, Shri Abhinav Krishna Srivastava, learned counsel appearing for respondent no.3, and Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel for the State-respondents.

2. Learned counsel for the petitioners are the recorded tenure holder of Gata No.82 area 0.1180 hectare, Gata no.503 area 0.1540 hectare situated in village Bairi Akbarpur Kachhar, District Kanpur Nagar. Even though, the land was acquired but till date the actual compensation had not been disbursed.

5. Considering the factual situation, we are not inclined to issue notice or to invite counter affidavit to the respondents. With the consent of the parties, the instant writ petition is disposed of with an observation that in case, the petitioner moves a detailed representation before

the District Magistrate, Kanpur Nagar/respondent no.2 in accordance with law, within a period of two weeks from today, the same shall be considered and decided by the respondent no.2 in further three months but certainly after giving opportunity of hearing to all the stakeholders. "

5. In response to the aforesaid order, the claim of the petitioners had been considered and rejected by the order impugned, hence the instant writ petition has been preferred with aforequoted reliefs.

6. Learned counsel for the petitioners, in this backdrop, states that the order impugned is per se unsustainable as the petitioners are entitled for compensation at the current circle rate. He states that direction may be issued to the respondents to make award as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "Act, 2013").

7. Per contra, learned Addl. Chief Standing Counsel has vehemently opposed the writ petition and submitted that initially acquisition proceedings were initiated for Planned Development of "Kanpur New City", which was challenged by various tenure holders. The acquisition proceedings were also tested in the leading Writ Petition No.66471 of 2005 (Mahavir Sahkari Avas Samiti Ltd. v. State of U.P. & Ors.). The said writ petition was allowed and the impugned declaration under Section 6 of the Act, 1894 was quashed qua the land involved in the said petition. He submits that admittedly for other tenure holders, who have not challenged the acquisition, the award was made with respect to their land in the year 2010. Admittedly qua petitioners' holding, award was made but till date no such challenge has been made to the award. Inspite of the remedy of reference, the petitioners did not approach the competent court. Only a belated attempt has been made by the petitioners in the previous round of litigation, which was instituted in the year 2025, wherein an innocuous relief was prayed for according compensation. The Division Bench, without adverting to the merits of the matter, had disposed of the same with a direction to the respondents to decide the representation of the petitioners. In response thereof, the order impugned had rightly been passed by the respondents. He submits that admittedly the award qua the petitioner was made in the year 2010 and till date the same has not been upset by any competent court. At this belated stage, the relief as prayed for, is totally misconceived and the order impugned does not warrant any interference in writ jurisdiction. Learned Addl. Chief Standing Counsel, in support of his submissions, has also placed reliance on the Division Bench judgment of this Court dated 16.05.2012, passed in a bunch of writ petitions with leading Writ Petition No.32875 of 2009 **(Smt. Krishana Tomar & Ors. v. State of U.P. & Ors.)**.

8. Shri Yash Padia, learned counsel for the Authority has also corroborated the arguments so advanced by learned Addl. Chief Standing Counsel. In addition, he has also argued that the acquisition was made for planned development and admittedly neither the father of the petitioners nor the petitioners themselves had ever challenged the acquisition. Admittedly, the award has also attained finality and after more than 16 years of award, no such relief can be accorded and the order impugned is legally sustainable under the present facts and circumstances of the case.

9. We have heard rival submissions, perused the record and respectfully considered the judgments cited at Bar.

10. We find that no doubt the petitioners had never challenged the acquisition, which was of the year 2005. The relief accorded by the Division Bench in Mahavir Sahkari Avas Samiti Ltd. (Supra) was only available to those petitioners, who had challenged the acquisition. In the said proceeding, the Court had categorically observed that quashing is only qua the petitioners in the said proceeding. As such, in absence of any challenge to the acquisition by the petitioners or their predecessors, no such relief can be accorded. The argument that the petitioners are entitled to receive the compensation as per the Act, 2013 is also misplaced inasmuch as for the first time the petitioners had approached this Court in the year 2025 for a direction to the respondents to disburse the compensation. Admittedly the award is of the year 2010. In absence of any challenge or reference, no such relief, as has been prayed for, can be accorded under the Act, 2013. The quashing of declaration under Section 6 of the Act, 1894 vide order dated 26.09.2006 was only qua the petitioners, those have approached the Court at the relevant point of time and the same cannot be applied to other tenure holders, who have not challenged the same.

11. We have also proceeded to consider the judgment in Smt. Krishna Tomar & Ors. (Supra). In the said proceeding, same notifications under Sections 4 and 6 of the Act, 1894 were under challenge. The Division Bench had considered the objection of the respondents that the petitions were barred by gross delay and laches and had also considered the judgment passed by the Division Bench in Mahavir Sahkari Avas Samiti Ltd. (Supra). The Division Bench had also taken note of the fact that large number of writ petitions in respect of same acquisition of the remaining portion of 111.84 hects. were filed and had been dismissed by this Court on the ground of laches. In the said proceeding, learned counsel for the respondents has also placed reliance on the order dated 24.2.2012 in Writ Petition No.10116 of 2012, Narendra Singh & Ors. v. State of U.P. & Ors., which for ready reference is quoted as under:-

"Heard learned counsel for the petitioners, Sri Ramendra Pratap Singh appearing for respondent No.4 and learned Standing Counsel appearing for respondents No.1, 2 and 3.

By this writ petition, the petitioner has prayed for quashing the notifications of section 4 and 6 of Land Acquisition Act 1894 dated 16.8.1988 and 22.2.1989 respectively.

This writ petition has been filed on 17.2.2012 i.e. after more than twenty years of declaration issued under Section 6 of the Land Acquisition Act.

The Apex Court in the case of Sawaran Lata vs. State of U.P. and others reported in 2010(4) SCC 532 has laid down following in paragraph 10:-

"10. Similar view has been reiterated in State of Rajasthan v. D.R. Laxmi wherein this Court has held that even the void proceedings need not be set at naught if the party has not approached the court within reasonable time, as judicial review is not permissible at a belated stage. This Court held as under:

"9. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications.

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be 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."

Similar view has been reiterated by this Court in Northern India Glass Industries v. Jaswant Singh and Haryana State Handloom & Handicrafts Corpn. Ltd. vs. Jain School Society."

A Full Bench of this Court in bunch of writ petitions being leading Writ Petition No.37443 of 2001 (Gajraj and others vs. State of U.P. and others) decided on 21st October, 2011 had occasion to consider the issue of laches in entertaining the writ petition challenging land acquisition proceedings. The writ petitions, which were filed with inordinate delay were dismissed.

Present is a case where acquisition is sought to be challenged after more than 10 years and there is no explanation in the writ petition which may furnish any ground for entertaining the writ petition after such a long period.

The writ petition being barred by laches is dismissed."

12. While dismissing the writ petitions in Smt. Krishna Tomar & Ors. (Supra) the Division Bench had also considered the judgment passed in Swaran Lata & Ors. v. State of Haryana & Ors., (2010) 4 SCC 532, wherein the Supreme Court relying upon State of Rajasthan v. D.R. Laxmi, (1996) 6 SCC 445 held that the order or action, if ultra vires the power, becomes void and it does not confer any right. The action need not necessarily be 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.

13. In the instant proceeding, undisputed position, which emerges out is that the award was made in the year 2010. Even from the date of taking possession, the previous writ petition was preferred with inordinate delay of more than 15 years, as such no interference is required in the instant matter at this belated stage.

14. Hon'ble the Apex Court in **Swaika Properties Pvt. Ltd. & Anr. v. State of Rajasthan & Ors.**, 2008 AIR SCW 1574 has deprecated the practice of filing writ petitions after possession has been taken and award has become final and held that the said writ petitions are liable to be dismissed for delay and laches. Similar view has also been taken by Hon'ble Apex Court in **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Ors**. (1996) 11 SCC 501 in which it is held:-

"It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the

discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

15. Similar view has also been taken by Hon'ble Apex Court in **Hari Singh & Ors. v. State of U.P. & Ors.**, AIR 1984 SC 1020, wherein interference has been denied only on the ground of delay as it would cause serious public prejudice. The Courts have repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable.

16. In the instant proceeding, what we find is that the acquisition proceedings were initiated in the year 1996, the award was made in the year 2010 and first time the writ petition was instituted by the petitioners in the year 2025. As such, there is hardly any scope to exercise our discretionary jurisdiction under Art.226 of the Constitution of India in the instant matter. We further observe that where the Court quashes the acquisition on the grounds personal to individual objectors-such as vitiated consideration of their specific objections under Section 5A, the relief operates "in personam" and benefits only those parties, who contested the matter before the judicial forum.

17. In Smt. Krishna Tomar & Ors. (Supra) similar benefits had been denied in terms of Mahavir Sahkari Avas Samiti Ltd. and the writ petition was dismissed in the year 2012 itself, whereas in the instant matter, first time the petitioners approached this Court, without any challenge to the acquisition proceeding, in the year 2025, only asking for the compensation under the Act, 2013. As such, no interference can be made at this belated stage.

18. In the facts and circumstances of the case, we do not find any infirmity or illegality in the order impugned, which may warrant any interference in writ jurisdiction. However, in the interest of justice, it is provided that in case the petitioners have not lifted the compensation, they are at liberty to move appropriate application before the Special Land Acquisition Officer (SLAO) for disbursement of compensation, which was deposited in view of the award made in the year 2010.

19. With the aforesaid observations, the instant writ petition stands **disposed of**.

(2026) 2 ILRA 644
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 5663 of 2026

M/s Scc Builders Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether the complaint can be decided on the first date itself by the State Commissioner in summary proceedings under the Rights of Persons with Disabilities Act, 2016.

HEADNOTE

Rights of Persons with Disabilities Act, 2016 – ss.23(3), 44 – Constitution of India – Arts.14, 21 – Summary proceedings – Right to Accessibility – Division of allotted parking space – Challenge to order of State Commissioner – Justification:

Held: Allottee, who was 90% disabled, was allotted a flat along with Parking No. UB-37 – After about eight years, builder divided the said parking into two parts (UB-37A and UB-37B) and allotted part to another person – Complaint was made and inspection was carried out in presence of parties which revealed that due to such division, the allottee was facing difficulty in accessing lift – It was also admitted that original allotment was not cancelled and parking was partitioned without consent of allottee – ***Held:*** One of the facets of the Rights of Persons with Disabilities Act, 2016 is to provide speedy redressal and for this reason the Act contemplates that the complaint "shall" be inquired within two weeks of its registration under Section 23(3) – Proceedings under the Act are summary in nature, designed to be quick, efficient and accessible and the Commissioner, acting as a quasi-judicial authority, may proceed on admitted facts and documents on record – Mandatory observance of accessibility norms under Section 44 requires that building plan and completion must adhere to accessibility rules – Right to Accessibility cannot now be confined to public infrastructure but demands that in "community living" also, where there are common facilities like lift, pavements, playgrounds, community centres and gymnasium, the right should be unhindered – Right to Accessibility is a fundamental right and extends to buildings used for community living – It is a fundamental right of a person with disability to have access to common facilities and any hindrance to such access, including access to lift from parking space, would be violative of such right – In the present case, representative of the petitioner was part of the proceedings and admitted that the original allotment was not cancelled and parking was subsequently partitioned without consent – Approach of the Commissioner that an allottee with 90% disability cannot be made to run from pillar to post cannot be faulted – Spot inspection conducted in presence of parties clearly established hindrance in accessing lift – Petitioner failed to place material to justify division of parking – No prejudice was caused and no violation of principles of natural justice is made out – No infirmity or perversity found in the impugned order – Court declined to exercise jurisdiction under Article 226.
Development Authorities in the State directed to incorporate necessary guidelines to ensure that persons with disabilities are not put to an inequitable position and that sanctioned maps for community living provide proper parking spaces with clear access to common facilities like lift – Government to ensure mandatory observance of accessibility rules at the stage of granting permission to build and issuance of completion certificate. (Paras 9, 12, 14, 18, 19, 20, 24) (E-5)

CASE LAW CITED

State of Himanchal Pradesh v. Umed Ram Sharma (1986) 2 SCC 68;
Jeeja Ghosh v. Union of India (2016) 7 SCC 761;
Rajive Raturi v. Union of India (2018) 2 SCC 413;
Ravinder Kumar Dharwal v. Union of India (2023) 2 SCC 209;
Vikash Kumar v. Union Public Service Commission (2021) 5 SCC 370;
Rajiv Raturi v. Union of India (2024) 1 SCC 654

List of Acts

Rights of Persons with Disabilities Act, 2016;
Constitution of India.

List of Keyword

Right to Accessibility; Persons with Disabilities; Summary proceedings; Parking space; Community living; Fundamental right; Accessibility norms; Hindrance to access; Natural justice.

CASE ARISING FROM

From the order dated 14.11.2025 passed by the State Commissioner under the Rights of Persons with Disabilities Act, 2016.

Appearances for Parties

Advs For Petitioner: Devendra Singh, Pravindra Singh.

Advs For Respondents: C.S.C., Tejasvi Misra.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Sri Devendra Singh, learned counsel for the petitioner, Sri Tejasvi Misra, learned counsel for the Ghaziabad Development Authority and learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed challenging the order dated 14.11.2025 by which Complaint Reference No.137 of 2025 Mrs. Bobby Bagga Vs. President/Director/Competent Authority, M/s SCC Builders, Pvt. Ltd.) under the provisions of the Rights of Persons with Disabilities Act, 2016 has been decided.

3. The sole argument that the petitioner has raised is that on the first date itself, the complaint was decided.

4. We have perused the record. The order sheet has not been brought on record.

5. Brief conspectus of facts are that the allottee who is 90% disabled, was given an allotment by builder in one of the projects named as SCC Sapphire being Flat No. D 509, Block - D; as per terms of the agreement, she was also allotted Parking No. UB - 37. Subsequently, after eight years, another Flat was sold by the builder. In pursuance thereof, he divided Parking No. UB 37 into UB 37 A and 37 B which was originally allotted to Mrs. Bobby Bagga.

6. Aggrieved by the aforesaid action, she approached the Ghaziabad Development Authority who carried out inspection on 16.09.2025 and submitted an inquiry report on 25.10.2025. The State Commissioner took note of the fact that the spot inspection was carried out in the presence of the parties and it clearly reveals that the complaint made by Mrs. Bobby Bagga was correct.

7. Perusal of the impugned order also clearly demonstrates that an adequate opportunity was given to the petitioner and argument of his representative before the State Commissioner was also

considered. For ready reference, the following paragraphs of the impugned order are reproduced hereinbelow:

"'उल्लेखनीय है कि प्रश्नगत प्रकरण में विशेष कार्याधिकारी, प्रभारी प्रवर्तन जो-/, गाजियाबाद विकास प्राधिकरण गाजियाबाद की आख्या पत्रांक 1470/ प्रवर्तन जो- आई०जी०आर०एस 0/2025 दिनांक 25-10-2025 जोकि जिलाधिकारी, गाजियाबाद को सम्बोधित एवं शिकायतकर्ता को पृष्ठांकित है, में उल्लिखित किया गया है कि राजनगर एक्सटेंशन में स्थित ग्रुप हाउसिंग एससीसी सफायर के बिल्डर द्वारा शिकायतकर्ता को अन्बंटित पार्किंग स्थान यू०बी०-37 को विभाजित कर दो भागों में बांट दिया गया है, जिस कारण शिकायतकर्ता को पार्किंग, से लिफ्ट तक जाने में परेशानी हो रही है, के सम्बन्ध में शिकायतकर्ता द्वारा ईमेल के माध्यम से भी शिकायत की गयी थी, के सम्बन्ध में पुनः आईजीआरएस के माध्यम से शिकायत की गयी है।

उक्त के सम्बन्ध में क्षेत्रीय अभियन्ता द्वारा स्थल निरीक्षणोपरान्त अवगत कराया गया है कि प्रश्नगत ग्रुप हाउसिंग के विकासकर्ता के प्रतिनिधि एवं शिकायतकर्ता श्रीमती बोबी बग्गा के साथ दिनांक 16.09.2025 को पार्किंग स्थल का निरीक्षण किया गया। स्थल पर श्रीमती बोबी बग्गा से कई स्थानों पर गाडियां खड़ी कराकर लिफ्ट में जाने तक देखा गया। स्थल पर श्रीमती बोबी बग्गा द्वारा बताया गया कि उनको यूबी-37 नम्बर की पार्किंग आवंटित हुई थी जिसे बिल्डर द्वारा दो भागों में विभाजित करते हुए अन्य व्यक्ति को आवंटित कर दिया गया है, जिस कारण श्रीमती बोबी बग्गा को लिफ्ट तक जाने में परेशानी हो रही है।

तदोपरान्त सहायक अभियन्ता, प्रवर्तन जोन-1 गाजियाबाद विकास प्राधिकरण के कार्यालय पत्र संख्या-173/प्रवर्तन जोन-1/2025 दिनांक 03-10-2025 द्वारा मै० एस०सी०सी० बिल्डर्स प्रा०लि०, ग्रुप हाउसिंग एस०सी०सी० सफायर, राजनगर एक्सटेन्शन, गाजियाबाद को निर्देशित किया गया है कि सुश्री बॉबी बग्गा फ्लैट संख्या डी-509 को मूल पार्किंग स्थान स्वीकृत मानचित्र एवं अनुबन्ध के अनुसार आवंटित किया जाना सुनिश्चित करें।

मा० न्यायालय द्वारा गाजियाबाद विकास प्राधिकरण की उपरोक्त आख्या दिनांक 25-10-2025 के परिशीलनोपरान्त पृच्छा की गई कि विपक्षी द्वारा शिकायतकर्ता को आवंटित पार्किंग को 08 साल बाद परिवर्तित किए जाने की आवश्यकता क्यों पड़ी? क्या विपक्षी द्वारा शिकायतकर्ता को आवंटित एक बड़ी पार्किंग को दो भागों में विभाजित कर आधे भाग को अन्य आवंटी को प्रदान किया जाना वाणिज्यिक परिदृश्य नहीं है? विपक्षी द्वारा शिकायतकर्ता को पार्किंग आवंटित किए जाने के उपरान्त उसे निरस्त परिवर्तित क्यों किया गया? क्या विपक्षी को ऐसा प्रतीत होता है कि शिकायतकर्ता सुश्री बॉबी बग्गा (90 प्रतिशत चलन क्रिया दिव्यांग) बार-बार मा० न्यायालय अथवा अन्य किसी प्राधिकरण में आने-जाने में समर्थ हैं? मा० न्यायालय द्वारा की गई पृच्छाओं को विपक्षी के अधिकृत प्रतिनिधि द्वारा स्वीकार किया गया किन्तु बिन्दुवार उत्तर प्रदान किए जाने हेतु अतिरिक्त समय की मांग की गई जिसे मा० न्यायालय द्वारा अस्वीकार किया गया।"

8. The statement of objects and reasons of the "Rights of Persons with Disabilities Act, 2016" while considering the 19 specified disabilities, enumerates various rights vis-a-vis duties and responsibilities of the appropriate Government. It is not disputed that the inquiry which is being conducted under the Act by the Chief Commissioner or the State Commissioner for persons with disabilities is considered to be a summary proceeding designed to be quick, efficient and accessible, rather than lengthy and formal. The forum acts as a quasi-judicial authority and the Commissioner acts as a civil court for specific purpose i.e. empowered to summon witnesses, receive evidence and enforce production of records, if the need arises. However, it being a summary proceeding and the process contemplated is, with an objective to provide speedy redressal, the Act is also to give effect to the United Nations Convention on the Right of Persons with Disability and for matters connected therewith an incidental thereto. The United Nations General Assembly adopted its convention on the Rights of Persons with Disability on 13.12.2006; which lays down certain principles for empowerment of Persons with disability, which includes "accessibility" and India is a signatory to the said Convention and has also ratified the same on 01.10.2007. It is for the implementation of the said principles that the Parliament has enacted the said legislation i.e. "Rights of Persons with Disabilities Act, 2016".

9. That one of the facets of the mechanism, is to provide speedy redressal and it is for this reason Act, 2016 contemplates that the complaint " shall " be inquired within 2 weeks of its registration; under Section 23(3) of the Act, 2016. We also find that under Chapter VII of the Act, 2016, makes special provisions for persons with disabilities with high support needs, which has been prescribed, more particularly under Section 44 of the Act, 2016. It has been provided that no establishment shall be granted permission to build any structure if the building does not adhere to the Rules formulated.

10. For ready reference, Section 44 is quoted herein below:

"44. Mandatory observance of accessibility norms. *(1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.*

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government."

11. Perusal of the impugned order also indicates that the forum was conscious of the fact that the original parking was allotted in a building, which was granted the completion certificate after examining the approved map, which necessarily was required to adhere to the mandate of Section 44 of the Act, 2016. The representative of the petitioner who had appeared, had also not denied the fact that the original allotment was not cancelled and the fact that the original parking allotted was subsequently partitioned without consent of the original allottee, was also admitted. Taking into account the aforesaid evidence and the admitted position, since nature of the proceedings were summary in nature, the Commissioner had proceeded on the basis of the admitted facts and documents on record, while not finding it necessary, to call for parawise reply.

12. On a pointed query to the learned counsel for the petitioner that in case further indulgence being given by the Commissioner, what objection or document contrary to the finding in the

impugned order, could have been produced; he had only relied on his argument that the proceedings were allegedly ex parte which as stated herein above could not have been accepted because representative of the petitioner was part of the proceeding and he had admitted the facts that the original allotment was not cancelled or whether he could have challenged the original allotment after five years. Therefore, approach of the Commissioner that an allottee with 90% disability cannot be made to run from pillar to post and on account of fact as the development authority had already carried out a spot inspection and submitted a report on 25.10.2025, which was not controverted by the representative of the petitioner, cannot be faulted; and accordingly we do not find any error in the proceedings or violation of the principles of natural justice.

13. At this juncture, the Court also takes note of the fact that the "Right to Accessibility" now being a fundamental right as guaranteed under Article 21 of the Constitution of India (**State of Himanchal Pradesh vs. Umed Ram Sharma 1986 (2) SCC 68**), is broad enough to incorporate and be extended to a "Right to Accessibility in a Community Living; also. These rights are essential for enabling persons with disabilities (hereinafter referred as "PWDs) to live independently, participate in a Society and enjoy their rights on a equal basis with others. Article 14 of the Constitution of India upholds equal access to spaces and services, as well. (See: ***Jeeja Ghosh v. Union of India (2016) 7 SCC 761; Rajive Raturi vs. Union of India (2018) 2 SCC 413; Ravinder Kumar Dharwal vs. Union of India, 2023 (2) SCC 209; Vikash Kumar vs. Union Public Service Commission, 2021 (5) SCC 370 and Rajiv Raturi vs. Union of India and others 2024 (1) SCC 654***)

14. The Right to Accessibility, can not now be confined to the principles of accessibility in public infrastructure; but now it demands that in "Community Living" also, where there are common facilities like lift, pavements, playgrounds, community centres and gymnasium etc., the "Right to Accessibility" should be unhindered.

15. The sanctioning of the map for a building meant for community living, now ought to take into account parking space with clear and unhindered access to the common facilities like lift for PWDs; and any change or hindrance to the access of common facilities (including access to lift from the parking lot), should be seen as violation of the fundamental right under Article 21 of the Constitution of India. In the case of **Rajiv Raturi vs. Union of India and others, 2024 (1) SCC 654** the Apex Court being ceased with the issue of "Right to Accessibility", also considered a report of a Committee on 'Rights of Persons with Disability"; and found that accessibility is related to groups, whereas reasonable accommodation is related to individuals. State parties need to set accessibility standards, which must be negotiated with organizations of 'Persons with Disability', and need to be specified for service providers, builders and other relevant stake holders. Accessibility standards must be broad and standardised in case of individuals, who have disabilities, that were not taken into account. The accessibility standards were developed to use the modes, methods and meaning, offering to achieve accessibility; and where the application of disability standards may not be sufficient to ensure them access, in such cases, principles of reasonable accommodation may apply.

16. The duty to provide reasonable accommodation is an ex-nunc duty, which means that it is enforceable from the moment an individual with an impairment needs it; and in a given situation,

individual accommodation seeks to achieve individual justice in the sense that non-discrimination and equality are assured, taking the dignity, autonomy, and choice of the individual into account; and as such, accommodation may also be required for a scenario which falls beyond the scope of an accessibility standard. The decision to provide it or not depends on whether it is reasonable or whether it imposes a disproportionate and undue audit.

17. The Court is also persuaded from the fact that the Rule of Law also demands that the locomotor disability, visible impairment, hearing and speech impairments and neurodevelopmental disorder and learning disability, multiple disability or survivors of accidents, crime etc. are to be protected, in case of the disabilities which restricts a normal pattern in daily chores. Section 34 deals with the mandatory observance of the accessibility Rules to be framed by the Central Government under Section 40 and the consequences of non-compliance; which under sub-clause (1) states that no establishment shall be granted permission to built any structure, if the building plan does not adhere to the Rules formulated by the Central Government under Section 40; and sub-clause (2) stipulates that no establishment shall be issued a certificate of completion or allow to take occupation of a building unless it has adhered to the Rules formulated by the Central Government. Therefore, at both stages-when the building plan is prepared and at the stage of completion-mandatory adherence to the accessibility Rules is envisaged by the Act.

18. In the facts of the present case, we find that the Commissioner has taken note of the fact that during the on spot inspection, Mrs. Bobby Bagga's right to accessibility to a common facility e.g. lift, was assessed by observing contingencies, wherein, her vehicle being parked at the different places, whether gave her an unhindered access to the lift in view of her disability; and it was found the act of the builder, by dividing her parking into two, was causing inherence to the incumbent, from accessing the lift.

19. We have no hesitation in holding that the 'Right to Accessibility' cannot be confined only in public places but as a fundamental right, it is also to be extended to a structure or building which is being utilized as "community living"; and as such right to accessibility which is a fundamental right, has to be adhered to in residential buildings, which caters to the requirement of providing a shelter with common facilities like lift, pavement, playgrounds, community centres, gymnasium etc. It is a fundamental right of a PWD to have right to accessibility, for facilities which are common in a building or structure, which is providing a shelter to an incumbent.

20. Apart from the aforesaid reasons, we find that the petitioner has failed to bring on record the allotment letter which could have clearly demonstrated that the parking which was allotted to Mrs. Bobby Bagga was UB - 37; and it is only subsequent to the allotment made to one Virendra Singh, that parking was split into 37A and 37B, without the consent of the original allottee; but nevertheless representative of the petitioner was duly heard and the impugned order is based on the inspection report of the Ghaziabad Development Authority, which was done in the presence of the parties. It was only thereafter, the inquiry report dated 25.10.2025 was submitted.

21. Perusal of the report also indicates that efforts were made to find out alternative parking for the allottee with 90% disabilities but it was found that no other parking is suitable for her; to access the lift for her Flat and for that reason also, an alternative arrangement was also not feasible.

22. It has been held by this Court as well as Hon'ble Apex Court that exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, has to be made only in circumstances where there is apparent injustice being caused to the petitioner and thus violation of the principles of nature justice, which leads to some prejudice to the petitioner. In the present case, we do not find any prejudice being caused to the petitioner; and on the contrary by unilaterally dividing petitioner's parking into two parking spaces, it has been to the detriment of the allottee, the same cannot be sustained; and in view of the aforesaid admitted position and documents, no infirmity or perversity can be found in the impugned order or any prejudice being caused to the petitioner or there being any violation of the procedure prescribed, under the Act.

23. In view of the aforesaid and nature of the proceedings, we decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India.

24. However, we find it appropriate in the facts of the case to issue directions, as follows:-

(i) That, the Development Authorities in the State of Uttar Pradesh to incorporate necessary guidelines, which may be necessary to ensure that persons with disability are not put to a inequitable position and the maps which is being sanctioned for such community living, it may be necessary that proper parking spaces may be made for persons with disability, from where there is a clear access to a common facility like lift; and also provisions for convenience of "persons with disabilities" to have access to other common facilities like pavement, playgrounds, community centres, gymnasium etc.

(ii) It is expected from the Government to ensure mandatory observance of the Accessibility Rules applicable, at the stage of granting permission to build any structure and issuance of certificate of completion; and it may also be verified that there has been a mandatory adherence to the Accessibility Rules as envisaged.

25. With the above, the present writ petition is disposed off.

(2026) 2 ILRA 651
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ A No. 6098 of 2016 and other connected cases

Benara Udyog Ltd. **...Petitioner**
Versus
Union of India & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the Payment of Bonus (Amendment) Act, 2015 (herein-after referred to as 'Amendment Act, 2015') published in the Gazette of India dated 01.01.2016, can be declared as ultra-vires?
(b) Whether the impugned recovery issued in pursuance of Amendment Act, 2015 can be quashed?
(c) Whether before amending the Act, 1965 retrospectively, opportunity of hearing was required?

Headnotes

A. Labour Law – Payment of Bonus Act 1965: Section 2(4), 2(6), 2(13), 12; Government of India (Transaction of Business) Rules, 1961: Rule 12; Punjab Service of Engineers, Class-I, Public Works Department (Irrigation Branch) Rules, 1964: Rule 6(b) - The pre-decisional hearing for making the Act retrospective is not required, inasmuch as retrospective application of the Amendment Act has not prejudiced the rights of the petitioners. (Para 54)

According to the petitioners, pre-decisional hearing to the petitioners was necessary inasmuch as retrospective operation of the Act has seriously prejudiced the vested rights of the petitioners and has created fiscal liability upon the petitioners. It is submitted that the petitioners as per Section 19 of the Act, 1965 have paid the bonus to their employees within the time frame provided under the said section, and the implementation of the Act with retrospective effect has resulted in financial liability for the petitioner and has further created accounting complexities. (Para 50)

The facts w.r.t. consultation with various organizations by State Machinery establishes that pre-decisional hearing was given to the recognised organizations by the State Machinery before introduction of the Amendment Bill in the Parliament, which is in compliance of the principles of natural justice. (Para 51 to 53)

In the present case, the petitioner has not disclosed any fact in the writ petition indicating that on account of the retrospective amendment, the liability is such, which would result in creating a huge financial liability which is detrimental to the interest of the employer. (Para 59)

B. There is a presumption of constitutionality in favour of the statute and the onus of proving it unconstitutional lies upon the person who challenges it. (Para 76)

"Vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course. (Para 72)

A right is considered vested, absolute, when it is not dependent on any future event; it is generally immune from subsequent changes in law that would impair it. (Para 73)

The payment of bonus is a statutory liability upon the employer i.e. he is statutorily bound to pay the bonus to the employees in compliance of statutory obligations posed upon it by the Act, 1965, therefore, to say that the petitioners' vested right by implementing Amendment Act, 2015 retrospectively has been infringed is not justified for the reason that the vested right is a right independent of any contingency whereas the petitioners are obligated to pay bonus by virtue of Section 10 of the Act, 2015. (Para 74)

The petitioners in the instant case have failed to demonstrate that petitioners cannot be asked to pay bonus with retrospective effect since such an amendment infringes their vested right. (Para 75)

C. All statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If

the enactment is expressed in language which is fairly capable either interpretation, it ought to be construed as prospective only. (Para 88)

As per the petitioners the **amendment in Principal Act i.e. Act, 1965 is not a declaratory Act** because it does not clarify anything embodied in the parent Act i.e. Act, 1965 rather retrospective enactment of the Amendment Act, creates new rights and obligations upon the parties which is not permissible in law. (Para 79)

Further it is submitted that the Act, 1965 is substantive law because it creates rights and liabilities upon the employers and the employees and **any amendment in the Principal Act, i.e. Act, 1965 which creates new rights and obligations upon the employers is not a declaratory law.** (Para 80)

The law does not permit the legislature to take away or impair any existing right or create a new obligation or impose a new liability retrospectively. At this stage, it is pertinent to note that the payment of bonus is a statutory right given to the employees. The liability to pay the bonus lies upon the employer which emanates from the Act, 1965. So by introducing the Amendment Act with retrospective effect, it neither impairs any existing right of the employer nor creates any new obligation upon the employer. The employer at the most can say that by retrospective operation of Amendment Act, 2015, additional liability to pay bonus upon the employer has been created. Thus, by Amendment Act, 2015, no new liability has been imposed upon the employer. (Para 94, 95)

D. A liability cannot be declared to be unreasonable because it merely operates retrospectively. (Para 77)

In order to succeed in challenging the Act on the ground of retrospective enactment, the petitioner has to establish that by enacting the Amendment Act, 2015 retrospectively, the legislature has conferred benefit of bonus to the employees, which inflicts a corresponding detriment on the employer, which is not permissible as the legislature can confer the benefit on employees retrospectively without inflicting a corresponding detriment on the employer. (Para 93)

E. The amendment, which has been implemented retrospectively has been made in a social welfare legislation. In order to appreciate the controversy in the light of facts, detailed by the petitioner in the writ petition in implementing the Amendment Act, 2015 retrospectively, the Court must remember that Act, 1965 is a social welfare legislation enacted with an object to achieve the principles enshrined in Articles 39 and 43 of the Constitution of India. (Para 98)

The Bombay High Court has dismissed the petitions challenging the vires of Section 10 of the Act, 1965 on the ground that it is violative of Article 19(1)(g) and Article 302 of the Constitution of India. (Para 99)

A benevolent provision should be interpreted liberally to achieve the purpose for which it has been enacted. In other words, the interpretation of beneficial legislation involves liberal and purposive construction to achieve the statute's underlying aim to ensure the welfare of the intended beneficiaries. (Para 100)

F. The legislature keeping in view the difficulty of the employer in providing the benefit of bonus to the employees has incorporated Section 15 of the Act, 1965 with a view to ease the employer in paying the bonus in case of non-availability of available surplus and shortfall of allocable surplus. Therefore, the difficulty posed by the petitioner, i.e. a serious financial threat to the establishment so as to close down the establishment because of such financial liability, is not found to be bonafide and genuine and a beneficial legislation can't be rendered unconstitutional on the said grounds. (Para 108, 109)

Section 15 of the Act, 1965 provides for 'set on' and 'set off' to ensure a consistent payment of bonus over the years. If in a given case, allocable surplus exceeds the maximum bonus amount such

surplus, subject to ceiling of 20%, shall have to be carried forward to the succeeding year upto and inclusive of fourth accounting year to be utilised for the purpose of payment of bonus. (Para 101, 103)

Section 15(2) of the Act, 1965 permits the employer that if, in any accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment u/s 10 and there is no amount or sufficient amount which is carried forward and set on u/sub-section (1) that could be utilised for the purpose of payment of minimum bonus, then, such minimum amount or deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule. (Para 105)

The petitioner though has posed difficulty in implementing the Act retrospectively, but has neither given any detail as to what available surplus or allocable surplus is available with the companies, which has been set on u/s 15(1) of the Act, 1965, nor has stated that there is no available surplus or allocable surplus in respect of that year, which falls short of minimum bonus payable to the employees in the establishment u/s 10. In the absence of any such detail in the writ petition, it is difficult to comprehend that by retrospective amendment in Section 2(13) of the Act, 1965, a huge financial liability has been inflicted upon the petitioner. (Para 107, 110)

G. If the bonus is paid retrospectively by way of notification, no prosecution could be made or launched against the petitioners for non-payment of bonus or for delayed payment of bonus. Hence, when the Amendment Act, 2015 has not even seen the light of the day, the petitioners cannot be prosecuted for the year 2015- 16 on the ground of delayed payment of bonus. (Para 111, 112)

H. Since the Amendment Bill was presented with proposal to amend it w.e.f. 01.04.2015 and without there being any serious discussion, it was proposed to be made effective w.e.f. 1st day of April, 2014. Thus, it is contended that constitutional decisions cannot be made on the whims and desires of the Government. He further contends that while the initial Bill by which it was proposed that the Bill to be made effective w.e.f. 01.04.2015, the discussions had taken place w.r.t. the financial aspect of the matter, but the proposed amendment makes it's applicability retrospectively and does not consider the economic viability. Thus, it is evident that the Amendment Act has been made effective retrospectively on the whims of the Government, without any proper discussion, which cannot be permitted in law, therefore, retrospective implementation of the Amendment Act, 2015 is bad in law and against the spirit of the Constitution of India. (Para 115, 116)

The respondent has filed a supplementary counter affidavit annexing therewith the proposal relating to seeking approval of Hon'ble Prime Minister u/Rule 12 of the GOI (Transaction of Business) Rules, 1961 for moving an official amendment to the Payment of Bonus (Amendment) Bill, 2015. In paragraph nos.5 & 8 of the said proposal, the justification for making the Bill retrospective has been stated. (Para 117)

From perusal of Rule 12 of the Rules, 1961, it is evident that the Prime Minister may, in any case or classes or cases, permit or condone a departure from these rules to the extent he deems necessary. The proposal to make the Rules, 1961 applicable has been duly approved by the Prime Minister u/Rule 12 of the Rules, 1961. (Para 119)

I. Rationale and reasonable classification - There may be several tests to decide whether a classification or differentiation is reasonable or not. One test which we are laying down and which will be useful in deciding this case, is: Is it conducive to the functioning of modern society? If it is then it is certainly reasonable and rational.

The equality code in Article 14 of the Indian Constitution prescribes substantive and not formal equality. It is now a settled position that classification *per se* is not discriminatory and violative

of Article 14. Article 14 only forbids class legislation and not reasonable classification. A classification is reasonable, when the twin tests as laid down by Apex Court are fulfilled:
(1) The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group; and
(2) The differentia must have a rational relationship to the object sought to be achieved by the statute. (Para 120, 123)

The capacity of employer is not to be considered as the welfare State assumes every employer must pay the minimum wages to its labour before employing them so as to prevent the exploitation of labours. (Para 121, 122)

It is true that a law should satisfy the twin test as laid down by the Apex Court in order to pass the test of reasonable classification. However, **the Madras High Court has categorically repelled the contention of employer that amendment in Section 12 of the Act, 1965 amounts to class legislation and is discriminatory**. (Pars 124)

Writ petitions dismissed. (E-4)

Case Law Cited

1. Remington Rand of India Ltd. Vs. The Workmen, AIR 1970 SC 1421 (Para 27)
2. State of Gujarat & Another Vs. Raman Lal Keshav Lal Soni & Others, 1983 (2) SCC 33 (Para 27)
3. T.R. Kapur & Others Vs. State of Haryana & Others, 1986 (Supp.) SCC 584 (Para 27)
4. Union of India & Others Vs. Tushar Ranjan Mohanty & Others, (1994) 5 SCC 450 (Para 27)
5. Punjab State Co-operative Milk Producers Federation Ltd. & Another Vs. Balbir Kumar Walia & Others, 2021 (171) FLR 397 (Para 28)
6. Indra Sawhney Vs. Union of India & Others, 2000 (1) SCC 168 (Para 30)
7. State of Punjab & Others Vs. Bhajan Kaur & Others, 2008 (12) SCC 112 (Para 30)
8. Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited, 2015 (1) SCC 1 (Para 30)
9. Jayam and Company Vs. Assistant Commissioner & Another, 2016(15) SCC 125 (Para 32)
10. Sukanya Shantha Vs. Union of India and Others, 2024 SCC OnLine SC 2694 (Para 36)
11. Bhikusa Yamasa Kshatriya & Another Vs. Sangamner Akola Taluka Bidi Kamgar Union & Others, AIR 1963 SC 806 (Para 36)
12. U. Unichoyi & Others Vs. State of Kerala, AIR 1962 SC 12 (Para 36)
13. J.S.Yadav Vs. State of Uttar Pradesh & Another, 2011 (6) SCC 570 (Para 72)
14. M/S. Jalan Trading Company Private Ltd. Vs. Mill Mazdoor Sabha, AIR 1967 SC 691 (Para 76)
15. R.C. Tobacco Pvt. Ltd. and Another Vs. Union of India and Another, AIR 2005 SC 4203 (Para 77)
16. The Employers' Federation of Southern India and Others Vs. The Government of India & Others, Madras High Court, WP No.6958 of 2016 (Para 120)

List of Acts

Payment of Bonus (Amendment) Act, 2015; Payment of Bonus Act 1965; Government of India (Transaction of Business) Rules, 1961; Punjab Service of Engineers, Class-I, Public Works Department (Irrigation Branch) Rules, 1964.

List of Keywords

bonus, payment, vested right, allocable surplus, available surplus, employee, declaratory, substantive.

Appearances for Parties

For Petitioner(s): Anshul Kumar Singhal, Vinod Kumar Agarwal
For Respondent(s): A.S.G.I., Arvind Kumar Goswami, C.S.C., Santosh Kumar Shukla

(Delivered by Hon'ble Saral Srivastava, J.)

1. Heard learned counsel for the petitioners, Sri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Sri Arvind Kumar Goswami, Sri Purnendu Kumar Singh, Sri Ved Mani Tiwari, Ms. Sujata Choudhary & Sri Ravi Prakash Singh, learned counsels for respondent-Union of India and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondent.

2. The petitioners in this bunch of writ petitions have prayed for a writ of mandamus declaring the Payment of Bonus (Amendment) Act, 2015 (herein-after referred to as 'Amendment Act, 2015') published in the Gazette of India dated 01.01.2016 as ultra-vires, and have further prayed for quashing of the impugned recovery issued in pursuance of Amendment Act, 2015.

3. For convenience, the facts have been delineated from Writ-C No.6098 of 2016 (Benara Udyog Ltd. Vs. Union of India and Others)

4. The petitioner is an Engineering Industrial Unit established in the vicinity of District Agra and is involved in manufacturing of products like disc-brake pads, bushing, pistons of motorcycle. The petitioner states that since the establishment of petitioner's unit, due care has been taken of welfare and rights and benefits of the employees employed in the petitioner's company. The petitioner's company has paid wages, bonus, increments and other statutory emoluments to its employees from time to time.

5. It is stated that Payment of Bonus Act, 1965 (hereinafter referred to as 'Act, 1965') was enacted with a view to provide for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity.

6. The President of India was informed about the subject matter of Amendment Act, 2015. The President of India recommended the introduction and consideration of Bill, 2015 in the House under Clause (1) & (3) of Article 117 of the Constitution of India.

7. The Bill, 2015 was introduced in Lok Sabha on 07.12.2015 and was passed on 22.12.2015. The Bill, 2015 (Bill No.265-C of 2015) was passed by Rajya Sabha on 23.12.2015 and thereafter, the Bill, 2015 received assent of President of India.

8. The Act, 1965 is applicable to all business establishments which has employed 20 employees or more. As per Section 2(13) of Act, 1965, an 'employee' who was employed on a salary or wages not exceeding Rs.10,000/- per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work or for hire or reward and has worked for not less than thirty days in an accounting year was eligible for bonus with a ceiling limit of minimum 8.33% of salary payable to him and a maximum cap of 20% of the salary. The Amendment Act, 2015 by amending Section 2(13) which defines 'employee' has brought the eligibility limit from Rs.10,000/- to Rs.21,000/-.

9. The Amendment Act, 2015 has further raised the ceiling provided under Section 12 of the Act, 1965 for payment of bonus from Rs.3500/- to Rs.7,000/- or the minimum wage for scheduled employment as fixed by the Government, whichever is higher.

10. It is stated that inclusion of minimum wage component in Section 12 of the Act, 1965 in calculating bonus will hinder the accounting policy of companies. The petitioner states that by the Amendment Act, 2015, the employers have not been provided with any specified time frame to factor the increased cost in their accounts in order to comply with retrospective applicability of the Amendment Act, 2015.

11. According to pleadings in the writ petition, further grievance of the petitioner by the Amendment Act, 2015 is that significant financial burden on the establishment ought to have been taken into consideration by the respondents while amending the Act, 1965. The petitioner states that Bill No.265 of 2015 has been introduced in the Lok Sabha vide Clause 1(2) to enforce the Bill from 1st day of April, 2015, which has not been done, and the Amendment Act, 2015 has been made effective retrospectively w.e.f. 1st day of April, 2014.

12. It is stated that by enforcement of Amendment Act, 2015 retrospectively, the petitioner would face difficulties inasmuch as allocable surplus would required to be re-assessed to account in the increased pool for eligible employees and the bonus eligibility based upon the Amendment Act, 2015. According to petitioner, the price fixation of the product has already been done, and the books of accounts have already been closed, and the product has been launched in the market, therefore, it is impossible to re-fix it′s price or to recover the enhanced price.

13. Further difficulty, which is faced by the establishment is that fiscal deficit incurred by virtue of Amendment Act, 2015 cannot be extracted under any of the heads of the account except adding it to the liabilities of the establishment resulting into decrease in profits or by variation of price in the commodity market.

14. It is stated that by the Amendment Act, 2015 there would be an increase in the financial burden and greater accounting complexities for employers.

15. It is further stated that insertion of 'minimum wage′ under the Minimum Wages Act, 1948 by amendment in Section 12 to calculate bonus has created an additional challenge for the petitioner′s company. It is stated that appropriate Government (State Government) and in different cases, Central Government fixed different minimum wages for various scheduled employment (skilled, unskilled and semi skilled) because of this fact, the petitioner would have to carry out separate assessment of applicable wage rate for different categories of employees to calculate statutory bonus payable. The petitioner has alleged that respondent has acted arbitrarily in enforcing the Amendment Act, 2015 retrospectively w.e.f. 01.04.2014.

16. Counter affidavit has been filed by the respondent-Union of India contending inter-alia that issues relating to amendment in the Act, 1965 was discussed before number of forums including tripartite consultation meetings with the representatives of various Departments of Central Government, State Labour Secretaries, Employers′ Associations and Central Trade Union

Organization. It is further stated that under the Chairmanship of the Minister for Labour and Employment, a tripartite consultation meeting was held on 20.10.2014 at New Delhi in which Employers' Association, Central Trade Union Organization, various Central Government Ministries and State Labour Secretaries had participated.

17. The respondents further stated that vide order dated 21.11.2014, an Inter Ministerial Group (IMG) was also set up to decide the revision in calculating ceiling and eligibility limit under the Act, 1965. It is stated that aforesaid Inter Managerial Group (IMG) for bonus held it's meeting on 03.12.2014 with the representatives of Employers' Associations to discuss the proposal relating to amendment in the Act, 1965.

18. It is also stated that the issue of amendment in the Act, 1965 was also discussed in the 46th Session of the Indian Labour Conference on 20-21 July, 2015 at New Delhi. It is further stated that there has been 111.67% increase in All India Consumer Price Index fixed for industrial workers (Base 2001=100) from 120 in April, 2006 to 254 in March, 2015. Further it is the case of the respondent-Union of India that rise in Consumer Price Index for industrial workers has been taken into consideration in calculating ceiling which came to Rs.7408/- per month till March, 2015 which is higher than the ceiling of Rs.7,000/- per month under the Amendment Act, 2015.

19. It is stated that the object, which is sought to be achieved by the amendment is fulfilled by making the law which increases the eligibility limit to Rs.7000/- or minimum wage for the scheduled employment whichever is higher, and plea of invalidity of retrospectivity of amendment on the ground that it infringes Article 14 of the Constitution of India is misconceived.

20. It is further stated that since bonus has to be paid after determining profits and calculation of allocable surplus for that particular year, therefore, retrospective implementation of Amendment Act, 2015 is just and proper.

21. Respondents have also stated that necessary debit and credit is a routine in an establishement, which implies that there should be no difficulty as far as practical aspects in calculating bonus is concerned, therefore, problems indicated by the petitioner are not justified and there is no statutory bar in adjustment of the account books.

22. It is further stated that any provision, which has the effect of promoting or effectuating directive principles is presumed to be reasonable. Such provisions are to be construed in favour of beneficiary for achieving the purpose of enactment being a social benefit oriented legislation.

23. It is also stated that enforcement of Amendment Act, 2015 retrospectively does not violate any vested right of petitioner, which has accrued to him nor retrospective enforcement of Amendment Act, 2015 has taken away any vested right of the petitioner. According to the respondents, the legislature has power to enact an amendment with retrospective effect. It is stated that the legislature possesses the right to make retrospective legislation, which creates new obligation in respect to the transactions already over and requires reopening of past, closed and completed transactions.

24. Respondents contend that no hurdle is faced by the establishment under the provisions of income tax, and other relevant statutes to ensure compliance of statutory liability. It is also stated that Section 15(2) of the Act, 1965 deals with a contingency where for any accounting year, if there is no available surplus or allocable surplus in respect of that year and falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 of the Act, 1965 and there is no amount or sufficient amount carried forward and set on in sub-section (1) of that section, which could be utilised for payment of minimum bonus, then such minimum amount or deficiency shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of fourth accounting year.

25. The petitioner has filed rejoinder affidavit denying the averments made in the counter affidavit. The petitioner has confined the challenge to the Amendment Act, 2015 only to the extent it has been implemented with retrospective effect i.e. 01.04.2014 and also enhancement of ceiling for payment of bonus under Section 12 from Rs.3500/- to Rs.7000/- and insertion of minimum wages under the Minimum Wages Act, 1948 to calculate bonus under Section 12 of the Act, 1965.

26. Challenging the amendment, Sri Anshul Kumar Singhal, learned counsel for the petitioner has contended that if, the amendment in the Act, 1965 creates financial burden on a class of persons without offending the rights of other persons, such amendment is permissible, but if it offends the rights of other persons, the amendment cannot be enforced with retrospective effect.

27. Supporting the aforesaid contention, Sri Shakti Swaroop Nigam, learned Senior Counsel appearing in some petitions has contended that any amendment in Act, 1965 can be implemented prospectively and not retrospectively as it violates Article 14 of the Constitution of India. He has relied upon the following judgements in support of his contention:-

(i). **Remington Rand of India Ltd. Vs. The Workmen, AIR 1970 SC 1421;**

(ii). **State of Gujarat & Another Vs. Raman Lal Keshav Lal Soni & Others 1983 (2) SCC 33;**

(iii). **T.R. Kapur & Others Vs. State of Haryana & Others1986 (Supp.) SCC 584;**

(iv). **Union of India & Others Vs. Tushar Ranjan Mohanty & Others (1994) 5 SCC 450.**

28. He further submits that since Amendment Act, 2015 created a financial liability, therefore, pre-decisional hearing before amending the Act, 1965 is mandatory. Accordingly, it is contended that since no pre-decisional hearing was given, therefore, Amendment Act is invalid. In support of the said contention, he has relied upon judgement of Apex Court in the case of **Punjab State Co-operative Milk Producers Federation Ltd. & Another Vs. Balbir Kumar Walia & Others, 2021 (171) FLR 397.**

29. He submits that legislative declaration cannot be contrary to the judicial declaration. He submits that for the following two reasons, the said principle of law is attracted in the present case:-

(a). According to him, amendment in Act, 1965 is not a declaratory Act because it does not clarify anything embodied in the parent Act rather the amendment creates a new right and obligation upon the establishment;

(b). Act, 1965 is substantive law because it creates rights and liabilities upon the employer and the employees and any amendment in the parent Act i.e. Act, 1965 would create new rights and obligations.

30. Thus, for the aforesaid two reasons, he submits that Amendment Act, 2015 is not a declaratory law. In support of the said contention, he has placed reliance upon following judgements of the Apex Court:-

(i). **Indra Sawhney Vs. Union of India & Others, 2000(1) SCC 168;**

(ii). **State of Punjab & Others Vs. Bhajan Kaur & Others 2008 (12) SCC 112;**

(iii). **Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited, 2015 (1) SCC 1.**

31. He has further contended that financial burden cannot be applied retrospectively unless the legislature has expressly and unambiguously stated such an intent in the amendment

32. Sri Diptiman Singh, learned counsel appearing in some of the petitions submitted that the Bill No.265 of 2015 was introduced w.e.f 01.04.2015, the statement of object and reasons do not mention that it would be made effective retrospectively. He submits that financial memorandum mentions that the Bill does not involve, 'any other recurring or non-recurring expenditure'. He has referred to certain discussions on the Bill, which shall be considered at the appropriate stage, to contend that constitutional decisions cannot be taken on the whims and desires of the Government. He further submits that original bill was to be made effective from 01.04.2015 and no explanation or reason has been given in changing the date of implementation of the Bill and making it retrospective. He has placed reliance upon the judgement of Apex Court in the case of **Jayam and Company Vs. Assistant Commissioner & Another 2016(15) SCC 125.**

33. Sri Sunil Kumar Tripathi, Advocate has addressed on the Amendment in Section 12 of the Act, 1965. He submits that amendment in Section 12 of the Act, 1965 in respect to increase in ceiling limit is based upon unreasonable classification. Therefore, it is violative of Article 14 of the Constitution of India.

34. Elaborating the said argument, he submits that industries notified as scheduled employment under Minimum Wages Act, 1948, monthly ceiling limit for calculation of bonus for this class of industry is the minimum wages under the Minimum Wages Act, 1948. He submits that at present minimum wages for unskilled workers is Rs.10,701/-, semi-skilled workers is Rs.11,772/- and skilled workers is Rs.13,186/- and bonus is to be calculated on the aforesaid notified wages with respect to different classes of workers.

35. He submits that for industries, which have not been notified as scheduled employment under the Minimum Wages Act, 1948, monthly ceiling limit for this class of industries is Rs.7000/- per month for calculation of bonus. He submits that classification is unreasonable and discriminatory.

36. He further submits that the classification of industries in two categories is arbitrary as the classification is not based on intelligible differentia. He contends that object sought to be achieved by classifying the industries in two categories is irrational because unorganised industries covered by scheduled employment have to pay higher bonus than the organised industries not covered by scheduled employment. He has placed reliance upon following judgements of Apex Court:-

(i) **Sukanya Shantha Vs. Union of India and Others, 2024 SCC OnLine SC 2694;**

(ii) **Bhikusa Yamasa Kshatriya & Another Vs. Sangamner Akola Taluka Bidi Kamgar Union & Others,AIR 1963 SC 806;**

(iii) **U. Unichoyi & Others Vs. State of Kerala AIR 1962 SC 12.**

37. Rebutting the aforesaid contention, learned Additional Solicitor General submits that the Act, 1965 being a welfare legislation should be interpreted in a manner so as to achieve the object of the Act. He submits that power and competence of the Parliament to amend the statutory provision cannot be doubted, however, the only rider in amending the Act, 1965 retrospectively is that the Act, 1965 must be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution of India. He submits that Amendment Act, 2015 amending the Act, 1965 with retrospective effect is reasonable and has been introduced to achieve the object for which it has been introduced. Therefore, the Amendment Act, 2015 is neither arbitrary nor is violative of any fundamental rights of the petitioner guaranteed under the Constitution of India.

38. It is contended that the Amendment Act, 2015 does not violate any vested right of the petitioner. He submits that Amendment Act, 2015 has been introduced for promoting and effectuating the Directive Principles of State Policy enshrined in the Constitution of India, therefore, the Amendment Act, 2015 cannot be said to be arbitrary and violative of any of the provisions of Constitution of India.

39. He further contends that Section 15(2) of the Act, 1965 provides for a situation where for any accounting year, if there is no available surplus or allocable surplus in respect to that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 of the Act, 1965, and there is no amount or sufficient amount carried forward and set on under sub-section (1) of that Section, which could be utilised for payment of minimum bonus, then such minimum amount or deficiency shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth succeeding year. Therefore, the difficulty as pointed out by the petitioner in the writ petition in implementing the Amendment Act is non-existent in view of Section 15(2) of the Act, 1965.

40. He contends that proviso (b) to Section 19 of the Act, 1965 provides that time for payment can be extended. He submits that validity of Amendment Act has been upheld by Patna High Court in Civil Writ Jurisdiction Case No.15379 of 2017 and by Madras High Court in Writ Petition No.6958 of 2016.

41. He has further contended that there is no arbitrariness in including the concept of calculation on the basis of minimum wages under the Minimum Wages Act, 1948 for the purpose of payment of bonus. Accordingly, he submits that the contention advanced in this regard by the learned counsel for the petitioners is misconceived.

42. He further urges that the contention of learned counsel for the petitioner that statement of object of the Bill indicates that the Bill was to be implemented w.e.f. 01.04.2015 and its applicability cannot be made retrospectively on the whims and desires of the Government is not sustainable inasmuch as the Prime Minister of India has approved the proposal of the Ministry for moving official amendments through Amendment Act, 2015 as contained in para 8 of the proposal dated 22.12.2015 under Rule 12 of the Government of India (Transaction of Business) Rules, 1961.

43. Accordingly, he submits that petitioners have failed to make out any case calling for any interference by this Court in exercise of power under Article 226 of the Constitution of India and declaring the Amendment Act, 2015 as ultra-vires to the Constitution of India.

44. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

45. Section 2(13) of the Act, 1965 which defines 'employee' as it stood prior to the Amendment Act, 2015 reads as under:

"2. **Definitions-**

(13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding [ten thousand rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for higher or reward, whether the terms of employment be express or implied."

46. Section 12 of the Act, 1965 as it prior to amendment provides for bonus payable to certain employees which reads as follows:-

"12. ***Calculation of bonus with respect to certain employees.-****Where the salary or wage of an employee exceeds [three thousand and five hundred rupees] per mensem, the bonus payable to such employee under section 10 or, as the case may be under section 11, shall be calculated as if his salary or wage were [three thousand and five hundred rupees] per mensem."*

47. By the Amendment Act, 2015 in Section 2(13) which defines expression "employee", the ceiling on salary or wages has been enhanced from Rs.10,000/- per month to Rs.21,000/- per month.

48. As a result of amendment in Section 12 of Act, 1965, the amount of Rs.3500/- has been substituted by an amount of Rs.7000/- or the minimum wages for scheduled employment as fixed by the Government whichever is higher.

49. Section 19 of the Act, 1965 deals with the time limit for the payment of bonus which reads as under:

"*19. **Time-limit for payment of bonus.**-[All amounts] payable to an employee by way of bonus under this Act shall be paid in cash by his employer-*

(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.″

50. According to the learned counsel for the petitioners that pre-decisional hearing to the petitioners was necessary inasmuch as retrospective operation of the Act has seriously prejudiced the vested rights of the petitioners and has created fiscal liability upon the petitioners. It is submitted that the petitioners as per Section 19 of the Act, 1965 have paid the bonus to their employees within the time frame provided under the said section, and the implementation of the Act with retrospective effect has resulted in financial liability for the petitioner and has further created accounting complexities.

51. The respondent in the counter affidavit has stated that the issues relating to the Amendment in the Act, 1965 were discussed before a number of forums including tripartite consultation meetings with the representatives of the various departments of Central Government, State Labour Secretaries, Employers′ Association and Central Trade Union Organization. It has also been stated that under the Chairmanship of the Minister for Labour and Employment, a tripartite consultation meeting was held on 20.10.2014 at New Delhi in which Employers′ Association, the Central Trade Union Organization, various Central Government Ministries and State Labour Secretaries had participated.

52. The aforesaid averments have not been denied by the petitioners in their rejoinder affidavit. However, the petitioners have stated that mere fact that certain consultation meetings and groups formed and chaired by the government functionaries in respect of the Amendment Act, 2015 will not cure it′s constitutional vices and infirmities.

53. The facts stated in the counter affidavit, referred above, with regard to consultation with various organizations by State Machinery establishes that pre-decisional hearing was given to the recognised organizations by the State Machinery before introduction of the Amendment Bill in the Parliament, which is in compliance of the principles of natural justice.

54. Further, the question as to whether before amending the Act, 1965 retrospectively, opportunity of hearing was required, we may state that in the facts of the present case for the reasons delineated above, the pre-decisional hearing for making the Act retrospective is not required, inasmuch as retrospective application of the Amendment Act has not prejudiced the rights of the petitioners. The reason why we say so shall be dealt with at the appropriate stage in the latter part of the judgement.

55. Sri Shakti Swaroop Nigam, learned Senior Counsel appearing for the petitioners in support of the contention that retrospective amendment has put financial liability upon the petitioner has placed reliance upon the judgement in the case of **Punjab State Co-operative Milk Producers Federation Ltd. (supra)** wherein it has been held that economic viability or financial capacity of the employer is an important factor, which cannot be ignored while fixing wage structure. The said judgement is not applicable in the facts of the present case inasmuch as in the said case, the employees of the Milk Federation demanded the pay scale as revised by the Punjab Government Anomaly Committee w.e.f. 01.01.1986. The Federation was suffering from acute financial stringency, therefore, it granted revised pay scale from 01.01.1994 instead of 01.01.1986. The employees of the Federation raised protest for grant of revised pay scale w.e.f. 01.01.1986, therefore, a Committee was constituted to examine several issues that arose.

56. The judgement of the Apex Court considered the recommendations of the Committee in paragraph no.8 of the judgement, the Committee in it′s recommendations found that large number of employees will be financially benefited and the financial burden will be of Rs.2 lacs per month, this was considered to be a huge liability. The Committee was also apprised that the liability of the arrears from 01.01.1986 to 31.08.1992 was still outstanding. The Committee after considering the above, as well as various other aspects, recommended that the improved pay scales may be implemented w.e.f. 01.01.1994 without giving the benefit of even notional pay fixation w.e.f. 01.01.1986, this would have saved the organization from a huge liability of the payment of arrears and would also give scope to the employees for placement in better pay scales and getting other benefits, which might accrue as a result of next revision of pay scale likely to be made from 01.01.1994 on the pattern of Punjab Government.

57. The report of the Committee was considered by the Board of Directors of Federation who approved the grant of revised pay scale w.e.f. 01.01.1994. Subsequently, the decision of the Board was approved by the Registrar (Cooperative Societies) on 29.04.1997.

58. The facts of the case noted above clearly discloses that the Apex Court in granting pay scale w.e.f. 01.01.1994 found that the same was in the interest of Federation as well as the employees of the Federation, inasmuch as, if the benefit of revised pay scale was granted w.e.f. 01.01.1994, the Federation could be saved from collapsing because of the huge financial liability likely to be incurred on the grant of revised pay scale w.e.f. 01.01.1986. On the other hand, the

employees interest could also be protected, as that would help in extending the next revision of pay scale likely to be made w.e.f. 01.01.1994 on the pattern of Punjab Government.

59. In the present case, the petitioner has not disclosed any fact in the writ petition indicating that on account of the retrospective amendment, the liability is such, which would result in creating a huge financial liability which is detrimental to the interest of the employer.

60. Learned counsel for the petitioner has further relied upon the several judgements noted below on the issue that the amendment in Bonus Act, 1965 could apply prospectively and not retrospectively, as it violates Article 14 of the Constitution of India.

61. The first judgement relied upon by the learned counsel for the petitioners is the case of **Remington Rand of India Ltd. (supra)**. The petitioners have placed reliance on paragraph no.1 of the said judgement with respect to the issue involved in the said case, which included the issue of grant of bonus for the year 1963-64. The said issue has been decided on concession given by the counsel for the workmen. Paragraph no.3 of the said judgement is reproduced herein-below:-

"3. As regards the bonus, the company had already paid to the workmen bonus at the rate of 4 months basic pay as against the demand for the maximum bonus calculated in accordance with the Payment of Bonus Act, 1965, and on consolidated as against the basic wages. The Tribunal conceded that demand and granted bonus at 20 percent of the consolidated wages. In view, however, of this Court's decision in Jalan Trading Co. v. Mill Mazdoor Union, 1967-1 SCR 15 (AIR 1967 SC 691), Mr. Ramamurthi for the workmen conceded that the Act cannot apply in respect of the year in question and that the bonus payable for that year will have to be calculated on the basis of the Full Bench Formula as approved by this Court. The award to that extent therefore, has to be set aside and remanded to the Tribunal for determining the bonus in accordance with the said Formula."

62. Accordingly, the aforesaid judgement of the Apex Court is not applicable to the facts of the present case.

63. So far as the judgement of the Apex Court in the case of **State of Gujarat (supra)** is concerned, the said judgement is not applicable as it was a case where personnel were drawn from different sources viz. government departments as well as local authorities or municipal services and were merged together to constitute a single integrated Civil Service (Panchayat Service) by a legislative enactment.

64. In the said case, a retroactive amendment of the enactment namely Gujarat Panchayats (Third Amendment) Act, 1978 created a differential classification in relation to the original position of the employees of different departments and the said amendment deprived the ex-municipal employees of their status of government servants.

65. In the aforesaid background, it was argued that the benefit acquired could not be taken away with retrospective effect. On the other hand, it was urged by the respondent that there was good reason for the classification, and that in the circumstances of the case, the classification was

legitimately made with retrospective effect. In the said backdrop, the Apex Court in paragraph no.52 of the judgement had held as under:-

"52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in B.S. Yadav v. State of Haryana. Chandrachud, C.J. speaking for the Court held :(SCC head-note)

Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case.

Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so intertwined with one another that it is well nigh impossible to consider any life-saving surgery. The whole of the Third Amendment Act must go. In the result Writ Petitions Nos.4266-4270 of-1978 are allowed with costs quantified at Rs 15,000. The directions given by the High Court, which we have confirmed, should be complied with before June 30, 1983. In the meanwhile, the employees of the panchayats covered by the appeal and the writ petitions will receive a sum of Rs.200 per month over and above the emoluments they were receiving before February 1, 1978. This Order will be effective from February 1, 1983. The interim Order made on February 20, 1978 will be effective up to January 31, 1983. The amounts paid are to be adjusted later."

66. Since, the facts of the present case are different from the facts in the case of **State of Gujarat (supra)**, therefore, the law laid down in the said case does not help the petitioners in the present case.

67. So far as the judgement of the Apex Court in the case of **T.R. Kapur (supra)** is concerned, the said judgement is also distinguishable on facts of the present case, therefore, it is of no help to the petitioners. In the said case, the petitioners being diploma holders were eligible for consideration for promotion on the post of Executive Engineer.

68. In the said case by a retrospective amendment in Rule 6 (b) of the Punjab Service of Engineers, Class-I, Public Works Department (Irrigation Branch) Rules, 1964, the right of petitioners, who were diploma holders, to be considered for promotion in Class-I service was taken away. In the said context, the Apex Court in paragraph no.16 had held as under:-

"16. It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S. Vadhera v. Union of India, Raj Kumar v. Union of India, K. Nagaraj v. State of A.P. and State of J & K v. Triloki Nath Khosa. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution: State of Mysore v. M.N. Krishna Murty, B.S. Yadav v. State of Haryana, State of Gujarat v. Raman Lal Keshav Lal Soni and Ex-Captain K.C. Arora v. State of Haryana."

69. The judgement of **T.R. Kapur (supra)** is also rendered in a different factual backdrop, and therefore, the ratio laid down in the said judgement does not help the petitioners.

70. The judgement of the Apex Court in the case of **Union of India (supra)** is also not applicable in the present case inasmuch as by introducing the amendment, the legislature attempted to deprive the petitioners in the said case of an accrued right by enacting retrospective legislation. The ratio laid down in paragraph nos. 14 and 15 of the judgement, which has been relied upon by the learned counsel for the petitioners does not help the petitioners in the present case and is reproduced herein-below:-

"14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived

of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.

15. Respectfully following the law laid down by this Court in the judgments referred to and quoted above, we are of the view that the retrospective operation of the amended Rule 13 cannot be sustained. We are satisfied that the retrospective amendment of Rule 13 of the Rules takes away the vested rights of Mohanty and other general category candidates senior to Respondents 2 to 9. We, therefore, declare amended Rule 13 to the extent it has been made operative retrospectively to be unreasonable, arbitrary and, as such, violative of Articles 14 and 16 of the Constitution of India. We strike down the retrospective operation of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Mohanty.″

71. Further, the aforesaid judgements do not help the petitioners inasmuch as though the petitioners claim that retrospective amendment has infringed their vested rights but the petitioners have failed to establish that by the retrospective amendment, which of their vested rights have been infringed.

72. The Apex Court in the case of **J.S.Yadav Vs. State of Uttar Pradesh & Another 2011 (6) SCC 570** has defined the words 'vested right'. Paragraph nos.20 to 22 of the said judgement are reproduced herein-below:

"20 . "17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

'Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edn.) at p. 1397, 'vested' is defined as:

'Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.'"

(See Bibi Sayeeda v. State of Bihar at SCC p. 527, para 17.)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and

convenience which are sought to be served by amendment of the law. (Vide Howrah Municipal Corpn. v. Ganges Rope Co. Ltd.)

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course"

73. The necessary corollary, which comes out from the reading of the aforesaid judgement is that a right is considered vested, absolute, when it is not dependent on any future event; it is generally immune from subsequent changes in law that would impair it.

74. The payment of bonus is a statutory liability upon the employer emanating from the Act, 1965. The employer is statutorily bound to pay the bonus to the employees in compliance of statutory obligations posed upon it by the Act, 1965, therefore, to say that the petitioners' vested right by implementing Amendment Act, 2015 retrospectively has been infringed is not justified for the reason that the vested right is a right independent of any contingency whereas the petitioners are obligated to pay bonus by virtue of Section 10 of the Act, 2015.

75. The petitioners in the instant case have failed to demonstrate that petitioners cannot be asked to pay bonus with retrospective effect since such an amendment infringes their vested right.

76. At this stage, it is pertinent to note that the Apex Court in paragraph no.19 of the judgement in the case of **M/S. Jalan Trading Company Private Ltd. Vs. Mill Mazdoor Sabha AIR 1967 SC 691** has held that there is a presumption of constitutionality in favour of the statute and the onus of proving it unconstitutional lies upon the person who challenges it.

77. In the case of **R.C. Tobacco Pvt. Ltd. and Another Vs. Union of India and Another, AIR 2005 SC 4203**, the Apex Court held that a liability cannot be declared to be unreasonable because it merely operates retrospectively. The Apex Court further in paragraph no.23 of the judgement laid down the factors which are generally considered in considering the challenge to an enactment because of its retrospective implementation. Paragraph nos.22 and 23 of the said judgement are reproduced herein below:-

"22. A law cannot be held to be unreasonable merely because it operates retrospectively. Indeed even judicial decisions are in a sense retrospective. When a statute is interpreted by a Court, the interpretation is, by fiction of law, deemed to be part of the statute from the date of its enactment. The unreasonability must lie in some other additional factors. The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms. "Where for instance it appears that the taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes". (Rai Ramkrishna v. State of Bihar: AIR 1963 SC 1667). The question to be answered therefore is

whether Section 154, which is in terms retrospective, is ex facie discriminartoy, or so unreasonable or confiscatory that it violates Articles 14 and 19 of the Constitution.

23. *The factors which are generally considered relevant in answering this question are (i) the context in which retrospectivity was contemplated, (ii) the period of such retrospectivity, and (iii) the degree of any unforeseen or unforeseeable financial burden imposed for the past period.*"

78. In the light of the factors laid down by the Apex Court in the aforesaid judgement while considering the validity of the retrospective application of an Act, the contention of the learned counsel for the petitioners that the legislative declaration cannot be contrary to judicial declaration shall be considered by this Court.

79. The aforesaid proposition has been raised by the learned counsel for the petitioners on the ground that the amendment in Principal Act i.e. Act, 1965 is not a declaratory Act because it does not clarify anything embodied in the parent Act i.e. Act, 1965 rather retrospective enactment of the Amendment Act, creates new rights and obligations upon the parties which is not permissible in law.

80. Further it is submitted that the Act, 1965 is substantive law because it creates rights and liabilities upon the employers and the employees and any amendment in the Principal Act, i.e. Act, 1965 which creates new rights and obligations upon the employers is not a declaratory law. In this regard, reliance has been placed upon the judgements already referred above.

81. It is pointed out that paragraph no.43 of the judgement in the case of ***Indra Sawhney (supra)*** relied upon by the learned counsel for the petitioners in support of aforesaid contention has been rendered in a peculiar factual background. The case of ***Indra Sawhney (supra)*** requires 'creamy layer' to be identified and excluded. The State of Kerala did not identify the creamy layer in the backward class in compliance of the judgement of ***Indra Sawhney (supra)***. The Apex Court held that State of Kerala represented by its Chief Secretary was guilty of contempt but the Apex Court gave further opportunity to the State to purge the contempt by implementing the directions of the Apex Court in the case of ***Indra Sawhney (supra)***.

82. The State of Kerala sought time to appoint a Commission to identify the creamy layer. However, the legislature of State of Kerala suddenly promulgated Kerala State Backward Classes (Reservation of Appointments or Posts in the Services under the State) Act, 1995, which declares that there was no creamy layer in the State of Kerala. Sections 3, 4 & 6 of the said Act contained provisions, which were contrary to law laid down in the case of ***Indra Sawhney (supra)***. The validity of the said Act was challenged before the Apex Court.

83. The Apex Court keeping in view, the fact that the State Government had failed to appoint a Commission as directed in the case of Indra Sawhney (supra) requested the Chief Justice of Kerala High Court to appoint a retired Judge to be the Chairman of a High Level Committee for gathering necessary information regarding creamy layer. The Committee submitted it's report identifying the creamy layer in the backward classes of State of Kerala and it is in this backdrop, the Apex Court held that the Amendment Act, 1995 was unrelated to the facts in existence. The Apex Court has further held in paragraph no.42 that the said Act had shut it's eyes to the realities

and facts and it came up with a declaration in clause (a) of Section 3, which had no factual basis inspite of the word used, 'known facts'. In such backdrop, the Apex Court held in paragraph no.43 of the judgement as under:-

"43. In view of the facts and circumstances referred to above, we hold that the declaration in clause (a) of Section 3 made by the legislature has no factual basis in spite of the use of the words "known facts". The facts and circumstances, on the other hand, indicate to the contrary. In our opinion, the declaration is a mere cloak and is unrelated to facts in existence. The declaration in Section 3(a) is, in addition, contrary to the principles laid down by this Court in Indra Sawhney and in Ashoka Kumar Thakur. It is, therefore, violative of Articles 14 and 16(1) of the Constitution of India. Clause (a) of Section 3 is, therefore, declared unconstitutional.

(viii) Clause (b) of Section 3-inadequate representation: Section 3(b) mixes up two different concepts."

84. The said judgement on facts is clearly distinguishable and does not help the petitioners.

85. So far as the judgement of the Apex Court in the case of ***Bhajan Kaur (supra)*** relied upon by the learned counsel for the petitioners is concerned, it was a case where the accident had taken place on 08.01.1983. The claim petition was filed in relation to the said accident purported to be in terms of Section 110-A of the Motor Vehicles Act, 1939.

86. The claim petition was dismissed by an Award dated 12.10.1984. The appeal preferred against the said award was disposed off by the learned Single Judge awarding a sum of Rs.15,000/- as compensation by way of 'no fault liability'. In intra-court appeal, the Appellate Court enhanced the awarded amount to Rs.50,000/- under 'no fault liability'. It is by virtue of an Amendment Act 54 of 1994, amending Section 140 of the Motor Vehicles Act, 1988 came into force w.e.f. 14.11.1994. In such backdrop, the Apex Court held that the Division Bench had erred in law by enhancing the compensation to Rs.50,000/- under the Motor Vehicles Act, 1988.

87. The Court held that Section 92A of the Act, 1939 created a right and a liability on the owner of the vehicle being a statutory liability, as the right was created by an enactment. In the absence of a clear provision in the Motor Vehicles Act, 1988 that it is to be applied retrospectively, the Court held that a statute is presumed to be prospective, unless it is retrospective either expressly or by necessary implication. It was held that a substantive law is presumed to be prospective.

88. Learned counsel for the petitioners has also relied upon paragraph nos. 28 to 32 & 35 of the judgement of the Apex Court in the case of ***Commissioner of Income Tax (supra)*** which is reproduced herein-below:-

"28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to

arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Lid. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legisiation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn., the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.

32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh in the following manner:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted". But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious emission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions.

35. We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO, while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)

"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable either interpretation, it ought to be construed as prospective only."

89. Similar proposition has been laid down by the Apex Court in the case of **Jayam and Company (supra)**. There is no quarrel to the proposition of law laid down in the aforesaid judicial

pronouncement by the Apex Court, but in the opinion of this Court, the law enunciated by the Apex Court in the aforesaid cases is not attracted in the present case for the reasons delineated below.

90. At this stage, it would be appropriate to refer to Sections 2(4) & (6) of the Act, 1965, which defines expression 'allocable surplus' and 'available surplus'. Section 2(4) & (6) of the Act, 1965 are reproduced herein below:-

"2. ***Definitions.-***

(4). "allocable surplus" means –

(a). in relation to an employer, being a company [(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;

(b). in any other case, sixty per cent of such available surplus.

(6). "available surplus" means the available surplus computed under section 5."

91. Section 15 of the Act, 1965 provides 'set on' and 'set off' of 'allocable surplus'. Section 15 of the Act, 1965 reads as under:-

"15. Set on and set off of allocable surplus.-(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account."

92. Section 19 of the Act, 1965 provides for the time limit for payment of bonus. 93. In order to succeed in challenging the Act on the ground of retrospective enactment, the petitioner has to establish that by enacting the Amendment Act, 2015 retrospectively, the

legislature has conferred benefit of bonus to the employees, which inflicts a corresponding detriment on the employer, which is not permissible as the legislature can confer the benefit on employees retrospectively without inflicting a corresponding detriment on the employer.

94. The law does not permit the legislature to take away or impair any existing right or create a new obligation or impose a new liability retrospectively. At this stage, it is pertinent to note that the payment of bonus is a statutory right given to the employees. The liability to pay the bonus lies upon the employer which emanates from the Act, 1965.

95. So by introducing the Amendment Act with retrospective effect, it neither impairs any existing right of the employer nor creates any new obligation upon the employer. The employer at the most can say that by retrospective operation of Amendment Act, 2015, additional liability to pay bonus upon the employer has been created. Thus, by Amendment Act, 2015, no new liability has been imposed upon the employer.

96. The employer is liable to pay bonus under Section 10 of the Act, 1965. The minimum bonus which the employer is liable to pay is 8.33% of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not, the employer has any allocable surplus in the accounting year. The employer is liable to pay bonus to a maximum 20% of the salary or wage under Section 11 of the Act, 1965 subject to the existence of the conditions enumerated in Section 11 of the Act, 1965.

97. Now, various difficulties have been posed by the petitioner in the writ petition from paragraph nos.30 to 37 of the writ petition, which are reproduced herein-below:-

"30. That thus the fiscal deficit incurred by virtue of the impugned amendment act cannot be extracted under any of the heads of the account except adding it to the liabilities of the company resulting into the decrease in profits or variating the prices of the commodity market.

31. That by the impugned amendment there would be an increase in the financial burden and greater accounting complexities for employers.

32. That for the first time by the impugned amendment there has been a insertion of a reference to the minimum wage under the Minimum Wages Act 1948 to calculate bonus and thus it has created an additional challenge to the petitioner companies.

33. That it is relevant to mention that the appropriate government (i.e. the State Government) and in different cases the Central Government fix different minimum wages for various schedule employment (skilled, unskilled and semi skilled). Thus the petitioner would have to carry out a separate assessment of the applicable wage rate for different category of employees to calculate the statutory bonus payable.

34. That since there has been a different minimum wages in different states and further varying to different types of industries, therefore now the bonus calculation has to be done separately for each category.

35. That the General Principles concerning retrospectivity provides various rules guiding as to how a legislation has to be interpreted and one established rule is that unless a contrary intention appears, a legislation is presumed not be intended to have a retrospective operation.

36. That the current law should govern the current activities while in the present matter the impugned amendment is directly having a consequence upon the activities done for past one year.

37. That the Principal of Law "Lex Prospicit non respicit" also provides for a law to look forward and not backward. Human being are entitled to arrange his affairs by relying upon the existing law and should not find that his plans have been retrospectively assets.″

98. In order to appreciate the controversy in the light of facts, detailed by the petitioner in the writ petition in implementing the Amendment Act, 2015 retrospectively, the Court must remember that Act, 1965 is a social welfare legislation enacted with an object to achieve the principles enshrined in Articles 39 and 43 of the Constitution of India. Thus, the amendment, which has been implemented retrospectively has been made in a social welfare legislation.

99. The Apex Court in the case of ***M/s. Jalan Trading Company (supra)*** has also affirmed the judgement of Bombay High Court whereby the Bombay High Court has dismissed the petitions challenging the vires of Section 10 of the Act, 1965 on the ground that it is violative of Article 19(1)(g) and Article 302 of the Constitution of India, paragraph no.2 of the said judgement is reproduced herein below:-

"2. We are satisfied that the restriction imposed by the Bonus Act in compelling the employer to pay the statutory minimum bonus even in years where there has been a loss sustained by the management is reasonable or in public interest within the meaning of Articles 19(6) and 302. What is reasonable depends on a variety of circumstances, but what is important is that the Directive Principles of State Policy in Part IV of the Constitution are fundamental to the Governance of the country. Therefore, what is directed as State Policy by the founding fathers of the Constitution cannot be regarded as unreasonable or contrary to public interest even in the context of Article 19 or 302. It follows that payment of bonus, being in implementation of Articles 39 and 43 of the Constitution, is reasonable. We agree with the High Court and dismiss the appeal with costs quantified at Rs.2,000/-. The costs be paid to respondent No.2″

100. The law is settled that a benevolent provision should be interpreted liberally to achieve the purpose for which it has been enacted. In other words, the interpretation of beneficial legislation involves liberal and purposive construction to achieve the statute′s underlying aim to ensure the welfare of the intended beneficiaries.

101. If we take a glance at Section 15 of the Act, 1965, we find the difficulty posed by the petitioners is eliminated in view of Section 15(2) of the Act, 1965, which provides for 'set on′ and 'set off′.

102. Section 15(1) of the Act, 1965 provides for carry forward and set on and on it′s plain terms, it comes into operation only when in a given accounting year, the allocable surplus exceeds the maximum bonus payable under the Act, so that after payment of maximum bonus, there is surplus left which can be carried forward and set on, subject, of course, to the limit of 20% of the total salary or wage.

103. Section 15 of the Act, 1965 provides for 'set on' and 'set off' to ensure a consistent payment of bonus over the years. If in a given case, allocable surplus exceeds the maximum bonus amount such surplus, subject to ceiling of 20%, shall have to be carried forward to the succeeding year upto and inclusive of fourth accounting year to be utilised for the purpose of payment of bonus.

104. The method to be followed in this behalf is set out in the Fourth Schedule of the Act, 1965. As per Section 15(2) of the Act, 1965, if in any succeeding accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus, the amount so carried forward has to be utilised for paying the bonus.

105. Thus, Section 15(2) of the Act, 1965 permits the employer that if, in any accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 and there is no amount or sufficient amount which is carried forward and set on under sub-section (1) that could be utilised for the purpose of payment of minimum bonus, then, such minimum amount or deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

106. So, in the absence of available surplus or allocable surplus in respect of that year and there is shortfall of the amount of the minimum bonus payable to the establishment under Section 10, and no amount or sufficient amount has been carried forward and has been set on under sub-section (1), which could be utilised for the purpose of payment of minimum bonus, the said sub-section permits the petitioner to set off the shortfall in the succeeding year upto and inclusive of fourth accounting year.

107. The petitioner though has posed difficulty in implementing the Act retrospectively, but has neither given any detail as to what available surplus or allocable surplus is available with the companies, which has been set on under Section 15(1) of the Act, 1965. The petitioner has not stated in the writ petition that there is no available surplus or allocable surplus in respect of that year, which falls short of minimum bonus payable to the employees in the establishment under Section 10. In the absence of any such detail in the writ petition, it is difficult to comprehend that by retrospective amendment in Section 2(13) of the Act, 1965, a huge financial liability has been inflicted upon the petitioner, which would be detrimental to the interests of the petitioner.

108. The legislature keeping in view the difficulty of the employer in providing the benefit of bonus to the employees has incorporated Section 15 of the Act, 1965 with a view to ease the employer in paying the bonus in case of non-availability of available surplus and shortfall of allocable surplus. Therefore, for the aforesaid reason, we do not find that the difficulty posed by the petitioner in the writ petition as stated in the paragraphs, extracted above, are bonafide and genuine and a beneficial legislation can be rendered unconstitutional on the said grounds.

109. For the reasons given above, we do not find that any such liability has been imposed by implementing the Amendment Act retrospectively, which poses a serious financial threat to the establishment so as to close down the establishment because of such financial liability.

110. Sri Diptiman Singh, learned counsel for the petitioners in the rejoinder affidavit has pointed out that the liability of the petitioner is more than Rs.3 crores, but necessary facts have not been detailed in the writ petition in the light of Section 15 of the Act, 1965.

111. So far as the contention of learned counsel for the petitioners that as per Section 19, eight months period is provided to pay bonus and that period has expired and any payment of bonus after the expiry of period provided in Section 19 will entail penal consequences is concerned, the said contention is also misconceived inasmuch as the Competent Authority under the Proviso (b) to Section 19 has power to extend the period of payment of bonus upto two years.

112. It is also settled law that if the bonus is paid retrospectively by way of notification, no prosecution could be made or launched against the petitioners for non-payment of bonus or for delayed payment of bonus. Hence, when the Amendment Act, 2015 has not even seen the light of the day, the petitioners cannot be prosecuted for the year 2015-16 on the ground of delayed payment of bonus.

113. We have also perused the judgements cited by the learned counsel for the respondents of Patna High Court in Civil Writ Jurisdiction Case No.15379 of 2017 and Madras High Court in Writ Petition No.6958 of 2016 upholding the validity of Amendment Act with retrospective effect.

114. For the reasons delineated above, we are in agreement with the judgement of Patna High Court as well as Madras High court.

115. One further submission has been raised by Sri Diptiman Singh, learned counsel for the petitioner that when the Amendment Bill was presented before the Lok Sabha at 16:04 hours on 22.12.2015, it is evident from the Lok Sabha discussion held on 22.12.2015, which is enclosed at page-31 of the rejoinder affidavit in Writ-C No.8995 of 2016, that the Amendment Bill was presented with a proposal that it should be made effective w.e.f. 1st day of April, 2015. However, without there being any further discussion, it was proposed that the proposed amendment may be made effective from the 1st day of April, 2014.

116. It is contended that since the Amendment Bill was presented with proposal to amend it w.e.f. 01.04.2015 and without there being any serious discussion, it was proposed to be made effective w.e.f. 1st day of April, 2014. Thus, it is contended that constitutional decisions cannot be made on the whims and desires of the Government. He further contends that while the initial Bill by which it was proposed that the Bill to be made effective w.e.f. 01.04.2015, the discussions had taken place with regard to the financial aspect of the matter, but the proposed amendment makes it′s applicability retrospectively and does not consider the economic viability. Thus, it is evident that no proper discussion had taken place for making the amendment with retrospective effect, and the Amendment Act has been made effective retrospectively on the whims of the Government,

which cannot be permitted in law, therefore, retrospective implementation of the Amendment Act, 2015 is bad in law and against the spirit of the Constitution of India.

117. The respondent has filed a supplementary counter affidavit annexing therewith the proposal relating to seeking approval of Hon′ble Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 for moving an official amendment to the Payment of Bonus (Amendment) Bill, 2015. In paragraph nos.5 & 8 of the said proposal, the justification for making the Bill retrospective have been stated which are reproduced herein-below:-

"5. **JUSTIFICATION**: As it is evident from the above paragraph, changes in the two ceilings have been given retrospective effect, initially through ordinance, for providing actual benefit to the employees. On the same analogy, the date of implementation may be 1.4.2014. This will also help in meeting the expectations of the Trade Union and may be useful in improving the relation with workers. The competent authority to approve an official amendment to a Bill is the Cabinet. However, it may not be feasible to bring the proposal before the Cabinet at this stage.

8.**APPROVAL**: In view of the above, Cabinet Secretariat is requested to convey the approval of the Hon'ble Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 for moving an official amendment to the Payment of Bonus (Amendment) Bill, 2015(pending in Lok Sabha) for making the date of implementation as 1st day of April, 2014″.

118. Rule 12 of the Rules, 1961 is reproduced herein-below:-

"12. ***Departure from Rules****.-*
The Prime Minister may, in any case or classes or cases, permit or condone a departure from these rules to the extent he deems necessary.″

119. From perusal of Rule 12 of the Rules, 1961, it is evident that the *Prime Minister may, in any case or classes or cases, permit or condone a departure from these rules to the extent he deems necessary.* The proposal to make the Rules, 1961 applicable has been duly approved by the Prime Minister under Rule 12 of the Rules, 1961. Therefore, in view of the aforesaid fact, the contention advanced by Sri Diptiman Singh, learned counsel for the petitioners lacks merit and is accordingly, rejected.

120. So far as the argument of Sri S.K. Tripathi that the amendment in Section 12 of the Act, 1965 in respect to increase in ceiling limit is based upon unreasonable classification is concerned, we find that the Madras High Court in ***Writ Petition No.6958 of 2016 (The Employers′ Federation of Southern India and Others Vs. The Government of India & Others)*** has given elaborate reasons for upholding the validity of Section 12 of the Act, 1965, and has also dealt with the argument of rationale and reasonable classification. Relevant extract of paragraph no.12 of the judgement of Madras High Court is reproduced herein below:-

(o) While considering the classification, the Hon'ble Supreme Court considered the terms 'rationale and reasonable' in the judgment in Transport & Dock Workers Union & Ors vs Mumbai

Port Trust & Anr (2011(2) SCC 575) and in paragraph 25, laid down the following test to determine what is reasonable or having rationale. The same is reproduced hereunder:

"25. In our opinion while it is true that a mathematically accurate classification cannot be done in this connection, there should be some broad guidelines. There may be several tests to decide whether a classification or differentiation is reasonable or not. One test which we are laying down and which will be useful in deciding this case, is : is it conducive to the functioning of modern society? If it is then it is certainly reasonable and rational."

(p) Useful reference can also be made as to the re-statement of law in this regard to the judgment of the Hon'ble Supreme Court in State of Tamil Nadu & Anr vs. National South Indian River Interlinking Agriculturist Association, 2021 (15) SCC 534, more particularly, paragraphs 15 to 15.2 which read as under:

"15. The equality code in Article 14 of the Indian Constitution prescribes substantive and not formal equality. It is now a settled position that classification per se is not discriminatory and violative of Article 14. Article 14 only forbids class legislation and not reasonable classification. A classification is reasonable, when the twin tests as laid down by Justice SR Das in State of W.B v. Anwar Ali Sarkar (1952 SCR 284) are fulfilled:

15.1 The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group; and

15.2 The differentia must have a rational relationship to the object sought to be achieved by the statute."

(q) Thus, it is seen that the classification per se between the employees who are in scheduled employment receiving minimum wages and others by itself is not forbidden, provided the same is reasonable.

(r) The twin test for arriving at a finding as to the reasonability is that it should be based on an intelligible differentia, which distinguishes the persons or things that are grouped from the others left out of the group. In this case, it is the workmen who are poorer among the poor who are governed under the Minimum Wages Act, 1948 who are grouped from the others left out.

(s) The second essentiality is that such differentiation must have a rational relationship to the objects sought to be achieved by the statute. The object sought to be achieved by the statute viz., the original Act is to provide a reasonable amount of bonus. The object of the amending Act is to enhance/modify or vary the quantum according to the prevalent conditions. Taking into account the time it takes to make amendments, i.e., it can be seen that the last amendment was made in the year 2006 and it has taken almost another decade to review the amount and the vagaries of the price index, when at least in respect of one part of the employees an able mechanism is available in the form of minimum wages, adopting the same has a rational relationship to the objects sought to be achieved by the statute. Therefore, we are unable to agree with the contentions made on behalf of the petitioners that the impugned enactment amounts to class legislation and is discriminatory. Accordingly, the question is answered that the classification made is reasonable and has nexus to the purposes of the Act."

121. The judgements of ***Unichoyi (supra) & Bhikusa Yamasa Kshatriya (supra)*** have elaborated the object behind promulgating the Minimum Wages Act. The Apex Court in paragraph no.12 of the judgement in the case of ***Unichoyi (supra)*** has stated that "*The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates, the capacity of the employer, need not be considered*."

122. So the Apex Court while explaining the object behind the introduction of Minimum Wages Act has held that the capacity of employer is not to be considered as the welfare State assumes every employer must pay the minimum wages to its labour before employing them so as to prevent the exploitation of labours.

123. The Apex Court in the case of ***Sukanya Shantha (supra)*** has dealt with contours of Article 14 of the Constitution of India, and in paragraph no.34 of the judgement, the Apex Court has summarized the constitutional standard laid down by the Court under Article 14 of the Constitution of India. Paragraph no.34 of the said judgement is reproduced herein below:-

"34. The constitutional standards laid down by the Court under Article 14 can be summarized as follows. First, the Constitution permits classification if there is intelligible differentia and reasonable nexus with the object sought. Second, the classification test cannot be merely applied as a mathematical formula to reach a conclusion. A challenge under Article 14 has to take into account the substantive content of equality which mandates fair treatment of an individual. Third, in undertaking classification, a legislation or subordinate legislation cannot be manifestly arbitrary, i.e. courts must adjudicate whether the legislature or executive acted capriciously, irrationally and/or without adequate determining principle, or did something which is excessive and disproportionate. In applying this constitutional standard, courts must identify the "real purpose" of the statute rather than the "ostensible purpose" presented by the State, as summarized in ADR. Fourth, a provision can be found manifestly arbitrary even if it does not make a classification. Fifth, different constitutional standards have to be applied when testing the validity of legislation as compared to subordinate legislation."

124. It is true that a law should satisfy the twin test as laid down by the Apex Court in order to pass the test of reasonable classification. However, the Madras High Court has categorically repelled the contention of employer that amendment in Section 12 of the Act, 1965 amounts to class legislation and is discriminatory. Therefore, the judgement of Apex Court in the case of ***Sukanya Shantha (supra)*** is of no help to the petitioners.

125. Thus for the reasons given above, we are of the view that all the writ petitions lack merit and are, accordingly, ***dismissed*** with no order as to costs.

(2026) 2 ILRA 681
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.02.2026

BEFORE

THE HON'BLE AJIT KUMAR , J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 7685 of 2025

Jm Pharma A Proprietorship Firm ...Petitioner
Versus
Principal Secretary, Department of Medical Health & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether cancellation of tender/purchase order and adverse action based on an enquiry conducted without furnishing details of allegations, without supplying supporting material, and without affording reasonable opportunity of hearing to the petitioner is vitiated for violation of the principles of natural justice; and whether, in such circumstances, the matter requires a fresh enquiry.

HEADNOTE

Constitution of India – Art.226 – Tender/Contract – Cancellation of bid – Enquiry report – Administrative Law – Principles of natural justice – Rule of Law – Petitioner awarded contract pursuant to bid – Supply made – CRAC generated – Payment not released – Enquiry conducted alleging substandard supply and irregularities – Tender cancelled – Maintainability and validity: Fairness, transparency, and impartiality in administrative action are facets of the Rule of Law – Every authority is bound to act within the framework of law and cannot exercise power unreasonably or arbitrarily – Decisions affecting rights must be based on relevant material and objective considerations – The affected party must be informed about allegations and be supplied with all relevant documents and reports relied upon, and granted a reasonable and meaningful opportunity to rebut all the allegations and defend the case – The Rule of Law requires that discretion be exercised without bias or predetermined conclusions – Where serious civil consequences such as cancellation of contract or blacklisting are involved, strict adherence to natural justice is mandatory – Any action taken in violation of these principles cannot be sustained in law.

Held: In the instant case, a tender was issued for supply of diagnostic material – The petitioner was selected as the successful bidder and a purchase/work order was issued – The petitioner supplied the material and a Consignee Receipt and Acceptance Certificate (CRAC) was generated indicating acceptance of goods – The petitioner sought release of payment – Subsequently, an enquiry committee was constituted; the first enquiry report recorded that the quantity was complete and quality could be assessed only through laboratory testing, whereas a subsequent enquiry alleged discrepancies and supply of substandard material – A show cause notice was issued, to which the petitioner submitted a reply denying the allegations – The purchase order was cancelled. ***Held:*** Petitioner was not provided any details of defective goods or any laboratory reports in support of the allegation of substandard quality in the show cause notice – The petitioner was also not made to participate in the enquiry and was not given details of the allegations or the basis of the impugned opinion, nor any reasonable opportunity to respond – The entire action is in violation of the principles of natural justice – Successful generation of CRAC indicates that the petitioner is legally entitled to receive payment – The impugned order and enquiry report are quashed – The matter is remanded for fresh enquiry by a new committee – Direction issued to provide a fresh show cause notice along with all material relied upon and to afford a reasonable opportunity of hearing. [Paras 27, 28, 29] **(E-5)**

CASE LAW CITED

Uma Nath Pandey v. State of U.P., (2009) 12 SCC 40;
Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105;
Daffodills Pharmaceuticals Ltd. v. State of U.P., (2020) 18 SCC 550;
UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551

List of Acts

Constitution of India.

List of Keyword

Natural justice; Audi alteram partem; Show cause notice; Cancellation of tender; Enquiry report; Civil consequences; Rule of law; CRAC; Payment obligation; Arbitrary administrative action; Opportunity of hearing; Remand for fresh enquiry.

CASE ARISING FROM

From the order dated 04.03.2025 cancelling the bid and enquiry report dated 13.02.2025.

Appearances for Parties

Advs For Petitioner: Udai Chandani

Advs For Respondents: C.S.C., Pooja Singh, Rekha Singh

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Sri Udai Chandani, learned counsel appearing for the petitioner and Sri Sanjeev Singh, learned Additional Advocate General assisted by Sri Ratan Deep Mishra, learned Standing Counsel for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner, who is proprietorship firm in a business of pharmaceutical, mainly prays for writ in the nature of certiorari seeking quashing of the order dated 04.03.2025, whereby the bid dated 25.11.2024 granted in the favour of the petitioner has been cancelled. Petitioner further seeks writ in the nature of certiorari seeking quashing of the enquiry report dated 13.02.2025 as well. Petitioner also prays for a writ of mandamus to command respondent no. 5 to release payment due against the invoices raised pursuant to the work order dated 25.11.2024.

3. The background fact of the matter is that petitioner participated in a tender bearing bid no. GEMC/2024-25/B/5533411 dated 23.10.2024 issued by the office of respondent no. 5 for diagnostic material and got selected for providing the material. Petitioner entered into a contract on 25.11.2024 in pursuance of the above mentioned bidding. Learned counsel appearing for the petitioner submitted that as per the work order, the material was to be supplied by the petitioner by 10.12.2024 after due verification of sample, but certain materials were not available, therefore, an extension application was filed, and fifteen days of extension was provided to the petitioner on 15.12.2024. The counsel for the petitioner submits that materials were supplied within time, considering the extension granted, and were duly accepted by the respondent authority.

4. Learned counsel appearing for the petitioner further submits that the bid document required the successful bidder to obtain approval of sample in advance before commencing bulk supply and it was a matter of record that the petitioner had addressed a letter to the Chief Medical Officer requesting acceptance of the sample submitted for GEMC/2024-25/B/5533411. After entire material was supplied to the respondent no. 5, the Consignee Receipt and Acceptance Certificate (hereinafter referred to as ?CRAC?) was generated, which acknowledged a fact that services rendered by the petitioner was satisfactory and within ten days from generation of CRAC, the payment, as raised by the petitioner, was to be released.

5. Learned counsel submitted that the letter dated 07.01.2025 was sent to the Chief Medical Officer seeking release of payment of Rs. 1,60,47,000/-, stating that the required documents had already been uploaded and that there was delay in payment. Further, the petitioner had sent reminders in this regard, but petitioner got to know from the Chief Medical Officer, Kanpur Nagar that an enquiry committee was constituted on 07.02.2025, which submitted its report dated 13.02.2025 and subsequently, by office letter dated 03.03.2025, the purchase order dated 25.11.2024 bearing Purchase Order No. GEMC-511687758881075 was cancelled. As a sequel to that the Additional Chief Medical Store, Chief Pharmacist and Pharmacist, Central Drug Store were directed to initiate the process for return of all materials relating to the said purchase. In pursuance of the above, the Chief Medical Officer issued a consequential letter dated 04.03.2025.

6. Learned counsel further submitted that the inquiry committee had analyzed the materials in the store on 16.01.2025 and had observed that no sample material was provided to the committee, and materials the inquiry report stated, which was received by the committee, was found complete in quantity. The report further stated that in absence of sample provided before the supply of the materials which was to be analyzed, the quality assessment and comparison could not have been done. It further observed that the supplied materials were related to pathology lab and the materials were as per the standard norms and therefore, there could not have been any comment on this without any lab examination.

7. He next submitted that there was another report dated 23.12.2024 which stated that the materials were sub-standard and those were less in numbers. The report further stated that the extension of the date was not based upon correct documents as there was no document available which would have demonstrated that there was any time extension provided to the seller by the Chief Medical Officer. The report further stated that on 14.12.2024, the Chief Medical Officer, who got transferred was to provide time extension.

8. The petitioner's counsel submitted that by letter dated 29.01.2025, which got issued in the nature of a show cause notice proposing blacklisting of the petitioner's firm, it was stated that pursuant to the petitioner's earlier letter dated 07.01.2025 seeking payment, a three-member enquiry committee was constituted on 10.01.2025 to examine Bid No. GEMC/2024-25/B/5533411 dated 23.10.2024 and Purchase Order No. Gem C-511687758881075 dated 25.11.2024, and to submit its report within three days, which was communicated to the petitioner on 18.01.2025. The petitioner's counsel submitted that the committee conducted an enquiry on 24.01.2025 and alleged differences in items and quantity, supply of substandard materials, and termed the purchase process as suspicious, stating that payment could not be released as per rules. It was further alleged that the petitioner had not supplied the materials as per the terms and specifications of the tender and was creating pressure for payment. By the said notice, the petitioner was granted two days' time to supply the materials in accordance with the tender conditions, failing which the tender and purchase order would be cancelled, the security amount forfeited, and the firm recommended for blacklisting.

9. Learned counsel for the petitioner referred to the detailed reply dated 30.01.2025 that was filed in response to the show cause notice dated 29.01.2025 and while referring reply, he submitted that the enquiry committee was constituted only after he sought payment on 07.01.2025 and hence

the action was unreasonable and arbitrary. He referred to earlier enquiry report dated 16.01.2025, which, recorded that the quantity supplied was adequate and that quality could be determined only through laboratory testing. Learned counsel also submitted that the the inspection report dated 23.12.2024 was not supplied to him. He further contended that without laboratory testing, the allegation of substandard material was unfounded.

10. He further submitted that the subsequent enquiry dated 24.01.2025 recorded contrary findings, termed the materials substandard, and questioned the procurement process, while the enquiry committee had no authority to examine the legality of a duly approved purchase, which was already concluded. He further stated that the show cause notice did not specify any item-wise defects, batch numbers, brands, or enclose any laboratory report, and that grant of only two days? time to reply amounted to denial of reasonable opportunity.

11. Learned counsel also contended that CRAC had already been issued without objection as to quality or quantity and that payment was required to be made within ten days thereof as per rules. He alleged that re-examination at a later stage was only to delay payment and raised apprehension of tampering during the intervening period. He asserted that he had supplied the materials strictly in terms of the tender, enclosed receipts and valid laboratory reports, denied exerting any undue pressure, and alleged mala fide intent to cancel the tender and blacklist his firm.

12. Learned counsel further submitted that the petitioner send letter to the District Magistrate, Kanpur Nagar against arbitrary action of the Chief Medical Officer, Kanpur Nagar, Assistant Chief Medical Officer and Chief Pharmacist for non-cooperating in providing the details of the materials which allegedly not provided by the petitioner. He reiterated that the petitioner had not been provided any details of goods which were not claimed to have not been supplied or the details of goods which was sub-standard.

13. Learned counsel contended that the bid document provided that the tender committee had the sole authority to accept or reject any bid and to cancel the ongoing bid without prior notice. The contract contained a termination clause, which permitted the buyer to terminate the contract by written notice if the seller failed to supply the materials within the stipulated period or failed to replace or rectify defective goods but this was not the case where CRAC was also generated and payment was being delayed even after sending reminders.

14. Learned counsel appearing for the petitioner submitted that after CRAC dated 15.12.2024, petitioner was entitled to receive payment from the respondent within ten days. Learned counsel for the petitioner placed reliance upon the Office Memorandum dated 03.07.2020 issued by the Ministry of Finance, Government of India, which is reproduced below for the ready reference:

"No F 6/18/2016-PPD

Government of India Department of Expenditure

Ministry of Finance

Procurement Policy Division

512. Lok Nayak Bhawan

New Delhi Dated the 3rd July 2020

OFFICE MEMORANDUM

Subject: ***Prompt payment to suppliers including MSMEs: Charging of interest on delayed payments in Government e-Marketplace (GeM)***

Reference This Department OM No FG/18/2019-PPD dated 23.01.2020

1. Government has been repeatedly emphasizing the need for prompt payment to vendors specially the MSME vendors. The intent of the Government in this regard has been articulated under the Aatmanirbhar Bharat pronouncements. For procurements made under rule 149 of GFRs 2017, ***buyers are mandated to make payments within 10 calendar days after generation (including auto generation) of Consignee Receipt and Acceptance Certificate (CRAC) in the GeM.***

2. In order to promote greater discipline and timeliness in payment to vendors it is decided that whenever a CRAC is auto generated or issued by a buyer and payment is not made 10 days thereafter the buyer organization will be required to pay penal interest @ 1% per month for the delayed payment beyond the prescribed timeline till the date of such payment. The charge of interest shall be prorated for the period of delay. [For example, if CRAC is generated on the 1st day of a month and payment is made by the buyer organization on the 20th day of the month, interest for 10 days will be charged. The penal interest will be 10/30 multiplied by 1% i.e. 0.33%] Month may be taken as 30 days in all cases.

3. The amount collected in this regard shall be deposited in an account maintained by GeM. This interest will not be paid to the vendor and will be kept by GeM in a separate account which will be used only for the education of sellers/buyers etc or other purposes related to GeM or public procurement with the prior approval of Department of Expenditure. This shall not cover any other interest payable to vendors under any law of contractual obligations, which will be over and above the interest as charged above.

4. The above conditions will be applicable for all procurements made from 1st October 2020.

5. This issues with the approval of Finance Minister.

Sd/-
(Kotluru Narayana Reddy)
Deputy Secretary to the Govt of India
Tel No 24621305 Email kn reddy@gov in"

15. In the light of paragraph 2 of the above mentioned Office Memorandum, any auto-generated CRAC issued by the buyer makes it mandatory that the buyer shall make payment within ten days and if it fails to do so, there is a provision for the penal interest for delayed payment beyond that prescribed time line till the date of such payment. Bringing of provision for penal interest shows the intention of the government to ensure timely payment to the suppliers after the CRAC is generated.

16. Per contra, learned counsel appearing for respondent nos. 2 and 5 submitted that the Enquiry Committee submitted detailed report dated 13.02.2025. In the said report, it was found that a case of corruption related to the Health Department was registered against the petitioner with the CBI and STF, New Delhi, and that charge sheets had been filed and charges had been framed by the competent court, including the Court of Special Judge, Anti-Corruption/CBI, Ghaziabad. He further submitted that Case No. 40 of 2015 and Case No. 18 of 2016 were still pending.

17. Learned counsel representing respondents further submits that the petitioner uploaded a notarized affidavit along with the bid, which was based on false facts, as the aforesaid criminal cases were concealed there. He contended that the firm deliberately suppressed these facts and obtained the tender in its favour. Reliance was placed upon Government Order dated 06.11.2023 issued by the Secretary, Government of Uttar Pradesh, Medical Section-1, which directed that no agency or firm involved in corruption shall be granted work under any circumstances. It was contended that despite the said Government Order, the then GeM Buyer/Consignee and Senior Finance and Accounts Officer acted illegally and attempted to process payment in favour of the firm.

18. Learned counsel for respondent nos. 2 and 5 further submitted that the purchase order was issued to the petitioner firm on 25.11.2024 in relation to the bid, in which the time period was fixed for 15 days, which was expiring on 10.12.2024, but the supply as per the purchase order was not completed by the petitioner firm within the stipulated period. On 14.12.2024, the Chief Medical Officer was transferred by the government, after which new Chief Medical Officer assumed charge on 16.12.2024.

19. The Enquiry Committee examined the purchase order issued on the GeM portal and found that on 15.12.2024, which was Sunday, the then GeM Buyer and GeM Consignee extended the time for supply of medical items without any written order from the then Chief Medical Officer, Kanpur Nagar. It was also recorded that the then GeM Buyer and GeM Consignee took advantage of the period between the transfer of the earlier Chief Medical Officer and the joining of the present Chief Medical Officer, extending the supply period in haste and contrary to rules, before the generation of the CRAC.

20. Learned counsel further submitted that the Enquiry Committee found that the acts of the GeM Buyer and GeM Consignee violated rules, and acted to benefit the firm. The Committee observed that the materials supplied under the bid were substandard, with discrepancies between the batch numbers on the bill vouchers uploaded on the GeM portal and those of the materials physically received were in lesser quantity. The department instructed that the materials be returned after informing the firm of these issues and of its being charge-sheeted by the CBI under serious

sections. He further submitted that departmental investigation also found the petitioner and certain officials guilty, and legal action had been initiated against them.

21. Learned counsel appearing for the petitioner submitted in the rejoinder argument that there was no suppression of fact as alleged by the respondent as no charges were ever framed against the petitioner and nor was he convicted in any case by the court. He submits that cases were against respondent no.5 and that could not have been interpreted as suppression of facts by petitioner at initial stage. He also contended that the enquiry was conducted by same authority against whom the petitioner has preferred complained before district magistrate and this alone rendered complete action at fault as it was against the principle that ?no one can be judge of his own cause?. Learned counsel for the petitioner emphasised upon a fact that there was no occasion when the petitioner was provided a show cause having details of allegations with supported evidence to provide too short time to submit reply. It was also contended that the impugned enquiry report was ex-parte which had the adverse effect on petitioner and, therefore, the same deserved to be quashed.

22. Issues that fall for consideration are; whether the issuance of the Consignee Receipt and Acceptance Certificate (CRAC) validates satisfactory supply of goods and entitles the petitioner to get timely payment and therefore the respondent is under liability to make payment; whether petitioner was given proper show cause having allegations and the basis to form a conclusive view and the enquiry was conducted fairly in accordance with the principle of rule of law, and whether the petitioner was afforded a reasonable and adequate opportunity to rebut allegations.

23. Having dealt with the factual matrix and the rival submissions, it is now necessary to advert to the settled principles applicable to the controversy involved in the matter. In ***Uma Nath Pandey v. State of U.P., (2009) 12 SCC 40***, the Supreme Court has held that:

"(10). The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play."

24. This is the settled principle which has been consistently followed and in ***Gorkha Security Services v. Govt. (NCT of Delhi) (2014) 9 SCC 105***, Supreme Court has held that any exercise of power prejudicially affecting another must be in conformity with the rule of natural justice. ***Daffodills Pharmaceuticals Ltd. v. State of U.P., (2020) 18 SCC 550 and UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551*** has also followed the same principles.

25. On a careful consideration of the facts of the case, and submissions advanced by counsel, it appears that the entire dispute arose due to contradictory reports and allegation of procedural irregularities. The grievance of the petitioner is that after sample approval, goods were supplied within the extended time, and thereafter CRAC was generated and yet payment was delayed despite repeated reminders made. Respondent's allegation is that the product did not get delivered timely and failed to meet the quality as well as quantity, both were not satisfactory. It is also clear from records that there were two enquiry committee reports having differing findings. While report dated 16.01.2025 recorded that quantity was adequate and quality could only be determined, though examination in lab but the subsequent enquiry report dated 24.01.2025 concluded that substandard materials were supplied and questioned the procurement process as well.

26. Fairness, transparency, and impartiality in administrative action are facets of the Rule of Law. Under the Rule of Law, every authority is bound to act within the framework of law and cannot exercise power unreasonably or arbitrarily. Decisions affecting rights must be based on relevant material and objective considerations. The affected party must be informed about allegations, and be supplied with all relevant documents and reports relied upon, and granted a reasonable and meaningful opportunity to rebut all the allegations and defend the case. The Rule of Law requires that discretion be exercised without bias or predetermined conclusions. Where serious civil consequences such as cancellation of contract or blacklisting are involved, strict adherence to natural justice is mandatory. We are of the considered view that any action taken in violation of these principles cannot be sustained in law.

27. It in the facts of the case, petitioner was not provided any details of defective goods or any laboratory reports in support of the allegation of substandard quality in the show cause notice. Further, the extension of supply time on 15.12.2024, by the then Chief Medical Officer, and successful generation of CRAC, indicates that the petitioner is legally entitled to receive payment. From bare reading of the impugned report, it appears that the petitioner was not made to participate in the enquiry and, therefore, there was no occasion for the petitioner to defend any of the allegations made against him. In fact, petitioner was not given details of the allegations and the basis to form that impugned opinion and the reasonable opportunity to respond. This complete action is in violation of the principle of natural justice. Considering above discussion, we are of view that there is need for an independent enquiry in the matter.

28. In view of the above, petition deserves to be allowed to the extent that a fresh enquiry is conducted by a new enquiry committee, comprising officers who were not previously involved in the case. We direct respondent no.1 to set up an enquiry committee within period of two weeks from the date of this order. The Chairperson of the Committee shall be an Additional Secretary and members shall not be from the same District Administration as there was allegation regarding connivance. A fresh show cause notice along with all documents forming basis of the allegations shall be provided to the petitioner and the petitioner shall have reasonable opportunity to respond all allegations. The fresh enquiry is directed to be completed in eight weeks for giving the fresh show cause notice to the petitioner.

29. Accordingly, the petition is **partly allowed**. The impugned order dated 04.03.2025 and enquiry report dated 13.02.2025 are quashed. The matter is remanded to the respondent no.1, for fresh enquiry and decision in terms of the directions issued hereinabove.

30. In the circumstances, petitioner would be permitted to participate in future tender proceedings.

31. No order as to costs.

(2026) 2 ILRA 690
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ C No. 13237 of 2025

The C/M, Nawab Singh Chauhan Gramodaya Inter College & Anr. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Matter pertains to the legality of the order passed by the Regional Level Committee rejecting rival elections of Committee of Management and directing fresh elections on the basis of undisputed membership list of the year 2012; and the validity of subsequent elections conducted pursuant thereto.

HEADNOTE

U.P. Intermediate Education Act, 1921, s.16-A(7) – Societies Registration Act, 1860, s.4-B – Scheme of Administration – Dispute regarding membership and validity of elections of Committee of Management Rival elections set up by parties – Regional Level Committee rejected both elections holding membership lists manipulated – Directed fresh election on basis of undisputed list of 284 members of year 2012 – Challenge – Justification:

Held: It is a case arising out of a dispute essentially of admission of new members and removal of old members and such meetings have to be conducted strictly in terms of provisions of the Scheme of Administration – Though the Scheme permits that in absence of President, Vice-President can conduct the meeting, however, there must be legally sustainable reasons for his absence, which do not reflect from the minutes – No communication from the President was placed on record – Even though further procedure may appear to be in terms of the Scheme, the manner in which the meeting was conducted was not proper – There is no sufficient material to demonstrate how names of forty members were deleted except a general reference that some of them are dead and no documentary proof was taken on record – Thus, the meeting in which sixty members were admitted and forty members were deleted was not conducted in accordance with the Scheme of Administration – Expulsion of members on allegations of misconduct without any declaration that they were found guilty and without affording opportunity is also not proper – There is no legally sustainable reason to conduct election about six months before expiry of tenure and the observation that

decision was taken in a secret manner has substance – Elections are required to be conducted in a fair manner, however, such fairness was missing – All three meetings were not conducted properly – There is no error in the impugned order – Fresh election has already been concluded pursuant to the impugned order – No ground exists to cause interference – Writ petition lacks merit and is dismissed. [Paras 21, 22, 24, 25, 26, 27] **(E-5)**

CASE LAW CITED

Nil.

List of Acts

U.P. Intermediate Education Act, 1921;
Societies Registration Act, 1860.

List of Keyword

Committee of Management; Membership dispute; Scheme of Administration; Induction of members; Removal of members; Validity of elections; Regional Level Committee; Undisputed membership list; Fresh elections; Abuse of procedure; Noncompliance of statutory scheme; Election irregularities.

CASE ARISING FROM

From the order dated 29.03.2025 passed by the Regional Level Committee, Aligarh Region, Aligarh and consequential order dated 16.05.2025 passed by District Inspector of Schools, Aligarh.

Appearances for Parties

Advs For Petitioner: Shivendu Ojha, Sneh Pandey, Sr. Advocate.

Advs For Respondents: Bachchu Lal Yadav, C.S.C., Wahid Jamal.

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

1. Present writ petition is filed by Committee of Management of Nawab Singh Chauhan Gramodaya Inter College, Aligarh through its Manager (Smt. Niharika Chauhan) whereas respondent-4 (Ravindra Singh Chauhan) has also claimed that he was the elected Manager of said Committee of Management.

2. Present case is arising out of a direction passed by this Court in Writ C No. 42499/2023 decided along with Writ C No. 12426/2022 filed by petitioners herein vide a judgment dated 16.07.2024 wherein following observations and directions were passed :-

"The outcome of the aforesaid discussion is that elections to a Committee of Management of an institution and its office- bearers are to be held in accordance with the Scheme of Administration. Any transgression from the scheme prescribed in the Scheme of Administration would invalidate the elections and any elections held according to the provisions of the Scheme of Administration cannot be rejected by the DIOS or the Regional Level Committee on the ground that

the elections were not in accordance with the Government Order dated 21.11.2008. Under Section 16-A(7) of the Act, 1921, the educational authorities "the District Inspector of Schools, the Regional Level Committee, the Joint Director or any other authority" can only look into the question as to whether the elections set up by the concerned party was in accordance with the Scheme of Administration. The educational authorities while deciding any dispute regarding rival claims set up by the parties under Section 16-A(7) cannot go beyond the provisions of the Scheme of Administration. Resultantly, where the Scheme of Administration of the institution stipulates a general body of the institution separate and different from the general body of the parent society, i.e., the society which runs the institution, and the general body of the society is not the electoral College for electing the Committee of Management and the office bearers of the institution, the elections cannot be invalidated on the ground that the elections were held on a list which was not registered under Section 4-B of the Act, 1860.

In the present case, the Scheme of Administration of the College was approved by the Regional Joint Director of Education, Agra. It is not the case of the respondents that any action was taken or any notice was issued to the College by the Director under Section 16-B or Section 16-CCC to include in the Scheme of Administration of the College the provisions of the Government Order dated 21.11.2008. The provisions stipulated in the Government Order dated 21.11.2008 were not incorporated in the Scheme of Administration of the College. There is nothing on record in the present case to show that any proposal was made by the Director or any other authority asking the College to amend its Scheme of Administration in accordance with the provisions stipulated in the Government Order dated 21.11.2008.

The Scheme of Administration of the College provides for a general body of the College separate and different from the general body of the Society. There is no provision either in the Scheme of Administration of the College or in the bye-laws of the Society providing that members of the general body of the Society shall automatically also be members of the general body of the College or that the general body of the Society shall also be the general body of the College. The Scheme of Administration of the College provides that any person desirous of being member of the general body of the College shall deposit the requisite fees, either by cheque or bank draft issued in the name of the College, along with an application recommended by any member of the general body of the College and submit the application before the Treasurer of the College. The application shall be placed before the Manager who shall in turn place the same before the Committee of Management and in case, the Committee of Management refuses to enroll the said person as member of the College, the matter shall be placed before the general body of the College. ***Clause - 5 of the Scheme of Administration provides that if the general body of the College agrees to admit the applicant as member, the applicant shall be admitted as member with effect from the date the cheque or the bank draft was submitted by him. A reading of Clause - 5 of the Scheme of Administration shows that it is the general body of the College which has the authority to decide on the admission of any applicant as a member of the general body of the College and the society "its general body or its governing body" has no role in the matter. The Scheme of Administration of the College also provides that the Executive Committee of the College shall be constituted by elections from amongst members of the general body of the College and the elections shall be held by the general body of the College. The Scheme does not stipulate participation of the general body of the Society in the elections of the Committee of Management or its office-bearers. Clause - 26 of the Scheme of Administration also provides that any order passed by the Registrar, Firms, Societies and Chits shall not be applicable either on the general***

body of the College or on the Executive Committee of the College. In short, the general body of the Society is not the electoral College which elects the Committee of Management and the office bearers of the College. Thus, the elections of the Committee of Management and the office bearers of the College cannot be rejected on the ground that the elections were held, on a list of members which was not registered under Section 4-B of the Act, 1860. Any order rejecting the elections on the ground that the election was held on a list not registered under Section 4-B of the Act, 1860 would be vitiated because of consideration of irrelevant material. As a corollary, any election held on a list registered under Section 4-B of the Act, 1860 and excludes members of the general body of the College who were not members of the general body of the Society would be contrary to the Scheme of Administration and invalid.

In view of the aforesaid, the elections of the Committee of Management of the College set up by the petitioners and by respondent no. 4 and referred to the Regional Level Committee by the DIOS vide his order dated 15.12.2021 could not have been rejected on the ground that the elections were held on a list of members which had not been registered under Section 4-B of the Act, 1860. The decision / order dated 29.3.2022 passed by the Regional Level Committee rejecting the elections set up by the petitioners as well as the respondent no. 4 on the aforesaid ground is contrary to law. The consequential order dated 30.3.2022 passed by the Joint Director of Education appointing an Authorized Controller in the College is, for the same reason also contrary to law. The appointment of Authorized Controller in the College has been declared illegal. It has also been held that the elections of the Committee of Management and the office bearers of the College could not have been held on a list registered under Section 4-B of the Act, 1860 and such an election would be invalid because it would be contrary to the Scheme of Administration. For the said reasons, the elections dated 10.9.2023 were invalid and contrary to law.

Thus, the order dated 14.9.2023 passed by the District Inspector of Schools, Aligarh recognizing the elections dated 10.9.2023 electing the respondent no. 4 as Manager of the Committee of Management of the Institution is also contrary to law.

For the aforesaid reasons, ***the orders dated 29.3.2022, 30.3.2022 and 14.9.2023 are contrary to law and are, hereby, quashed.***

The matter is remanded back to the Regional Level Committee, Aligarh Region, Aligarh, i.e., respondent no. 2 to decide the dispute regarding the rival elections set up by the petitioners and respondent no. 4 and referred to it by the District Inspector of Schools, Aligarh by his letter dated 15.12.2021 afresh in accordance with the observations made above. Appropriate orders shall be passed by the Regional Level Committee and by the District Inspector of Schools, Aligarh within a period of two months from today and the Regional Joint Director of Education, Aligarh Region, Aligarh shall ensure that appropriate orders are passed by the Regional Level Committee and the District Inspector of Schools within the time prescribed by this Court.

Till the decision of the Regional Level Committee, the College shall be managed by an Authorized Controller appointed by the Joint Director of Education, Aligarh Region, Aligarh.

With the aforesaid directions and observations, the writ petitions are allowed.

A copy of this order shall be sent to the Joint Director of Education, Aligarh Region, Aligarh by the Registrar (Compliance) within ten days for necessary compliance."

3. In aforesaid circumstances, impugned order dated 29.03.2025 was passed by Regional Level Committee whereby it was held that election conducted by either party was not conducted as

per valid list of 284 Members and it was also directed that a list dated 26.06.2012 on which earlier, undisputed election was conducted would be the valid list and after removing names of Members who have meanwhile died, a fresh election be conducted. For reference, relevant part of impugned order is quoted below :-

"<u>विवेचना **(Analysis)**</u>

मण्डलीय समिति की बैठक दिनांक 29.03.2025 में सम्बन्धित पक्षों द्वारा उपलब्ध कराये गये अभिकथनाेंं उत्तर/प्रत्युत्तर एवं प्रत्युत्तर के जवाबों तथा काार्यालय में उपलब्ध अभिलेखों की विवेचना की गयी। विवेचना में निम्न तथ्य उभरकर सामने आये।

1- ग्राम शिक्षा समिति कासिमपुर अलीगढ़ सोसाइटी रजिस्ट्रेशन अधिनियम-21 सन् 1860 के तहत एक पंजीकृत संस्था है, जिसका पंजीकरण दिनांक 19.07.1982 को पंजीकरण संख्या 4291/1982-83 पत्रावली सं. बी-1278 पर हुआ। <u>उक्त का नवीनीकरण दिनांक 26.10.2020 को दिनांक 16.07.2024 से पांच वर्ष के लिए विधिमान्य है। उक्त संस्था का नवीनीकरण श्री रवेन्द्र सिंह चौहान प्रबन्धक द्वारा समय-समय पर कराया गया है एवं संस्था प्रबन्ध समिति में वर्ष 2002 से श्री रवेन्द्र सिंह चौहान अनवरत प्रबन्धक रहे हैं, जो उप निबन्धक फर्म्स सोसाइटी एवं चिट्स आगरा से पंजीकृत/मान्य है। उक्त पंजीकृत संस्था द्वारा नवाब सिंह चौहान ग्रामोदय इण्टर कॉलेज कासिमपुर पावर हाउस अलीगढ संचालित है। उक्त साधारण सभा के सदस्य प्रशासन योजना में वर्णित प्रावधानों के अनुसार है। विद्यालय साधारण सभा के सदस्य उसी नाम पते से संस्था सोसाइटी साधारण सभा के सदस्य हैं, सोसाइटी साधारण सभा के सदस्य सोसाइटी नियमावली के अनुसार बने हैं। विद्यालय एवं सोसाइटी की साधारण सभा में उसी नाम पते के व्यक्ति पाये गये। विद्यालय प्रबन्ध समिति का चुनाव विद्यालय की अनुमोदित प्रशासन योजना के अन्तर्गत साधारण सभा के सदस्यों से तथा संस्था सोसाइटी का चुनाव सोसाइटी नियमावली के अन्तर्गत साधारण सभा के सदस्यों से सम्पन्न होना पाया गया। विद्यालय प्रबन्ध समिति में वर्ष 2002 से दिनांक 24.06.2012 तक श्री रवेन्द्र सिंह चौहान प्रबन्धक रहे हैं।</u>

2- <u>उक्त विद्यालय की प्रबन्ध समिति का पिछला निर्विवादित चुनाव दिनांक 25.06.2012 को सम्पन्न हुआ</u>, जिसमें अध्यक्ष पद पर श्री महेन्द्र सिंह चौहान तथा प्रबन्धक पद पर श्री विपिन कुमार चौहान निर्वाचित हुए। प्रशासन योजना में प्रबन्ध समिति का कार्यकाल पांच वर्ष है।

3- <u>प्रबन्ध समिति का अगला चुनाव कार्यकाल समाप्ति से 6 माह पूर्व दिनांक 02.01.2017 को प्रबन्ध समिति का चुनाव श्री जगदीश सिंह चौहान की अध्यक्षता में सम्पन्न होना दर्शाया गया जबकि आउटगोइंग प्रबन्ध समिति के निर्वाचित अध्यक्ष श्री महेन्द्र सिंह चौहान थे, तब श्री जगदीश सिंह चौहान द्वारा चुनाव हेतु साधारण सभा की अध्यक्षता प्रशासन योजना के प्रावधानों के विपरीत और अनियमित पायी गयी। इस सम्बन्ध में प्रकरण में बार-बार की गयी सुनवाई के समय अभिकथनों, प्रत्युत्तरों एवं प्रत्युत्तरों के जवाब में याची श्रीमती निहारिका चौहान द्वारा किसी भी प्रकार का जवाब नहीं दिया जा सका। जिससे</u>

ऐसा प्रतीत होता है कि वर्ष 2017 में प्रबन्ध समिति का चुनाव कार्यकाल समाप्त होने से 06 माह पूर्व गोपनीय रूप से दर्शाया गया।

4- याची पक्ष द्वारा कराये गये चुनाव में प्रयुक्त साधारण सभा की सूची में श्री रवेन्द्र सिंह चौहान, श्री महेन्द्र सिंह चौहान व श्री लाखन सिंह आदि ऐसे अनेक सदस्यों के नाम अंकित नहीं है, जो वर्ष 2012 तक वैध आजीवन सदस्य रहे है। उक्त सन्दर्भ में याची पक्ष द्वारा प्रयुक्त साधारण सभा की सूची का गहन परीक्षण करने पर पाया गया है कि जो वर्ष 2012 तक के चुनावों में मान्य एवं वैध सदस्यता सूची थी में से 40 आजीवन सदस्यों को हटाकर तथा 63 नये सदस्य जोड़कर तैयार की गयी सदस्यता सूची वर्ष 2017 एवं 2021 के चुनाव में प्रयुक्त की गयी है, जो बिना किसी विधिवत कार्यवाही के मनमाने तरीके से नये 63 सदस्य जोड़कर तैयार की गयी है, जिसका विवरण निम्नवत् है :-

साधारण सभा के उन सदस्यों के नाम जो वर्ष 2012 तक के निर्विवादित चुनावों में प्रयुक्त साधारण सभा की सूची से प्रथक किये गये है।					
सूची क्रमांक	सदस्य का नाम	सूची क्रमांक	सदस्य का नाम	सूची क्रमांक	सदस्य का नाम
4	श्री कैलाश चन्द्र सिंघल	5	श्री उदयभान सिंह राना	8	श्री नेत्रपाल सिंह चौहान
13	श्री कृष्ण कुमार सिंह तोमर	15	श्री महाबीर सिंह	27	श्री महाराज सिंह राघव
33	श्री दुष्यन्त सिंह राठौर	35	श्रीमती प्रकाश कुमारी	44	श्री डी०पी० सिंह
46	श्री विनय कुमार सिंह तोमर	52	श्री सुखपाल सिंह छोकर	53	श्री बृजभान सिंह तोमर
57	श्री मिथलेश सिंह	60	श्री नरेन्द्र सिंह चौहान	62	श्री नगेन्द्र सिंह चौहान
63	श्री प्रमोद कुमार	64	श्री विजेन्द्र गालिफ	71	श्री प्रताप सिंह चौहान
75	श्री सुभाष चौहान	76	श्री रवेन्द्र सिंह चौहान	82	श्री सुरेश चौहान
85	श्री महेन्द्र सिंह चौहान	86	श्री बीरेश चौहान	87	श्री हरीश चन्द्र शर्मा
97	श्रीमती मीरा देवी	108	श्री राज कुमार सिंह	123	श्री मुकेश कुमार सिंह
124	श्री प्रमोद कुमार सिंह	125	श्री मनोज कुमार शर्मा	126	श्री ललित कुमार

127	श्री हरपाल सिंह	159	श्री पुष्पेन्द्र सिंह	219	श्री धीरज सिंह तोमर
231	श्री भूपेश प्रताप सिंह	240	श्री लाखन सिंह तोमर	245	श्री पदम सिंह
247	श्रीमती प्रवेश	266	श्रीमती रिकी कुमारी	267	श्रीमती नीतू कुमारी
274	श्री सूर्यकान्त				

साधारण सभा के उन सदस्यों के नाम जो वर्ष 2017 एवं 2021 के चुनाव में बढ़ाये गये है।

सूची क्रमांक	सदस्य का नाम	सूची क्रमांक	सदस्य का नाम	सूची क्रमांक	सदस्य का नाम
6	श्री योगेश सिंह राघव	49	श्रीमती नीतू रानी	50	श्री महिपाल सिंह
109	श्रीमती कुसुमलता देवी	249	श्री लक्ष्मन सिंह	250	श्रीमती कमलेश देवी
251	श्री राजेन्द्र सिंह	252	श्री रिशीपाल सिंह	253	श्री श्रीकृष्ण
254	श्रीमती धर्मवती	255	श्री अमित कुमार	256	श्री विल्लू कुमार
257	श्रीमती संजयरानी	258	श्री रोहित कुमार	259	श्री मुखत्यार सिंह
260	श्रीमती रूपवती देवी	261	श्री सर्वजीत सिंह	262	श्री परमजीत सिंह
263	श्री इन्द्रदेव सिंह	264	श्रीमती मछला देवी	265	श्री धीरज कुमार
266	कु० शीतल	267	श्री गोविन्द राव	268	श्रीमती लक्ष्मी
269	श्री राजवीर सिंह	270	श्रीमती सुमन	271	श्रीमती मोनिका
272	श्री संजीव आनन्द	273	श्रीमती भावना आनन्द	274	श्री दिव्येन्द्र चौधरी
275	श्रीमती रश्मि चौधरी	276	श्री योगेन्द्र प्रताप सिंह	277	श्री चमन चौधरी
278	श्री नृपेन्द्र सिंह	279	श्रीमती अन्जू	280	श्री अभय कुमार
281	श्री अन्नू कुमार	282	श्री गोपाल	283	श्रीमती सुमन देवी

284	श्री हरीश कुमार	285	श्रीमती मंजू देवी	286	श्रीमती मीरा चौहान
287	श्री प्रभव चौहान	288	कु० पुलकिता चौहान	289	कु० रिशु
290	श्री मनोज सागर	291	श्री संजय सागर	292	श्री विनोद
293	श्री प्रमोद कुमार	294	श्रीमती रेखा देवी	295	श्री प्रेम कुमारा
296	श्रीमती हेसमुखी	297	श्री राजाेश कुमार	298	श्रीमती कृष्णा कुमारी
299	श्री गौरव कुमार	300	कु० दिव्या	301	श्री मयंक चतुर्वेदी
302	श्री रवि अग्रवाल	303	श्री दुजेन्द्र सिंह	304	श्री धीरेन्द्र सिंह
305	श्री अनिल कुमार चौहान	306	श्री सुरेश चन्द्र वर्मा	307	श्रीमती सुधा चौहान

5- याची श्रीमती निहारिका चौहान, दावेदार प्रबन्धक वाली प्रबन्ध समिति के चुनाव में प्रयुक्त साधारण सभा की सूची में वर्ष 2012 तक के निर्विवादित चुनावों में प्रयुक्त वैध एवं आजीवन सदस्यों के नाम पृथक करने और नये सदस्यों के नाम जोड़ने के सम्बन्ध में याची श्रीमती निहारिका चौहान द्वारा कोई भी साक्ष्य/अभिलेख उपलब्ध नहीं कराये जा सके। इस प्रकार याची पक्ष द्वारा वर्ष 2012 तक के निर्विवादित चुनावों में प्रयुक्त वैध एवं आजीवन सदस्यों की साधारण सभा की सूची से मनमाने तरीके से बिना किसी प्रस्ताव/कार्यवाही के विवाद पैदा किया गया है। यहां तक कि याची का नाम वर्ष 2012 तक की वैध सदस्यता सूची में सूची क्रमांक 102 पर श्रीमती आशा कुमारी पत्नी श्री विपिन कुमार, ग्राम व पोस्ट साथा, अलीगढ़ अंकित है, को याची पक्ष वाले चुनाव में प्रयुक्त सदस्यता सूची में क्रमांक 80 पर नाम बदलकर श्रीमती निहारिका चौहान उर्फ आशा पत्नी श्री विपिन चौहान ग्राम व पोस्ट साथा, अलीगढ़ अंकित कर दिया गया है। इस प्रकार याची पक्ष द्वारा वैध सदस्यता सूची से अपने नाम में ही फेरबदल किया गया है। याची श्रीमती निहारिका चौहान दावेदार प्रबन्धक वाले पक्ष के चुनाव में वर्ष 2012 की सूची से 40 आजीवन सदस्यों के नाम हटाकर तथा 63 नये सदस्यों के नाम बिना किसी प्रस्ताव आदि कार्यवाही के जोड़कर 286 सदस्यों की सूची प्रयुक्त की गयी है।

6- याची श्रीमती निहारिका चौहान से सदस्य बनने की रसीद व उक्त से सम्बन्धित अभिलेख मांगने पर प्रत्युत्तर दिनांक 02.01.2025 बिन्दु संख्या 3 में 36 से 40 व 41 से 44 संलग्नक सदस्यता रसीदों का उल्लेख रसीद क्रमांक 102, 103, 106, 107, 108, 110, 112, 113, 120, 123 बुक संख्या 2 दिनांक 02.01.1996 एवं रसीद संख्या 180, 168, 171, 159, 160, 153, 154 बुक संख्या 2 दिनांक 10.05.1997 छायाप्रति संलग्न की गयी। उक्त रसीदें धनराशि 500 व 1000 रूपये की दर्शायी गयी। किन्तु उक्त से सम्बन्धित मूल अभिलेख जैसे सदस्यता रजिस्टर, सदस्यता जमा का कोई भी अभिलेख सुनवाई के समय मांगने पर उपलब्ध नहीं कराये जा सके।

7- श्री रवेन्द्र सिंह चौहान वर्ष 2012 तक विद्यालय की प्रबन्ध समिति के प्रबन्धक रहे हैं और श्री रवेन्द्र सिंह चौहान सचिव/मंत्री वाले पक्ष का सोसाइटी समिति पर अद्यतन प्रभावी नियंत्रक बना हुआ है, श्री विपिन कुमार चौहान वर्ष 2012 से वर्ष 2017 तक एवं वर्ष 2017 से नवम्बर 2021 तक विद्यालय की प्रबन्ध समिति के प्रबन्धक रहे हैं। वर्ष 2012 में विद्यालय की प्रबन्ध समिति का चुनाव दिनांक 25.06.2012 निर्विवादित सदस्यता सूची से सम्पन्न हुआ था, जिसमें अध्यक्ष पद पर श्री महेन्द्र सिंह चौहान तथा प्रबन्धक पद पर श्री विपिन कुमार चौहान निर्वाचित हुये थे। उक्त चुनाव में प्रयुक्त सदस्यता सूची में 284 सदस्य अंकित पाये गये हैं। सुनवाई के समय श्री रवेन्द्र सिंह चौहान द्वारा कार्यालय में अवलोकित कराये गये मूल अभिलेखों के परीक्षण करने पर पाया गया है कि वर्ष 2012 के चुनाव में प्रयुक्त साधारण सभा की सूची में अंकित सदस्यों को रूपये 500.00 की सदस्यता रसीदें निर्गत की गयी है और उनसे प्राप्त धनराशि सम्बन्धित बैंक में जमा की गयी है साथ ही मूल एजेण्डा रजिस्टर, कार्यवाही रजिस्टर सदस्यता रजिस्टर आदि अभिलेखानुसार 284 सदस्य सही पाये गये हैं। उसी निर्विवादित सदस्यता सूची से वर्ष 2012 में श्री विपिन कुमार चौहान, प्रबन्धक वाली प्रबन्ध समिति का चुनाव सम्पन्न हुआ है। उक्त चुनाव को मान्यता प्रदान करने के उपरान्त जिला विद्यालय निरीक्षक, अलीगढ़ द्वारा निर्वाचित प्रबन्धक श्री विपिन कुमार चौहान के हस्ताक्षर प्रबन्धक के रूप में प्रमाणित किये गये।

8- श्री रवेन्द्र सिंह चौहान विद्यालय की प्रबन्ध समिति में वर्ष 2012 के बाद प्रबन्धक नहीं रहे हैं और श्री रवेन्द्रसिंह चौहान वाले पक्ष द्वारा साधारण सभा के जो सदस्य बना लिये गये और इनके द्वारा चुनाव में साधारणसभा के 514 सदस्यों की सदस्यता सूची प्रयुक्त की गयी है। अभिलेखों के परीक्षण करने पर पाया गया है कि श्री रवेन्द्र सिंह चौहान द्वारा उक्त अवधि में सोसाइटी के सचिव/मंत्री के रूप में उक्त सदस्य बनाये गये हैं और वही सदस्यता सूची धारा 4बी में उप निबन्धक, फर्म्स सोसाइटीज एवं चिट्स फण्ड, आगरा कार्यालय से पंजीकृत करायी गयी है। इस प्रकार श्री रवेन्द्र सिंह चौहान, दावेदार प्रबन्धक के चुनाव में प्रयुक्त सदस्यता सूची विद्यालय की साधारण सभा की सदस्यता सूची नहीं है, वह सूची केवल सोसाइटी समिति की साधारण सभा की सूची है, जो प्रशासन योजना में वर्णित व्यवस्थानानुसार विद्यालय की प्रबन्ध समिति के चुनाव में मान्य नहीं है।

9- माननीय उच्च न्यायालय इलाहाबाद के आदेश में उल्लिखित है कि विद्यालय की साधारण सभा के आधार पर ही चुनाव की वैधता का निर्धारित किया जायेगा।

10- कार्यालय पत्रांक: मा०-1/प्र०स०/7735/2024-25 दिनांक 03.03.2025 द्वारा जि०वि०नि०, अलीगढ़ को तथा पत्रांक: मा०-1/प्र०स०/7752/2024-25 दिनांक 06.03.2025 एवं पत्रांक: मा०-1/प्र०स०/7816/2024-25 दिनांक 10.03.2025 याची श्रीमती निहारिका चौहान को वर्ष 2012 के चुनाव में प्रयुक्त निर्विवादित साधारण सभा की सूची उपलब्ध कराने के निर्देश दिये गये। याची श्रीमती निहारिका चौहान के पत्र दिनांक 17.03.2025 द्वारा प्रबन्ध समिति के चुनाव दिनांक 25.06.2012 को विवादित बताया गया है। कार्यालय अभिलेखों में उपलब्ध वर्ष 2012 के चुनाव पत्रावलियों का अवलोकन करने पर पाया गया है कि श्री विपिन कुमार चौहान, निर्वाचित प्रबन्धक द्वारा अपनी चुनाव के समय वर्ष 2012 के चुनाव में प्रयुक्त साधारण सभा की वही सूची जिस पर चुनाव अधिकारी, प्रबन्धक, मंत्री के हस्ताक्षर अंकित है, की छायाप्रति सुनवाई के दौरान कार्यालय में प्राप्त करायी गयी है। उक्त सदस्यता सूची में 284 सदस्य अंकित है, जो निर्विवादित आजीवन सदस्य पाये गये हैं और प्रशासन योजना में वर्णित व्यवस्थानुसार वर्ष 2012 में प्रयुक्त सदस्यता शुल्क की धनराशि रू० 500.00 अंकित है।

11- वर्ष 2012 में श्री विपिन कुमार चौहान, प्रबन्धक एवं श्री रवेन्द्र सिंह चौहान, मंत्री द्वारा दैनिक हिन्दुस्तान समाचार पत्र की छायाप्रति में कार्यालय में प्रस्तुत की गयी थी, में 284 सदस्यों की सूची सूचना पट पर विद्यालय में 30.03.2012 को चस्पा करने एवं सदस्यों को सूचना दिये जाने की विज्ञप्ति प्रकाशित करायी गयी है, इससे स्पष्ट है कि विद्यालय की साधारण सभा के 284 सदस्यों की सूची वैध एवं सही है।

- निष्कर्ष -

उपरोक्त विवेचना से निष्कर्ष निकलता है कि विद्यालय की प्रबन्ध समिति के उक्त दोनों ही चुनावों में प्रयुक्त साधारण सभा की सदस्यता सूची अनियमित एवं अवैध पायी गयी है। इस प्रकार दोनों पक्षों द्वारा कराये गये प्रबन्ध समिति के चुनाव मान्य किये जाने योग्य नहीं है और दिनांक 25.06.2012 के चुनाव में प्रयुक्त साधारण सभा की निर्विवादित सदस्यता सूची, जिसमें 284 सदस्य अंकित पाये गये है, में से अद्यतन मूल सदस्यों को जोड़कर निस्तारित सदस्यता सूची से पुनः चुनाव कराना विधिसंगत है।

- निर्णय -

उपरोक्त विवेचना एवं निष्कर्ष के आधार पर मण्डलीय समिति द्वारा सर्वसम्मति से लिये गये निर्णयानुसार नवाब सिंह चौहान ग्रामोदय इण्टर कालेज, कासिमपुर पावर हाउस (अलीगढ़) की समानान्तर प्रबन्ध समितियों के चुनाव दिनांक 28.11.2021 एवं 05.12.2021 को निरस्त करते हुये विद्यालय की प्रबन्ध समिति के चुनाव दिनांक 25.06.2012 में प्रयुक्त निर्विवादित साधारण सभा की सदस्यता सूची से पुनः चुनाव कराये जाने का निर्णय लेते हुए प्रकरण निस्तारित किया जाता है और संयुक्त शिक्षा निदेशक को निर्देशित किया जाता है कि वे प्रबन्ध समिति के चुनाव दिनांक 25.06.2012 में प्रयुक्त साधारण सभा की सूची जिसमें 284 सदस्य अंकित पायें गये हैं, मे से मृत सदस्यों को हटाकर अन्तिम सदस्यता सूची तैयार कर

जिला विद्यालय निरीक्षक, अलीगढ की देख रेख में प्रशासन योजना में वर्णित व्यवस्थानुसार प्रबन्ध समिति का चुनाव तत्काल सम्पन्न करायें।"

4. During pendency of present writ petition, fresh election was conducted on 11.05.2025 on basis of above order and Sri Mahendra Nath Chauhan, President and Sri Ravendra Chauhan, Manager was elected and election was approved by the concerned D.I.O.S. by an order dated 16.05.2025. The said order is impugned by way of an application for amendment which was allowed and subsequently, an amended writ petition was also filed.

5. Sri R.K. Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, learned counsel for petitioners has submitted that in the year 2017 (02.01.2017), the election was conducted wherein 207 Members of General Body have participated and Election of year 2017 was duly approved by DIOS, Aligarh vide an order dated 18.01.2017 and also by Joint Director of Education, Aligarh vide an order dated 04.06.2018 and further challenge was disputed subsequently. Though it was not denied that Joint Director of Education has not decided the dispute of Membership on merit, being beyond jurisdiction. Relevant part of it is reproduced hereinafter :-

"निष्कर्ष

उपरोक्त विवेचना से यह निष्कर्ष निकलता है कि श्री विपिन कुमार चौहान नव निर्वाचित प्रबन्धक वाली प्रबन्ध समिति का चुनाव दिनांक 02.01.2017, जो जिला विद्यालय निरीक्षक द्वारा मान्य किया गया है, प्रशासन योजना में वर्णित प्रावधानों के अनुरूप है। परन्तु संस्था की अनुमोदित प्रशासन योजना के नियमों एवं प्रावधानों के विपरीत बनावटी सदस्यता से चुनाव कराये जाने विषयक शिकायत के सम्बन्ध में शिक्षा विभागत के किसी सक्षम अधिकारी को निर्मय लेने का अधिकार नहीं है। प्रकरण में इण्टरमीडिएट शिक्षा अधिनियम 1921 की धारा 16 डी के अनुरूप संस्था में प्राधिकृत नियंत्रक को संस्तुति किये जाने का कोई भी कारण विद्यमान नहीं है।

निर्णय

उपरोक्त विवेचना एवं निष्कर्ष के आधार पर मण्डलीय समिति द्वारा लिये गये निर्णयानुसार शिकायत कर्ताओं की सदस्यता विषयक शिकायतों को क्षेत्राधिकार से बाहर होने के कारण प्रकरण को अस्वीकार करते हुए एतदद्वारा निस्तारित किया जाता है।"

6. Learned Senior Advocate has further submitted that 60 new Members were inducted after they deposited requisite fee of Rs. 500/- each and total sum of Rs. 30,000/- was deposited in the bank account on 30.04.2016. Learned Senior Advocate has submitted that name of 40 earlier Members were deleted as either they were dead or had not attended meeting for many long time, though in support of submission, no supportive document was placed on record.

7. Per contra, Sri Ashok Khare, learned Senior Advocate assisted by Sri Wahid Jamal, learned counsel for respondents has submitted that this Court in earlier round of litigation has directed that issue of dispute of Membership considered by the Regional Level Committee and since that order has attained finality, therefore, Regional Level Committee has not made any illegality to consider the dispute of membership.

8. Learned Senior Advocate for respondents has further submitted that Regional Level Committee has considered the material on record and referred a finding that induction of new Members was wrong and deletion of earlier Members was also without any reason. No document was placed on record which could dispute said findings.

9. In earlier round of litigation, this Court has directed the Regional Level Committee to look into the dispute afresh and as referred above, after giving opportunity of hearing to petitioners and others, impugned order was passed whereby it was held that admission of 63 new Members as well as removal of 40 earlier Members was dehors of provisions of approved Scheme of Administration.

10. In the impugned order, it was also held that there was no reason for Committee to conduct election six months prior to end of tenure in the year 2017 and despite various opportunities, petitioner-2 Smt. Niharika Chauhan, Manager has not submitted any reply or documents that under what circumstances, a decision was taken to prepone the elections.

11. It was also held that in support of admission of 63 new Members, Manager has not able to show any requisite documents.

12. In above background, Court has considered rival submissions and documents now placed on record.

13. First document is minutes of proceedings dated 30.04.2016 whereby 63 new Members were inducted and some Members who were either dead or have not attended the meeting for last many years were removed.

14. I have carefully perused the resolution and found that it appears that procedure for admission of new Members appears to be followed, however, no document was placed that 40 Members have died and some Members have submitted their resignation. Court takes note that meeting was conducted under Chairmanship of Vice President on a ground that President was absent though it is not on record whether any prior information was given to Vice President or published in news paper.

15. Second document is minutes of meeting dated 08.05.2016 whereby a resolution was adopted for removal of S/Sri Mahendra Singh Chauhan, President, Ravindra Singh Chauhan, Secretary and Lakhan Singh, Member on a ground of their unsocial and bad conduct.

16. In this regard, Court takes note of Clause-IV of approved Scheme of Administration that any Member can be removed from membership if he is found guilty of a conduct related to anti-social, however, for that there must be a declaration that he was found guilty and such declaration

is absent in resolution dated 08.05.2016 except that they were involved in antisocial activities though Court is of the view that if allegations are serious, General Body can take a decision to remove any Member from membership, though it is not recorded in resolution that said Members were put on notice or their stand was called and considered.

17. Third document is resolution dated 29.05.2016 whereby it was resolved that election be conducted much before tenure is over on a ground that 3 Office Bearers are not attending the meeting and they are not cooperating, therefore, work of Committee of Management is hampered.

18. In this regard, Court takes note of clauses of approved Scheme of Administration that tenure of an election is 5 years and within one month thereafter, election ought to have been held otherwise Committee will be declared time-barred. There is no provision of early election and still Court takes note there is no bar to conduct early election if circumstances so warrant, but it should be very specific.

19. As referred above, impugned order was passed mainly on a ground that aforesaid documents were never placed before concerned respondents despite various opportunities were granted and concerned respondent has no opportunity to consider above referred three documents, impugned order was passed.

20. Now the Court proceeds to consider whether on basis of documents brought on record along with this Writ Petition, it would be a sufficient ground to grant an opportunity to petitioners to place them before concerned respondents or in the light of observations made by this Court in earlier paragraphs in reference to each document, it would not necessary or legally permissible to grant an opportunity to place referred documents.

21. It is a case arising out of a dispute essentially of admission of new Members and removal of old Members, therefore, Court finds that meeting for said purpose have to be conducted strictly in terms of provisions of Scheme of Administration.

22. The meeting for admission of new Members was conducted in absence of President, though, scheme of Administration permits that in absence of President, Vice President can conduct meeting, however, there must be legally sustainable reasons for his absence, however, same does not reflect from minutes of meeting, which only states that President was not available.

23. No communication from the President was placed on record or taken note in resolution, therefore, even though further procedure may be in terms of Scheme of Administration for admission of Members, manner under which meeting was conducted was not proper.

24. Court is of the view that there is no sufficient material even in proposal adopted that how names of forty Members were deleted except a general reference that some of them are dead. No documentary proof of their death was taken on record, therefore, Court if of the view that said meeting on which sixty Members were admitted and forty Members were deleted was not conducted in accordance with Scheme of Administration.

25. The next meeting was conducted on 08.05.2016, whereby a serious allegation was made against three Members i.e. President, Secretary and one Member and they were expelled from General Body and as referred above before such action is proposed, there must be some finding or some substantial evidence that they were found guilty, however, there is no such declaration even in brief in the resolution, though there were serious allegations that one expelled Member was found in compromising position with a woman, therefore, manner under which President, Secretary and one Member were expelled from General Body was also not proper.

26. In similar circumstances Court finds that there is no legally sustainable reason to conduct election about six months before expiry of tenure and observations made in impugned order that decision was taken to conduct election in a secret manner has substance. The Election should be conducted in a fair manner, however, such fairness was missing.

27. In aforesaid circumstances Court finds that all three meetings referred above were not conducted properly, therefore, there is no need to this Court to grant liberty to petitioner to place these documents before concerned respondents as there is no error in impugned order and since according to directions made in impugned order, fresh election has already been concluded, therefore also, no ground exists to cause interference.

28. Accordingly, Writ Petition lacks merit, hence, it is **dismissed**.

(2026) 2 ILRA 703
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 44795 of 2025

Sarita Devi **...Petitioner**
Versus
Union of India & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether **for want of quantification of the compensation amount, the determination of the same can be justified in view of the provision of Section 4(1)(a) read with Section 5 of the Employees Compensation Act, 1923** and **whether the calculation of the compensation being accepted without any opportunity to the claimant/petitioner amounts to post-decisional hearing, in contravention to the principles of natural justice**; whether **the State is vicariously liable** for **tortuous act resulting in death of the employee**; and whether **the notification issued in purported exercise of power under Section 4(1B)** can override **Section 5 of the Act, 1923**.

HEADNOTE

Employees Compensation Act, 1923 – ss.4(1)(a), 4(1B), 5, 20 – Constitution of India, Art.226 – Scope of judicial review - claim for enhancement of compensation and damages – employee died while performing his duty – postmortem report showed electrocution burn injury – determination of compensation without quantification – acceptance of a figure given by the Department, without providing any basis of such quantification, could not be accepted – no notice was given to the petitioner to demonstrate the mitigating factors – method of calculating wages – monthly wages – notification issued under Section 4(1B) vis-à-vis Section 5 of the Act, 1923 – field covered by special enactment i.e. Employees Compensation Act, 1923 and calculation required to be made keeping in mind statutory provision of Section 4(1)(a) read with Section 5 - adjudicating authority could not grant compensation lesser than what statute provides and even in case of ambiguity it was obligatory to consider factor or monthly wages leading to higher compensation – power of Commissioner not restricted and compensation could be enhanced irrespective of claim made by claimant – exercise of power under Article 226 as judicial review – In case an employee is found to have committed a civil wrong, resulting in death of another employee, the State has to be held vicariously liable and such action can be subjected to judicial scrutiny in exercise of its power of judicial review under the Constitution – tortuous act by employees entitled claimants to damages – involvement of public functionaries and violation of fundamental rights – life recognised as basic human right and its violation actionable under Article 226 – State failed in its duty and held vicariously liable and under constitutional liability to pay damages.

Held: Case arose out of the death of the petitioner's husband, a railway employee, who died while performing his duty. Postmortem report and departmental record showed electrocution burn injury. Shutdown was not done resulting in electrocution, which demonstrated negligence of the Department and the same being the main cause of fall from the ladder resulting in death – Compensation quantified at Rs. 10,16,700/- without disclosing any basis of such quantification and without following the statutory mandate of Section 4(1)(a) read with Section 5 of the Act, 1923 was erroneous – Only method of calculation/computation of compensation is as provided under Section 4 read with Section 5 and adoption of any other criteria resulting in lesser compensation could not be accepted under the Scheme of the Act, which is a beneficial legislation – Adjudicating Authority could not grant a compensation which was lesser than what the statute provides and it was obligatory to consider the factor or monthly wages which leads to higher compensation – Acceptance of a figure given by the Department, without providing any basis of such quantification, could not be accepted and without putting the claimant to notice amounted to violation of principles of natural justice – It was admitted position that no notice was given to the petitioner to demonstrate the mitigating factors and respondents could not justify the basis of such quantification – On admitted facts, shutdown was not done resulting in electrocution, which established tortious act and rendered the State vicariously liable – Where public functionaries are involved and right to life was violated, remedy under Article 226 is available – Notification dated 03.01.2020 could not override the statutory provision of Section 5 and where the monthly wages admissible to the deceased employee was higher, the same was required to be considered – Beneficial legislation was required to be interpreted to achieve the object of providing just compensation – Court applied the statutory formula by taking the monthly wage at ₹39,900, calculating 50% thereof as ₹19,950, applying the relevant factor for age 55 as 135.56, and thus arriving at compensation of approximately ₹27,04,422 (₹19,950 × 135.56), thereby demonstrating that the amount of ₹10,16,700 was grossly incorrect - Impugned determination was set aside and matter was remitted for fresh determination of compensation as per Section 4 read-with Section 5 of the Act, 1923 after affording opportunity along with consideration of damages and interest. Court held that the family belonged to a middle-class background and, in the absence of the sole breadwinner, had suffered significant financial hardship, and therefore applied the principle of *restitutio in integrum*, holding that the claimants are entitled to such compensation as would, as far as money can, place them in the same position in which they would have been had the wrongful death not occurred. Court

directed that the adjudicating authority may also consider the grant of damages for the tortuous act of the employees of the department, keeping in mind other mitigating factors. Court further directed that the petitioner/claimants shall be entitled to interest @ 12% per annum from the date of death of the employee, i.e., the date of occurrence of the accident, on the amount of compensation as determined in accordance with law. It was further provided that a conventional sum of ₹1,00,000/- shall be added and paid over and above the quantifiable compensation, to be determined by the Commissioner appointed under Section 20 of the Employees Compensation Act, 1923. (Paras 9, 14, 15, 19, 20, 22, 23) (E-5)

CASE LAW CITED

Karnataka State Road Transport Corporation v. B.T. Somasekharaiah (1994 LLR 251 (KAR));
General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (1994) 2 SCC 176;
Lata Wadhwa v. State of Bihar (2001) 8 SCC 197;
Chairman, Railway Board v. Chandrima Das (2000) 2 SCC 465;
Rudul Sah v. State of Bihar (1983) 4 SCC 141;
Bhim Singh v. State of J&K (1985) 4 SCC 677;
People's Union for Democratic Rights v. State of Bihar (1987) 1 SCC 265;
People's Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters (1989) 4 SCC 730;
Saheli, A Women's Resources Centre v. Commissioner of Police (1990) 1 SCC 422;
Arvinder Singh Bagga v. State of U.P. (1994) 6 SCC 565;
P. Rathinam v. Union of India 1991 SCC (Cri) 228;
Death of Sawinder Singh Grower, In re 1994 SCC (Cri) 1464;
Inder Singh v. State of Punjab (1995) 3 SCC 702;
D.K. Basu v. State of W.B. (1997) 1 SCC 416;
Khadak Singh Vs. State of U.P AIR 1963 SC 1295
State of Rajasthan v. Vidyawati AIR 1962 SC 933;
State of Gujarat v. Memon Mahomed Haji Hasam AIR 1967 SC 1885;
Basavva Kom Dyamangouda Patil v. State of Mysore (1977) 4 SCC 358;
N. Nagendra Rao & Co. v. State of A.P. (1994) 6 SCC 205;
State of Maharashtra v. Kanchanmala Vijaysing Shirke (1995) 5 SCC 659;
V. Krishnakumar Vs. State of Tamil Nadu and Ors 2015 9 SCC 388
H.L. Trehan v. Union of India (1981) 1 SCC 764;
Maneka Gandhi v. Union of India (1978) 1 SCC 248;
State of Orissa v. Dr. (Miss) Binapani Dei 1967 2 SCR 625;
Swadeshi Cotton Mills v. Union of India (1981) 1 SCC 664;
Pandit Ram Narain v. State of U.P. AIR 1957 SC 18;
East India Hotels Ltd. v. Union of India (2001) 1 SCC 284;
Darshan Singh v. State of Punjab AIR 1953 SC 83;
State of Maharashtra v. Marwanjee F. Desai (2002) 2 SCC 318;
Employees' Provident Fund Commissioner v. Official Liquidator of Esskay Pharmaceuticals Ltd. (2011) 10 SCC 727;
M/s Aphali Pharmaceuticals Ltd. v. State of Maharashtra (1989) 4 SCC 378;
ONGC Ltd. v. Afcons Gunanusa JV (2024) 4 SCC 481;
Assistant Commissioner of Income Tax (International Taxation) v. Shelf Drilling Ron Tappmeyer Ltd. 2025 SCC OnLine SC 1652;
Union of India v. Prabhakaran Vijaya Kumar (2008) 9 SCC 527;
Alembic Chemical Works Co. Ltd. v. Workmen AIR 1961 SC 647;
Jeewanlal Ltd. v. Appellate Authority (1984) 4 SCC 356;
Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852;
S.M. Nilajkar v. Telecom District Manager (2003) 4 SCC 27;

List of Acts

Employees Compensation Act, 1923;
Constitution of India.

List of Keywords

Compensation; Electrocution; Workplace accident; Beneficial legislation; Quantification; Monthly wages; Relevant factor; Vicarious liability; Tortious act; Public law remedy; Natural justice; Audi alteram partem; Just compensation; Harmonious construction; *restitutio in integrum.*

CASE ARISING FROM

From the order dated 29.12.2023 passed in W.C. Case No. 15/2023 (Smt. Sarita Devi v. Divisional Railway Manager).

Appearances for Parties

Advs For Petitioner: Mohammad Parwez Khan, Raj Kumar Singh, Vipul Yadav.

Advs For Respondents: A.S.G.I., Dinesh Varun.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Shri Raj Kumar Singh, learned counsel for the petitioner and Shri Dinesh Varun, learned counsel for the respondents.

2. By the consent of the parties the writ petition is being disposed of at the admission stage itself.

Facts

The admitted facts in the present case are that-

1. Shri Vinod Kumar Joshi (husband of the petitioner) was employed as Senior Technician (Electrical) under the Senior Section Engineer (Electrical)/Renukoot. On 08.04.2023, at approximately 7.30 AM, a power outage was reported in the Renukoot main colony and on being reported, the Senior Section Engineer (Electrical)/Renukoot directed the deceased along with one Shri Vinod Kumar (Senior Technician), at 8.00 AM to rectify that fault. During patrolling, the team identified a burnt 11 KV HT fuse near the power house and after request of shutdown of the 11 KV HT line at 9.35 AM, the deceased proceeded to climb the utility pole/ladder, equipped with necessary safety gear including gloves and helmet, while his colleague, Mr. Vinod Singh secured ladder from below.

2. As per the report of the Senior Section Engineer, East Central Railway, Renukoot & Chopan and statement of Shri Vinod Singh (co-worker), at approximately 9.45 AM while

performing his official duties, the deceased fell from the pole. He was immediately rushed to HINDALCO hospital by railway staff, where he was declared dead and an F.I.R. was also lodged; and a postmortem examination was conducted.

As per postmortem report, the following ante-mortem injury was found:-

"1. Electrocution burn inj. of size 25 cm x 14 cm on Rt. Forearm 4 cm below Rt. Elbow.
2. Electrocution burn inj. of size 7cm x 1 cm, 10 cm below cimbilians.
3. Swelling of size 7 cm x 5 cm on Rt. Side Skull (Pariatal bone), 10 cm above Rt. Underlying bone fracture, & about 50 ml blood clot underneath the inj.
4. Exit wound - Electrocuted burn inj. of size 2 cm x 1 cm of Nav on lt. sole of."

3. It is admitted by the respondents that in a joint investigation, it was found that the incident was a workplace accident, occurring in the course of performance of duty. The perusal of the postmortem report also indicates that there was an exit wound of size 2 cm x 1 cm and electrocution burn injury of size 7 cm x 1 cm, 10 cm below cimbilians; which has not been disputed by the respondents, as such the accident was clearly attributed to the electrocution.

4. The petitioner was given a compensation of Rs. 10,16,700/- but however she was not satisfied with the ex-parte computation and accordingly has assailed the said computation of the compensation. The present writ petition has been filed for enhancement of the same, since no basis for the computation was either provided by the respondents or by the Presiding Officer, in W.C. Case No. 15/2023(D) (Smt. Sarita Devi Vs. Divisional Railway Manager), in its order dated 29.12.2023.

Issues-

(i) Whether for want of quantification of the compensation amount, the determination of the same by the order dated 29.12.2023 can be justified in view of the provision of Section 4(1)(a) read with Section 5 of the Employees Compensation Act, 1923; and also whether, in the factual context, petitioner is entitled to enhancement, by way of damages.

(ii) Whether the calculation of the Railway Authority regarding the compensation being accepted without any opportunity to the claimant/petitioner and treating the same to be final, amounts to post-decisional hearing, in contravention to the principles of natural justice.

(iii) Whether the notification issued in purported exercise of power under Section 4(1B) regarding the fixation of "monthly wages" by the Government shall supersede Section 5 of the Act, 1923.

Argument - (Issue No.1)

1. The learned counsel for the petitioner has argued that neither the evidence which was placed on record was considered nor any opportunity of hearing was provided, prior to accepting the ex-parte compensation as determined by the respondent-Authorities to be Rs. 10,16,700/- and being directed to be released in favour of the petitioner; though the "relevant factors" for determination of the compensation were not taken into account by the authorities.

2. He has placed reliance on the judgment in the case of **Karnataka State Road Transport Corporation Vs. B.T. Somasekharaiah** to contend that apart from the mitigating factors for award of compensation under Section 4 of the Act, 1923, the Commissioner has power to award compensation more than what is claimed by the workman, if the facts do warrant such an award in the form of damages.

3. He has further contended that from the perusal of the postmortem report, it is evident that negligence was that of the employees of the Department, since the shutdown of the 11 KV HT Line was not made, which resulted in the death of the deceased; and as such the State was vicariously liable.

4. Per contra, learned counsel for the respondents has submitted that the compensation was quantified as per the mandate of Section 4 of the Act, 1923 and has further submitted that apart from the aforesaid compensation, all admissible retirement benefits payable to on-duty deceased employee was paid, to the tune of Rs. 21,33,567/-; and further maximum admissible ex-gratia as per Circular no. RBE No. 139/2016 dated 25.11.2016 i.e. Rs. 25,00,000/- was also paid; and as such the acceptance of the compensation amount, as computed by them, was completely justifiable. However, they had not disputed the postmortem report and the cause of death with respect to the deceased employee on-duty.

Discussion- (Issue No.1)

1. In view of the admitted facts that the deceased who was an employee of the Department, had died while he was performing his duty and the postmortem report clearly shows that the deceased suffer electrocution burn injury; it demonstrate the negligence of the Department and the same being the main cause of fall from the ladder, due to which the husband of the petitioner died. Now, it is to be seen, if the State is vicariously liable and whether the adjudicating authority has failed to take the same into account, while determining the compensation and as such in the aforesaid background, the moot question which is to be considered is, the basis of quantification of the compensation.

2. At this juncture, it will be relevant to quote Section 4(1)(a) and Section 5, which are as below:

"[4. Amount of compensation.-(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) where death results from the injury an amount equal to [fifty per cent.] of the monthly wages of the deceased [employee] multiplied by the relevant factor; or an amount of [one lakh and twenty thousand rupees], whichever is more;

5. [Method of calculating wages.- [In this Act and for the purposes thereof the expression "monthly wages" means me amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated] as follows, namely:-

(a) where the 1[employee] has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the 1[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

[(b) where the whole of the continuous period of service immediately preceding the accident during which the 1[employee] was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the 1[employee] shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a 1[employee] employed on the same work by the same employer, or, if there was no [employee] so employed, by a 1[employee] employed on similar work in the same locality;]

[(c)] [in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)]], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

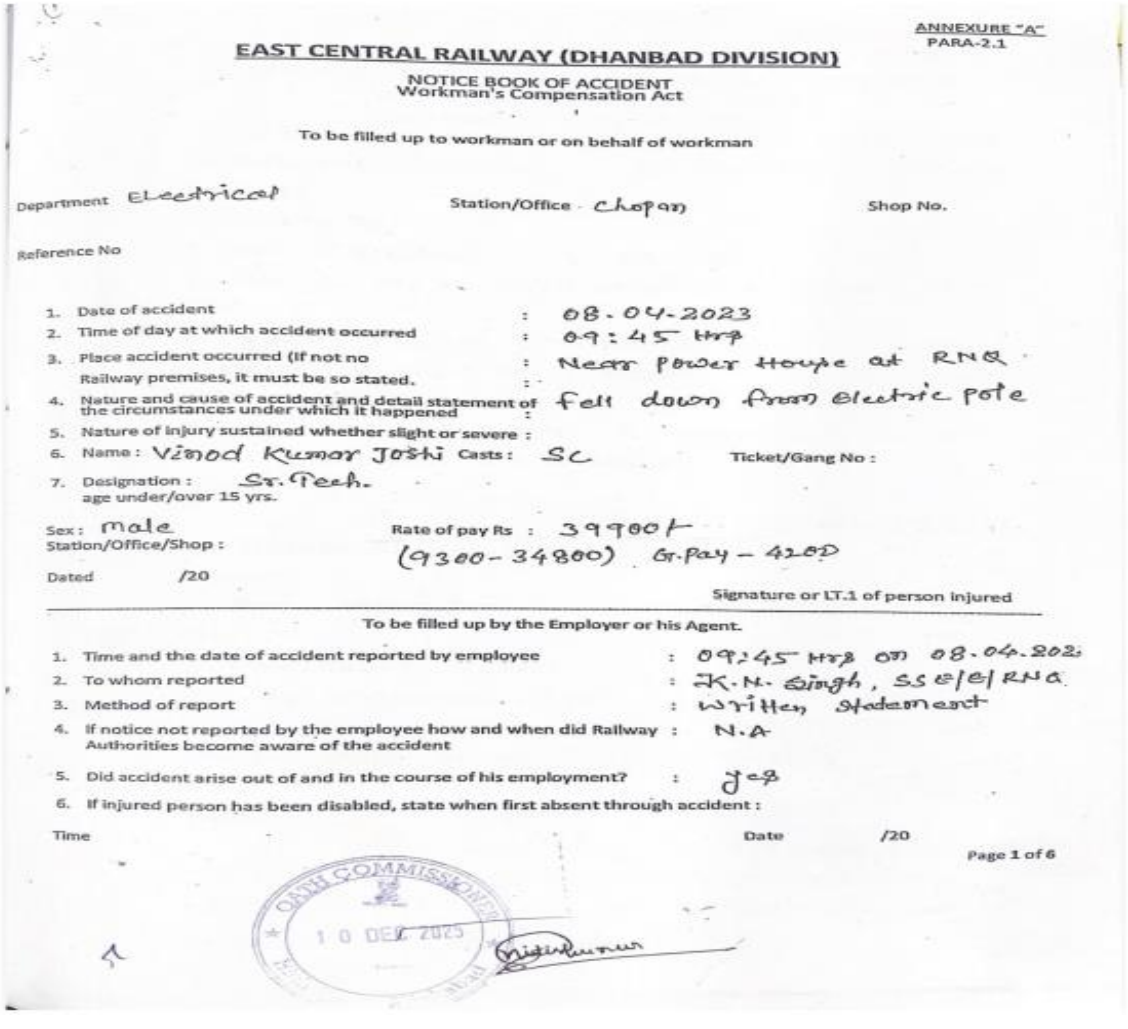
***Explanation.**-A period of service shall, for the purposes of [this [section]] be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days."*

3. The perusal of the aforesaid provision indicated that an amount equal to 50% of the monthly wages of the deceased employee, is to be multiplied by the relevant factors, where death results from an injury.

4. Now, we proceed to examine the Scheme of the Act, to the extent it relates to the quantification of amount of compensation. Section 4 (1)(a) of the Act, 1923 clearly prescribes that in case of death, an amount equal to 50% of the "monthly wages" of the deceased employees has to be multiplied by the relevant factor.

5. Explanation 1 to Section 4 of the Act, 1923 states that for the purposes of clause (a), "relevant factor", in relation to an employee means the factor specified in the second column of Schedule IV; against the entry in the first column of the Schedule specifying the number of years which are same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due.

6. We find that the respondent-Railways had prepared an accident report which has been annexed as Annexure 4 to the Affidavit filed with the aforesaid Writ Petition and the pay of the deceased employee has been clearly mentioned as Rs. 39,900/-. For ready reference the same is pasted below:-



ANNEXURE "A"
PARA-2.1

EAST CENTRAL RAILWAY (DHANBAD DIVISION)

NOTICE BOOK OF ACCIDENT
Workman's Compensation Act

To be filled up to workman or on behalf of workman

Department Electrical Station/Office Chopan Shop No.

Reference No

1. Date of accident : 08.04.2023
2. Time of day at which accident occurred : 09:45 Hrs
3. Place accident occurred (If not no Railway premises, it must be so stated. : Near Power House at RNQ
4. Nature and cause of accident and detail statement of the circumstances under which it happened : fell down from Electric pole
5. Nature of injury sustained whether slight or severe :
6. Name : Vinod Kumar Joshi Casts : SC Ticket/Gang No :
7. Designation : Sr. Tech. age under/over 15 yrs.

Sex : male Rate of pay Rs : 39900/-
Station/Office/Shop : (9300-34800) Gr.Pay - 4200
Dated /20

Signature or LT.1 of person injured

To be filled up by the Employer or his Agent.

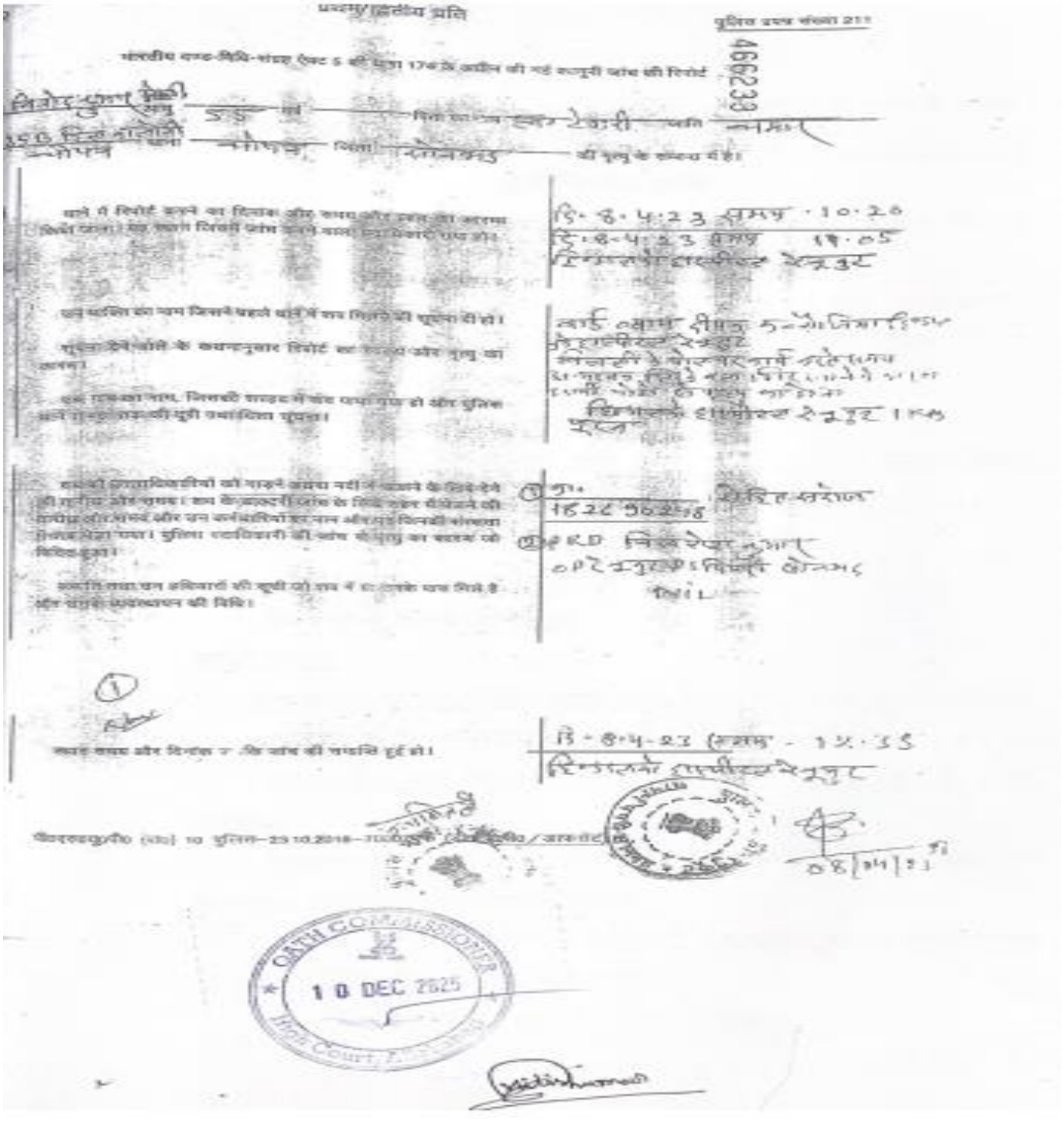
1. Time and the date of accident reported by employee : 09:45 Hrs on 08.04.2023
2. To whom reported : K.N. Singh, SS E/E/ RNQ
3. Method of report : Written Statement
4. If notice not reported by the employee how and when did Railway Authorities become aware of the accident : N.A
5. Did accident arise out of and in the course of his employment? : Yes
6. If injured person has been disabled, state when first absent through accident :

Time Date /20

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OATH COMMISSIONER 10 DEC 2023

7. It is also borne out from the record that in the accident report which has been appended as Annexure 2, the age of the deceased has been mentioned as 55 years at the time of the death. For ready reference the Accident Report is pasted below:-



8. In the aforesaid admitted facts, the factor as mentioned in Schedule IV in case of an employee who is 55 years of age, is "135.56". Based on the aforesaid data the following calculation emerges:

Monthly wages	Rs. 39,900/-
50% of Monthly Wage	Rs. 19,950/-
Factor, as per Schedule IV for 55 year of age	135.56
Amount of compensation	19,950 x 135.56 = Rs. 27,04,422/-

9. On a pointed query to the counsel for the respondents as to what method was adopted for computing the compensation, he could not dispute that the mandatory provision of Section 4 read-

with Section 5, is the only method of calculation/computation of compensation; and adoption of any other criteria for computation of compensation, especially if it results in lesser compensation, than what is prescribed under Section 4(1)(a) read with Section 5 of the Act, cannot be accepted under the Scheme of the Act, which is a beneficial legislation. He also could not dispute that the grant of compensation to a tune of Rs. 10,16,700/-, is an incorrect calculation while looking at the beneficial nature of the legislation in question, the provision for any other method of calculation resulting in a lesser computation, has to be superseded by the calculation which is in consonance of Section 4(1)(a) read-with Section 5 of the Act, 1923.

10. The Apex Court in the case of **General Manager, Kerela State Road Transport Corporation Vs. Susamma Thomas and Ors.** while concluding on the question of "just" compensation held that the multiplier method is logically sound and legally well established method of ensuring a "just" compensation, which will make for uniformity and certainty of the award. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.

11. We may gainfully take a clue from the judgment in the case of **Lata Wadhwa and Ors. Vs. State of Bihar and Ors.**; when multiple claims were raised by the heirs/survivors of an unfortunate accident, resulting in death on account of burn injury to several persons, the Apex Court appointed Justice Y.V. Chandrachud, former Chief Justice of India having expertise in the matter, to determine the compensation, keeping in mind principles enunciated by the Apex Court in various judgments till date.

12. Justice Chandrachud, adopted the multiplier method and on that basis determined quantum of compensation, as pertaining to various deaths/injuries which was suffered; and the said method for determination of quantum of compensation, was thereafter approved by the Apex Court.

13. The Apex Court, in the aforesaid judgment approved the method of quantification of compensation on the basis of dependency of 60% of the annual income and thereafter applied different multipliers, depending upon their age. It also approved a conventional figure to compensate the variables which were not quantifiable. It is also noteworthy that the other benefits which were payable to the employees apart from the compensation, was not taken into consideration, while determining the compensation. The benefit already granted to the dependents of the deceased were not taken into account as the quantification of the compensation, was required to be made independent of the other statutory rights and the entitlements.

14. However in the present case, since the field is covered by the special enactment i.e. The Employee's Compensation Act, 1923, the calculation has to be made keeping in mind the statutory provision of Section 4(1)(a) read-with Section 5 of the Act, 1923. The said legislation being a beneficial legislation, the object of the Act is to provide an undisputed methodology for coming to the conclusion pertaining to the amount of the compensation payable. However, this does not entitle the adjudicating authority or act as a hindrance, to the power of the Commissioner to award more compensation. There maybe an instance where the claimant not knowing the provisions of the enactment or aware to his rights, makes a claim for a lesser compensation; but the Court finds that irrespective of the claim made by the claimant, the adjudicating authority cannot grant a

compensation which is lesser than what the statue provides. Even in case of ambiguity as to the applicability of the "factor", it is obligatory on the Adjudicating Authority to consider the "factor" or the "monthly wages" which leads to a higher compensation and under no circumstances a compensation less than what is provided under the Act can be awarded by the Commissioner.

15. The aforesaid interpretation is in consonance with the purpose and the objective of the legislation and can also be read to give ample powers to the Commissioner to award further damages, considering the facts and circumstances of each case and resultantly enhance the compensation.

16. The Apex Court while dealing with the issue with respect to public law remedies and the award of compensation under Article 226 of Constitution of India in the case of **Chairman, Railway Board and others v. Chandrima Das(Mrs) and others.** laid down a ratio that the public law remedies has also been extended to realm of Tort and the court can award compensation to the petitioner, who suffer personal injuries, amounting to tortuous act at the hand of officers of the Government. It discarded the contention that for such a remedy, the petitioner has to approach a Civil Court and a petition under Article 226 of the Constitution, is not maintainable. The Apex Court held that where public functionaries are involved and matters relate to violation of a fundamental right or the enforcement of public duties, the remedy would still be available under the public law, notwithstanding that a suit can be filed for damages under private law.

17. The learned counsel for the respondents had also contended that as far as the enhancement sought by the petitioner in the amount of compensation to Rs. 60,00,000/- is concerned, the Department is only liable to pay the compensation as provided under the Act, 1923 and for any enhancement in the form of damages, the Government cannot be held vicariously liable.

18. Per contra, learned counsel for the petitioner has submitted that the functions of the State in a welfare State, is not limited to carry out the obligations as provided under the statute but it also has to take the responsibility being vicariously liable, so that the essential components of the Government machinery i.e. their employees, if found to have committed an act of tort, the Government, of which they are the employees, can be subjected and held to be vicariously liable in providing damages to the person wronged by the employees.

19. We find that the report submitted by the Department clearly states that the deceased employee had asked for shutdown but clearly the same was not done by other employees of the State Government, resulting in electrocution of the deceased employee, which was the factor of the fall from the ladder and resulting in his death.

20. Aforesaid admitted position clearly establishes all the ingredients of the commission of "tort" against the deceased person, so as to entitle the heirs/claimants to the relief or damages.

21. Now, we proceed to the other objection of the State Counsel, to the effect that considering the nature of the liability, the relief is not available to the petitioner, by invocation of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

22. The exercise of constitutional power by the High Court under Article 226 can be categorized as power of "judicial review". In case an employee is found to have committed a civil wrong, resulting in death of another employee, the State in the opinion of this Court has to be held vicariously liable and such action accordingly can be subjected to judicial scrutiny in exercise of its power of judicial review under the Constitution. Especially, when the right to life, has been brutally violated and as such those who can be treated as "authority", within the meaning of Article 12, can be made amenable to the jurisdiction of this court and can be subjected to scrutiny on the touchstone of the constitutional mandates. The causing of injuries, which amounted to tortuous act, was compensated by this Court in many of its decisions beginning from **Rudul Sah v. State of Bihar. (See also Bhim Singh v. State of J&K, Peoples' Union for Democratic Rights v. State of Bihar, Peoples' Union for Democratic Rights v. Police Commr., Delhi Police Headquarters, Saheli, A Women's Resources Centre v. Commr. of Police, Arvinder Singh Bagga v. State of U.P., P. Rathinam v. Union of India, Death of Sawinder Singh Grower In re, Inder Singh v. State of Punjab and D.K. Basu v. State of W.B.)**

23. In the present case, there is involvement of public functionaries and on admitted facts itself there is violation of fundamental rights, that being so, since "life" has been recognized as a basic human right, which has been interpreted by the courts in various decision relating to Article 21 of the Constitution of India, we find State is vicariously liable and remedy for damages, resulting in enhancement of the compensation can be claimed under Article 226 of the Constitution of India. In **Khadak Singh Vs. State of U.P** , the term "life" was held to indicate something more than an animal existence; and its violation can give a cause of action to be remedied by envocation of Article 226 of the Constitution.

24. The employees of the State at times, as in the present case, perform hazardous duties which even raises threat to their life, however, such duties are undertaken with a firm belief that the State shall be responsible for their "life" as guaranteed under Article 21 of the Constitution of India and various human right declaration, to which India is also a party; but however, in the present case, the State has failed, and as such is vicariously liable, and is under a constitutional liability, to pay damages.

25. In **State of Rajasthan Vs. Vidyawati**, it was held that Government will be vicariously liable for the tortuous act of its employee. Reference may also be made to the decisions of this Court in **State of Gujarat Vs. Memon Mahomed Haji Hasam** and **Basavva Kom Dyamangouda Patil Vs. State of Mysore.** These Principles were reiterated in **N. Nagendra Rao & Co. Vs. State of A.P.** and again in **State of Maharashtra Vs. Kanchanmala Vijaysing Shirke.**

Conclusion

1. We are constrained to note that the Department is guilty of ignoring the standards of normal safety measures and resultantly the negligence ultimately led to death of the sole bread winner of the family. In absence of quantification by Adjudicatory Authority, the acceptance of a figure given by the Department, without providing any basis of such a quantification, cannot be accepted. It is no doubt that the amount of compensation has to be determined as per the statutory provisions of section 4(1)(a) read with Section 5 of the Act, 1923 which itself contemplates i.e. the amount equal

to 50% of the "monthly wages" of the deceased employee, is to be multiplied by the relevant factors. Apart from the same, in consideration of the various judgments referred herein above, we find that no exhaustive list can be provided but for certainty, the following points are to be kept in consideration, while determining the compensation as contemplated under Section 4 of the Act 1923 and to provide for damages, in exceptional cases:-

(i) It has to be taken into account, as to the life expectancy of the deceased and the dependents and the amount that the deceased would have earned during the remaining of his life, the amount that he would have attributed to the dependents during that period.

(ii) Apart from the determination as provided under Section 4(1)(a) read with Section 5 of the Act, 1923, it may also be seen that the said capital if invested at the prevailing rate of interest, which is acceptable to a stable economy, which would have been utilized in the form of saving; and which is expected from an employee to invest for better future of his children/family members; but for his death, it being not invested.

(iii) The chances that the deceased might have got better employment or income i.e. an over all picture that matters, should be kept in mind while making the computation or assessment for reaching to a "just" compensation viz. a viz. the loss suffered.

(iv) The question of extent of harm/loss/pain/hardship, impact of inflation, may also be taken into consideration**. [Ref: V. Krishnakumar Vs. State of Tamil Nadu and Ors.]**

2. In view of the aforesaid, the Issue No.1 is decided in favour of the petitioner and it is held that the quantification of the amount of compensation, as provided under Section 4(1)(a) read with Section 5 of the Act, 1923 being erroneous, is required to be re-determined by the adjudicating authority and after doing so, he may also consider the grant of damages for the tortuous act of the employees of the department, keeping in mind other mitigating factors, as indicated hereinabove.

3. It is also provided that after the aforesaid determination, the petitioner/claimants shall be entitled to interest @ 12% p.a. from the date of death of the employee i.e. occurrence of the accident, on the amount, after deducting Rs. 10,16,700/-, which has already been paid to the petitioners/claimants, till the date of actual payment of entire amount.

Argument- (Issue No.2)

1. The learned counsel for the petitioner has argued that though, the order dated 29.11.2023 records that certain evidences were filed on affidavit but since there was no computation of the compensation of the amount in terms of Section 4(1)(a) read with Section 5 of the Act 1923, therefore, no opportunity was given to the petitioner to plead his case pertaining to "relevant factors" that were essential for the claim for damages viz-a-viz enhancement of of compensation and the Adjudicatory Authority without such computation and opportunity accepted the compensation amount of Rs. 10,16,700/- to be a "just" compensation; which amounts to denial of principles of natural justice and as such was a post decisional hearing; and failure to observe audi alteram partem rule at pre-decisional stage, vitiates the determination of compensation and

accordingly they are entitled to a higher compensation which has been prayed for in the present writ petition.

2. He has relied on the ratio propounded in **H.L. Trehan Vs. Union of India** to contend that post-decisional opportunity of hearing does not subserve rules of natural justice and the authority who embarks upon post-decisional hearing will naturally proceed with the closest trend and there is hardly any chance of getting a proper consideration of the representation at such post-decisional hearing. He has further relied upon the case of **Maneka Gandhi Vs. Union of India** and submitted that any violation to the principles of audi alteram partem rule will lead to paralysing the administrative process and the court must make every effort to salvage this cardinal rule to the maximum extent permissible in the given case. He has relied on the following excerpt from the judgment of **Maneka Gandhi (supra)**.

"The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

3. Per contra, learned counsel for the respondents have contended that they have determined the compensation as per Section 4 of the Act, 1923 but on a pointed query as to the basis of the quantification of the compensation, they could not state, as to what factors were considered while determining the compensation.

Discussion- (Issue No.2)

1. It is to be determined in the facts of the present case, whether the petitioner was at all put to notice or given an opportunity either by the Department or the Adjudicatory Authority, to substantiate their claim by providing cogent evidence, which according to them would have substantiated their claim regarding various factors, which ought to have been considered prior to quantification of the compensation and also towards their claim for damages, for which State is vicariously liable, as such for the enhancement of their compensation, itself.

2. It is also pertinent to note that even in case, the petitioner would have failed to justify the factors for computing or quantifying the compensation, was it justified on part of the Department or the Adjudicatory Authority, to straightaway provide or accept a figure, without looking into the basis of the quantification of the compensation. The respondents, in their instructions, could not point out as to what were the factors which formed the basis of the figure of Rs. 10,16,700/-; and the learned Standing Counsel also could not point out as to whether before the determination by the Adjudicatory Authority in its order dated 29.11.2023, did he made efforts either to put the petitioners to notice on the question of quantification or by itself, it considered the basis on which the Department has determined the said compensation.

Conclusion

1. From the aforesaid facts, it is admitted to the department that no notice was given to the petitioner to demonstrate the mitigating factors so as to determine the basis on which the quantification of the compensation could have been made. They also could not justify the said quantification or basis of any multiplier, or the principles of "restitutio in integrum". They also could not demonstrate the compliance to the two fundamental maxims of natural justice vis.

(i) audi alteram partem

(ii) nemo judex in re sua

2. The audi alteram partem rule has many facets, two of them being:

(a) Notice of the case to be made, and

(b) Opportunity to explain.

3. It is no longer res integra that even if the statute is silent with regard to giving a pre-decisional hearing to the person affected and which involves a civil consequences of grave nature, it inherently involves the principles of natural justice, which demands that the person to be effected, may be given an opportunity, by putting him to notice prior to the determination; and as such the Court must make every effort to salvage this cardinal rule to the maximum extent. (Ref: State of Orissa v. Dr. (Miss) Binapani Dei). The principles of natural justice are now considered so fundamental as 'implicit in the concept of ordered liberty' and, therefore, implicit in every decision making function, call it judicial, quasi judicial or administrative. Where the statute is silent about the observation of principles of natural justice, such statutory silence it taken to imply compliance with the principles of natural justice. (kindly referred to **Swadeshi Cotton Mills vs. Union of India**.

4. In the Scheme of a Statute there may be a provision itself providing for a post-decisional hearing, a post-decisional hearing may also be had by the terms of Section 21 of the General Clauses Act; but it may not necessarily help in the interpretation of the provision of the Statute concerned. The exclusion of the principles of natural justice, is generally when a question of public interest is involved and statute provides for post decisional hearing itself.

5. However, in the present case we do not find any such exclusion to the principles of natural justice or a question of public interest, since the question of determination of the compensation under the Employees Compensation Act, 1923 is very individual or a private right. We find that the petitioner ought to have been given an opportunity to substantiate by way of evidence or other mitigating factors, apart from the multiplication of the average annual income, (to the extent of 50%) with such "relevant factors" as provided in the statute; which has been denied in the present case; and as such the decision of the adjudicatory authority while accepting computation of compensation, without the department justifying its basis or putting the claimant/petitioner to

notice, is clearly in violation of the principles of natural justice, which is to be read as an implied requirement of the law.

6. Accordingly, under the facts and circumstances of the present case, there has been a non compliance, with such implied requirement of audi altram partem rule of natural justice at the pre-decisional stage.

7. The family belongs to a middle class and in absence of the bread winner, the pain and sufferings, lost wages and the future care that would be necessary while accounting for inflationary trends; and accordingly, the maxim 'restitutio in integrum' is applicable i.e. the aggrieved person should get that sum of money, which would put him in the same position, if he had not sustained the wrong.

8. We find that in such circumstances, the question of grant of damages, by way of enhancement of compensation is also to be considered. However, we restrain ourselves from computation for such damages, to which the petitioner/claimant may be entitled and leave it open to the Adjudicating Authority, to determine the same keeping in mind the criteria/considerations as indicate hereinabove.

Argument- Issue No.3

1. Learned counsel for the respondents has relied upon a notification dated 03.01.2020 which has been published in the Gazette of India in supersession of the earlier notification dated 31.05.2010, in purported exercise of Section 4(1B) of the Act, 1923 to contend that the monthly wages have been capped at Rs. 15,000/-; and accordingly the said amount is to be considered for the purposes of grant of compensation, under Section 4 of the Act, 1923.

2. Per contra, learned counsel for the petitioner has submitted, that Section 5 of the Act, 1923 clearly provides that the expression "monthly wages" means an amount of wages, which is payable for a month's service and the explanation appended to Section 5 of the Act, 1923, further clarifies that the period of service shall, for the said purposes, be deemed to be continuous, which has not been interpreted by a period of absence from work exceeding 14 days.

3. He has further contended that the capping of the "monthly wages" will render the statutory provision that Section 5 of the Act, 1923; to be otiose.

Discussion- Issue No.3

1. We have carefully examined the interplay of the provisions i.e. Section 4(1B) and Section 5 of the Act, 1923. The careful perusal of sub-section (1B), undoubtedly gives a power to notify in the official Gazette, such "monthly wages" in relation to an employee, which may be required for the purpose of determination of the amounts of compensation in the following conditions:-

(a) Where death results from the injury- or
(b) Where permanent total disablement results from the injury; or

(c) Where permanent partial disablement results from the injury; or
(d) Where temporary disablement, whether total or partial, results from the injury.

2. Section 5 of the Act, 1923 provides the method of calculating wages i.e. it gives meaning to the expression "monthly wages" i.e. the amount of wages deemed to be payable for a month's service; and Section 5(a) may be relevant for the purposes of the present case, which states that where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer which is liable to pay compensation, the monthly wages of the employee shall be "1/12th of the total wages", which have fallen due for payment to him by the employer in the last 12 months of that period. In the present case, the deceased employee was in continuous service, for years together, immediately preceding the accident.

3. The said section also take notes of the circumstance, when the service of the employee was less than one month; then in the said circumstance, the monthly wages of the employee shall be average monthly amount which, during 12 months immediately preceding the accident, was being earned by the employee; and lastly it makes provision for a circumstance, in "other cases" for example in cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be 30 times the total wage earned in respect of the last continuous period of service immediately preceding the accident, divided by the number of days comprising such period.

4. In order to harmonize the provision of Section 4(1B) and Section 5 of the Act, 1923, the object of the legislation or the scheme of the Act is to be analyzed, to come to the conclusion as to whether Section 4(1B) would proceed for all purposes Section 5 of the Act, 1923 or it may have to give way, to the circumstances, which are covered by Section 5 of the Act, 1923.

5. In the case of **Pandit Ram Narain Vs. The State of Uttar Pradesh and Ors.**, the Apex Court observed that expression used in an Act must take colour from the context in which they appear. In the case of **East India Hotels Ltd. and Anr. Vs. Union of India and Anr.**, the Apex Court reiterated a settled principle that an Act is to be read as a whole and different provisions have to be harmonize and effect have to be given to all of them and is not proper to give judgment upon a single clause unless a whole law is examined (Ref: **Darshan Singh and Anr. Vs. State of Punjab**; and State of Maharashtra v. Marwanjee F. Desai & Others.)

6. It is no longer res integra that an interpretation must taken on the text and the context, as held in the case of **Employees' Provident Fund Commissioner vs Official Liquidator of Esskay Pharmaceuticals Ltd.**

7. In order to harmonize the statutory provision of Section 4(1B) and Section 5 of the Act, 1923, it is the duty of the court to interpret the said provision in a way which ultimately avoid conflict in two different spheres and at the same time, achieve the objective of the legislation in question, so as to suit, the intent of the legislature must be carefully analysed, in crystallizing the interplay between the two provisions of same statute.

8. This court, gainfully refers to the ratio in the case of M/s Aphali Pharmaceuticals Ltd. v. State of Maharashtra & Others.31, which was considered with affirmation in **ONGC Ltd. vs. Afcons Gunanusa JV**, and which has laid down context of the "principles of harmonizing construction" i.e. provision could be so construed in the context of the Act, that no word of the statute is rendered redundant, superfluous or meaningless. The Apex Court, recently in the case of **Assistant Commissioner of Income Tax (International Taxation) and others vs. Shelf Drilling Ron Tappmeyer Ltd. etc**., has dealt with the issue in hand and for ready reference Para-9 is quoted below:

"Principles of Statutory Interpretation:

9. Before proceeding further, it would be useful to discuss the relevant principles of statutory interpretation from authoritative sources.

9.1 A statute or any enacting provision therein must be so construed as to make it effective and operative. Thus, courts should lean against construction which reduces a provision to a futility. It has been observed by Lord Dunedin of the House of Lords that "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." vide Whitney vs. Inland Revenue Commissioner, (1926) A.C. 37 ("Whitney"). Therefore, any construction which would defeat the plain intention of the Legislature must be rejected by the courts. Hence, courts should avoid a construction which would reduce the provision to futility and rather accept a construction based on the view that Parliament or any Legislature would legislate only for the purpose of bringing about an effective result. It is in that context that purposive construction by court is gaining acceptance rather than holding that there is absurdity in the statute. The doctrine of purposive interpretation may be taken recourse to for the purpose of giving full effect to the statutory provisions and the courts must state what meaning the statue should bear rather than rendering the statute a nullity.

9.2 Another principle of statutory interpretation is that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, courts are bound to give effect to that meaning irrespective of consequences. The results of the construction are then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust or oppressive. Gajendragadkar, J. in Kanailal Sur vs. Paramnidhi Sadhu Khan, AIR 1957 SC 907 opined thus:

"If the words used are capable for one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act."

S.R. Das, J. in CIT, Agri vs. Keshab Chandra Mandal, AIR 1950 SC 265 observed thus:

"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules."

He further observed that:

"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act". Vide Rananjaya Singh vs. Baijnath Singh, AIR 1954 SC 749,"

9.3 Similarly, Subba Rao, J. observed that in interpretation of a statute, the primary test is the language employed in the Act and when the words are clear and plain, the court is bound to accept the expressed intention of the Legislature, vide MV Joshi vs. MU Shimpi, AIR 1961 SC 1494.

9.4 This means that mere hardship cannot be a ground for not giving effective and grammatical meaning to every word of the provisions of a statute if the language used therein is unequivocal. Thus, an unambiguous and plain statute must be given its full interpretation. It has been observed that unambiguous means "unambiguous in context". The expression "context" in this connection is used in a wide sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia and the mischief which by those and other legitimate means can be discerned that the statute was intended to remedy. In this context, it would be useful to recall the words of Grover, J. in VO Tractoroexport vs. Tarapore and Co., AIR 1971 SC 1, which are as follows:-

"We are aware of no rule of interpretation by which rank ambiguity can be first introduced by giving certain expressions a particular meaning and then an attempt can be made to emerge out of semantic confusion and obscurity by having resort to presumed intention of the Legislature to give effect to international obligations."

9.5 On the other hand, plain meaning rule applies at the stage when the words have been construed in their context and the conclusion has been reached that they are susceptible to only one meaning. In that event, the meaning so derived is to be given effect to irrespective of consequences.

9.6 Further, while interpreting a statute it must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make out a consistent enactment of the whole statutes. Such a construction has a merit of avoiding any inconsistency or repugnancy either within a Section or between a Section and other parts of the statutes. It is the duty of the courts to avoid a clash between two Sections of the same Act and "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise". While doing so the edges have to be ironed out so as to read the provisions of an Act in consonance with the object of the Act. Thus, the provisions of one Section of a statute cannot be used to defeat another section of the same statute. The same rule applies to a sub-section of a Section. In Venkataramana Devaru vs. State of Mysore AIR 1958 SC 255, Venkatarama Aiyar, J. said that "the rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction."

9.7 Therefore, effect should be given to both provisions. Thus, a construction which reduces one of the provisions to a "useless lumber" or 'dead letter' is to be avoided. One of the ways in dealing with such a situation is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the same accordingly. However, if a specific provision has to be read within the mandate of a general provision then the same has to be accordingly construed so as to give effect to the mandate of the general provision. However, if a situation arises where two Sections of the Act cannot be reconciled, as there is an absolute contradiction between them, it is often said that the latter must prevail. Another way of looking at such a situation is to ascertain which is the leading provision and which is the subordinate provision and which must give way to the other, but only if a harmonious construction of two apparently contradictory provisions is possible which will not lead to any absurdity or give rise to practical inconvenience or make well-established provision of existing law nugatory, then the same should be resorted to. In other words, an interpretation which would dilute the intention of the Parliament or give rise to an absurdity or lead to any provision of law being rendered nugatory has to be eschewed.

(Source: GP Singh - Principles of Statutory Interpretation, 15th Ed. LexisNexis)."

9. We may also refer to the title of Section 4(1B) and Section 5 of the Act, 1923. Section 4 has been titled as "amount of compensation"; whereas Section 5 has been titled as "method of calculating wages". Primarily, Section 4(1B) gives an impetus to the Central Government to determine "monthly wages" and Section 5 lays down the method of calculating wages, in different circumstances. It is also no longer res integra that even if a notification which has been issued in its purported exercise of a statutory provision, the same shall not override a statutory provision, itself; as it would amount to amending the statutory provision itself. A circular, notifications, or instructions issued by Government Departments under statutory powers are merely interpretative or administrative guidance and cannot override, contravene, or supplant the provisions of the statute itself. A statutory provisions is supreme, and any subordinate legislation or executive instructions must align with it. It is no longer res integra that executive fiat cannot override the statutory provision.

10. In view of the aforesaid, principle of harmonizing construction and the principle of law that a notification, which can only be categorized as a subordinate legislation, cannot override a statutory provision of law; this court has no hesitation in holding that the circular dated 03.01.2020 cannot override the statutory provision of Section 5 of the Act, 1923 which provides for a method of calculating wages, relevant for the purposes of Section 4 of the Act, 1923. Aforesaid conclusion also finds strength from the object of the Act and the fact that same is a beneficial legislation.

11. For gain sake, the 'Statement of Objects and Reasons' of the Employee's Compensation Act, 1923 is quoted below:

"The general principles of workmen's compensation command almost universal acceptance, and India is now nearly alone among civilised countries in being without legislation embodying those principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing

complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accidents.

An additional advantage of legislation of this type is that by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects of such accidents as do occur. ***The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour.*** *At the same time, a corresponding increase in the efficiency of the average workman may be expected. A system of insurance would prevent time burden from pressing too heavily on any particular employer.*

After a detailed examination of the question by the Government of India, Local Governments were addressed in July 1921, and provisional views of the Government of India were published for general information. The advisability of legislation has been accepted by the great majority of Local Governments and of employers' and workers' association and the Government of India believe that public opinion generally is in favour of legislation.

In June 1922, a committee was convened to consider the question. This committee was composed, for the most part of members of the Imperial Legislature. After considering the numerous replies and opinions received by the Government of India, the committee was unanimously in favour of legislation and drew up detailed recommendations regarding the lines which in its opinion such legislation should follow. The Bill now presented follows these recommendations closely. A number of supplementary provisions have been added where necessary, but practically no variations of importance have been made.

The Bill contains two distinct proposals. In Chapter II modifications are made in the ordinary civil law affecting the liability of employers for the damages in respect of injuries sustained by their workmen; these clauses will operate only in actions before the ordinary civil courts. ***The main part of the Bill makes provisions for workmen's compensation and sets up special machinery to deal with claims falling under this category.***

Both parts of the Bill, however, apply to the same classes of workmen. If the scope of the employers' liability clauses was made wider than the scope of the workmen's compensation provisions, there would be considerable danger of a great increase in litigation. The classes included are those whose inclusion was recommended by the committee, and are specified in Schedule II. Two criteria have been followed in the determination of the classes to be included-

(1) that the Bill should be confined to industries which are more or less organised;

(2) ***that only workmen whose occupation is hazardous should be included.***

The general principle is that the compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in certain limited circumstances for disease. The actual rates of compensation payable are based on the unanimous recommendation of the committee. They are in every case subject to fixed maxima, in accordance with the committee's recommendations. It should be remembered, ***however, that the more highly paid workmen will be enabled in cases to which the employers' liability clauses will apply, to obtain damages on a scale considerably in excess of the maximum fixed for workmen's compensation.***

A consistent endeavour has been made to give as little opportunity for disputes as possible. Throughout the Bill in the definitions adopted the scales selected, and the exceptions permitted the great aim has been precision in order that in as few cases as possible should the validity of a claim for compensation or the amount of that claim be open to doubt. At the same time, on the unanimous recommendation of the committee provision has been made for special Tribunal to deal cheaply and expeditiously with any disputes that may arise, and generally to assist the parties in a manner which is not possible for the ordinary civil courts courts."

12. The aforesaid object clearly envisages that by increasing the importance of adequate safety devices for the employee, reduces the number of accident to workman (employee) in a manner that it cannot be achieved by official inspection. The benefit that an employee draws from the enactment, is an increased sense of security, and which would render industrial life more attractive, catering to the conduciveness and increased availability with supply of labours. The liability of an employer for the damages in respect of injury sustained by their employee, was made paramount and the provision for compensation by setting up special mechanism to deal with claims falling under this category.

13. We also find that one of the considerations before the Committee was that more highly paid workman, shall be entitled under the employers' liability clause, to obtain "**damages**" on a scale considerably in excess of the maximum fixed for the workman's compensation.

We may gainfully refer to the judgment in the case of **Union of India Vs. Prabhakaran Vijaya Kumar and Others**, wherein while a lady was trying to enter a train, fell down on railway track and was run over by the train and consequently died, on legal representatives filing a claim petition before the Railway Claims Tribunal, it held that it was not an "untoward incident" within the meaning of the said expression in Section 123(c) of the Railways Act, 1989; as the same was not an accidental falling of the passenger from a train. However the Apex Court held that the case came within the expression "accidental falling of a passenger from a train carrying passengers" which was an "untoward incident."

In the aforesaid case, while interpreting the aforesaid provisions and the words "untoward incident" as defined under Section 123(c) of the Railways Act, 1989, the Apex Court held that, it is a well settled law if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made, should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation. Reliance was placed on

Alembic Chemical Works Co. Ltd. v. Workmen35 (AIR para 7), Jeewanlal Ltd. v. Appellate Authority36 (AIR para 11), Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd.37 (AIR para 13), S.M. Nilajkar v. Telecom District Manager 38(SCC para 12). Paragraph no.13 of the Prabhakaran Vijaya Kumar and Others (supra) is quoted as below:

"13. In *Hindustan Lever Ltd. v. Ashok Vishnu Kate* this Court observed: (SCC pp. 347-48, paras 41-42)

"41. In this connection, we may usefully turn to the decision of this Court in Workmen v. American Express International Banking Corpn. wherein Chinnappa Reddy, J. in para 4 of the Report has made following observations: (SCC p. 76)

'4. The principles of statutory construction are well Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court we had occasion to say: (SCC p. 447, para 6)

"6. *... Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation.* Where legislation is designed to give relief against certain kinds of mischief, the court is not to e make inroads by making etymological excursions."

42. Francis Bennion in his Statutory Interpretation, 2nd Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by –

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).'

At p. 661 of the same book, the author has considered the topic of 'Purposive Construction' in contrast with literal construction. The learned author has observed as under:

'Contrast with literal construction.- Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction Lord Diplock said in 1975: "If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions." The matter was summed up by Lord Diplock in this way-

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.' "

(emphasis supplied)"

14. Perhaps this brings us back to the question that once "method for calculating" wages has been provided under Section 5, what could be the intent of the legislature to make provision under Section 4(1B) of the Act, 1923, by providing the Central Government to issue notification of such "monthly wages" as it may consider necessary; for an employee who is entitled for compensation under Section 4 of the Act, 1923.

15. There is no iota of doubt that Section 5 visualises three different contingencies and provides a method for calculation of wages in the said three contingencies; but nonetheless there may be a circumstance where a claimant may not be able to demonstrate, the actual "monthly wages" that the deceased employee was entitled to or there may be a circumstance where an employee may be getting wages which may be so meager that applying the methodology as provided under Section 5 of the Act, 1923, the amount of compensation as contemplated under Section 4 of the Act, 1923 is so meager that it may not be a "just compensation"; and which was not be the intent of the Act, 1923; and in form of a social security to the deceased dependents or the family. In the said circumstances, a notification under Section 4(1B) has to be taken into account, which provides for a minimum "monthly wages" to be Rs. 15000/-.

Conclusion

In view of the foregoing discussions we have no hesitation in holding that if the case of a deceased employee is covered by any of the contingencies provided under Section 5 of the Act, 1923, the same shall be applicable; which would mean the actual "monthly wages" an employee was drawing immediately preceding the accident. However, in case the "monthly wages" of an employee is less than what is provided by the notification dated 03.01.2020 i.e. 15000/- the benchmark for calculating the amount of compensation under Section 4 of the Act, 1923 shall be Rs. 15000/-. This is imperative and in consonance with the objects and reasons of the Act, 1923 and in line with the principles for providing a "just compensation" which the enactment envisages, for providing a social security to the family in destitute, on account of death of the earning member of the family. The amount fixed by the circular dated 03.01.2020, can only get a benchmark that the calculation cannot be with a lesser amount; but where the "monthly wages" admissible to the deceased employee was higher, the same shall be considered, for determining the "Amount of Compensation" under Section 4 of the Act, 1923.

Directions

In view of the aforesaid the writ petition stands allowed in terms of the following directions.

(i) The present matter is referred to the Commissioner of the concerned Region, who may have been appointed by the State Government by the notification in the official Gazette, in view of the provisions of Section 20 of the Act, 1923; and he may put the claimant/petitioner to notice for filing evidence/documents to demonstrate their restitutio in integrum, which may be considered along with the mitigating factors; as indicated hereinabove, for grant of damages; apart from the re-determination of compensation as per Section 4 read-with Section 5 of the Act, 1923

(ii) Once the claimant is put to notice and given an opportunity to file their evidence, he shall proceed to quantify the compensation and in consideration of the determining factors. The compensation shall be quantified afresh and paid to the claimant within a period of one month from the date of such determination.

(iii) Once the compensation along with damages are determined, the same shall be held to be payable along with the interest of 12% p.a., which is to be calculated from the date of death i.e. date of accident till the actual disbursal of the said amount after deducting amount of Rs. 10,16,700/-, which has already been paid to the petitioner/claimant.

(iv) In view of the law laid down in the case of **Lata Wadhwa and Ors. (supra)** and in consideration of the admitted factual position and there has been an infraction to the principles of natural justice, it is provided that a conventional figure of Rs. 1,00,000/- is to be added and paid over and above the quantifiable compensation, to be determined by the Commissioner appointed under Section 20 of the Act, 1923.

(v) The entire aforementioned exercise is to be completed within a period of four months from the date of production of copy of this order.

(vi) No order as to costs.

(2026) 2 ILRA 727
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.02.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1003583 of 2008

F.C.I. Faiazabad ...Petitioner

Versus

Regional Labour Commissioner Central Lko. & Ors. ...Respondents

Issue for Consideration

Matter pertains to whether the Regional Labour Commissioner while exercising conciliation proceedings has jurisdiction to decide the dispute relating to payment of wages and issue consequential recovery proceedings (Paras 4, 6–8, 11,12)

Headnotes

LABOUR LAW – Conciliation Proceedings – Jurisdiction of Regional Labour Commissioner – Scope and limitation – Whether authority can adjudicate dispute and direct payment of wages – Held, under conciliation proceedings only conciliation can be made and authority has no power to decide dispute or direct payment of wages – such action amounts to assumption of jurisdiction of Labour Court/Industrial Tribunal – impermissible – orders passed without jurisdiction liable to be quashed. (Paras 9, 11)

LABOUR LAW – Conciliation vs. Adjudication – Distinction – Conciliation proceedings cannot culminate in determination of rights – if conciliation fails matter has to be referred to Central Government for transmission to Labour Court/Industrial Tribunal – direct adjudication by conciliation authority is manifest error of law and jurisdiction. (Paras 9, 11)

JURISDICTION – Lack of – Effect – Primary order being without jurisdiction – consequential orders including rejection of recall application and recovery proceedings also wholly without jurisdiction – not sustainable in eyes of law. (Para 12)

ADMINISTRATIVE LAW – Orders passed in perfunctory and cursory manner – exemplary costs – imposition justified where authority acts beyond jurisdiction. (Para 15)

Held:

Under conciliation proceedings only conciliation can be made and in case conciliation proceeding fails the only remedy is to refer the matter to the Central Government for its transmission to the Labour Court or Industrial Tribunal which alone can pass appropriate order - the order passed by the Regional Level Commissioner directing payment of wages is wholly without jurisdiction as he has no authority under law to pass such order and if satisfied that wages are liable to be paid he ought to have made reference to the competent authority - in proceeding to decide the controversy he has committed manifest error of law and jurisdiction - consequential orders including rejection of recall application and initiation of recovery proceedings being dependent upon such order are also wholly without jurisdiction and not sustainable in the eyes of law - impugned orders having been passed in a perfunctory and cursory manner are liable to be quashed - Petition allowed. (Paras 9, 11–13, 15) (E-7)

Case Law Cited

Nil

List of Acts

– Article 226

List of Keywords

Conciliation Proceedings – Jurisdiction – Regional Labour Commissioner – Industrial Dispute – Reference to Government – Labour Court – Industrial Tribunal – Recovery Proceedings – Without Jurisdiction – Manifest Error – Quashing of Orders

Case Arising From

Order dated 2.11.2006, order dated 5.6.2008 and recovery certificate dated 4.7.2008 passed by the in-Conciliation Case No. LKO.8(2-31)/2005

Appearances for Parties

Counsel for the Petitioner(s):

Jaideep Narain Mathur, Sayed Haseen, Shikhar Anand

Counsel for the Respondent(s):

H.G.S. Parihar, Kumar Ayush, R.N. Tilhari, Raj Kumar Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Shikhar Anand, learned counsel for the petitioners and Shri Raj Kumar Singh, learned counsel for the respondents-Union of India.

2. Vide order dated 11.7.2019, this Court held that service of notice upon opposite party no.2 is deemed sufficient.

3. In view of the above, this Court is proceeding to decide the controversy involved in the present writ petition.

4. By means of the present writ petition, the petitioner is challenging the order dated 2.11.2006, 5.6.2008 and the recovery certificate dated 4.7.2008 passed by the opposite party no.1 in Conciliation Case No.LKO.8(2-31)/2005, enclosed as Annexure Nos.1 & 2 to the writ petition.

5. Factual matrix of the case is that the respondent no.2 filed several writ petition before this Hon'ble Court praying reinstatement of 255 workers with continuity of service and full back wages and also wages for the period 26.06,1998 to 19.08.1999. Vide order dated 4.10.2025, these writ petitions were disposed of with the direction to the petitioners to approach the concerned State or Central for making reference for adjudication of dispute before appropriate Forum/ Industrial Adjudicator.

On 23/27.12.2007, respondent no.2 instead of approaching Industrial Tribunal/ Labour Court made representation before RLC (Central), Lucknow for conciliation proceedings. On 14.08.2006, petitioner filed preliminary objections before the RLC. The RLC without deciding the preliminary objection started conciliation proceedings in the matter relating to payment of wages to 77 workers w.e.f. 26.06.1998 to 18.08.1998. The petitioner never accepted any compromise nor made any commitment an order was passed by the opposite party no.1 without having any power for determination of dispute the petitioner to pay wages to the 77 workers.

The application for recall of the order dated 2.11.2006 was rejected by the opposite party no.1 vide order dated 5.6.2008. The opposite parties did not take any decision regarding the revision/ modification of the drawings submitted by the petitioner but instead the Director, C&DS arbitrarily and unilaterally modified the agreement and took 7 works from the petitioner out of the total 17 works granted by the agreement and also asked to show cause as to why the agreement not be terminated on the ground that it had not completed the work as per the terms of agreement vide order dated 4.7.2008 and recovery was issued on 4.7.2008.

6. Submission of learned counsel for the petitioner is that once the application was moved for conciliation proceedings to be initiated before the Regional Labour Commissioner, then he would not have proceeded to decide the issue like Industrial Tribunal/ Labour Court.

7. Next submission of learned counsel for the petitioner is that without any authority under law and wholly without jurisdiction the opposite parties proceeded to pass orders impugned and in pursuance thereof, recovery proceedings have also been initiated and an application for recall of the order has also been rejected, therefore the order passed is wholly without jurisdiction.

8. Next submission of learned counsel for the petitioner is that the entire proceedings initiated by the Regional Level Commissioner is wholly without jurisdiction and without any rational basis, therefore, the impugned orders are patently illegal and are liable to be set aside.

9. On the other hand, Shri Raj Kumar Singh, learned counsel for the respondents-Union of India admitted the fact that under the conciliation proceedings only conciliation can be made. In case conciliation proceeding fails, the only remedy is available to refer the matter to the Central Government who will recommend to the Labour Court or Industrial Tribunal and the Labour Court or Industrial Tribunal will pass an appropriate order.

10. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record.

11. Admitted position is that the order passed by the Regional Level Commissioner is wholly without jurisdiction. He has no authority under law to pass the order for payment of wages under conciliation proceedings. In case he was satisfied that the wages are liable to be paid to the labourer then by disposing of the conciliation proceeding he has to make reference to the Central Government for its transmission to the Competent Authority i.e. Labour Court or Industrial Tribunal. In this view of the matter, the Regional Level Commissioner has committed manifest error of law and jurisdiction in proceeding to decide the controversy involved in the matter.

12. The consequential orders are also dependent upon the order passed by the Regional Level Commissioner, therefore, the order rejecting recall application as well as initiating proceeding for recovery of the amount is wholly without jurisdiction and is not sustainable in the eyes of law.

13. In view of the facts and circumstances of the case and the reasons assigned above, impugned orders dated 2/11/2006, 5/6/2008 and the recovery certificate dated 4.7.2008 are hereby quashed.

14. In the result, this writ petition is **allowed**.

15. The orders impugned show that in a very perfunctory and cursory manner, the orders have been passed, therefore an exemplary cost to the tune of Rs.50,000/- to be payable to the petitioner is imposed upon the then Regional Level Commissioner who was appointed at the relevant point of time when the order was passed.

(2026) 2 ILRA 730
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 3 of 2026

Mohammad Arif **...Petitioner**
Versus
Laiq Ahmad **...Respondent**

Issue for Consideration

(A) Whether permitting summoning of documents at the stage of final arguments amounted to allowing the plaintiff to fill up lacunae in the case and defeated a valuable right which had accrued in favour of the defendant.
(B) Whether the trial court was justified in fixing the matter for arguments/orders without affording adequate opportunity to the petitioner to cross-examine witnesses and to advance submissions in the light of the additional documents brought on record.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order VII Rule 14(3)- The discretion under Order VII Rule 14(3) CPC is required to be exercised judiciously by applying a threefold test: (i) whether the omission to file the document earlier was bona fide; (ii) whether the document is relevant and necessary for effective adjudication of the dispute; and (iii) and whether permitting its production at a later stage would occasion serious prejudice or irreparable injustice to the defendant- The Trial Court has recorded a clear finding that the omission occurred due to an inadvertent and bona fide mistake arising out of the simultaneous filing of several eviction suits against different tenants on the same date. The documents sought to be summoned pertain to the notice terminating the tenancy, postal receipts evidencing dispatch, and the reply notice submitted by the defendant, all of which form the very foundation of the eviction proceedings. Significantly, the documents were already part of the judicial record of a connected SCC suit and were not sought to be introduced for the first time- Fairness in procedure necessarily requires that once such documents are permitted to be brought on record, the opposite party must be afforded a real, effective, and meaningful opportunity to meet the same by way of cross-examination and by advancing arguments.

Held- No illegality in the impugned orders insofar as they relate to summoning and taking on record the relevant documents- having regard to the subsequent fixation of the matter for final orders and the concern expressed on behalf of the petitioner regarding lack of adequate opportunity, this Court is of the considered opinion that the ends of justice would be best served by directing the Trial Court to afford full opportunity to the parties before proceeding to pronounce final judgment- Petition disposed of. (E-15)

(Para 15, 16, 19, 20 & 21)

Case Law Cited

K.K. Velusamy v. N. Palanisamy (2011) 11 SCC 275; Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527; State of Punjab v. Shamlal Murari AIR 1976 SC 1177; Sangram Singh v. Election Tribunal, Kotah AIR 1955 SC 425

List of Acts

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

List of Keywords

Order VII R.14, Production of documents; the opposite party must be afforded opportunity; by way of cross-examination and by advancing arguments

Case Arising From

the orders dated 03.09.2025 and 09.10.2025 passed by the Judge, Small Causes Court, , as also the order dated 20.11.2025 passed by the learned District Judge, Bareilly whereby the revision preferred by the petitioner under Section 25 of the Provincial Small Cause Courts Act came to be dismissed as not maintainable.

Appearances for Parties

Counsel for Petitioners(s) : Rama Goel Bansal, Shalini Goel
Counsel for Respondent(s) : Rupesh Srivastav

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Ms Rama Goel Bansal, learned counsel for the petitioner and Sri Rupesh Srivastav, learned counsel for the respondent.

2. The present petition under Article 227 of the Constitution of India calls in question the orders dated 03.09.2025 and 09.10.2025 passed by the Judge, Small Causes Court, Bareilly in SCC Suit No. 6 of 2019, as also the order dated 20.11.2025 passed by the learned District Judge, Bareilly in Misc. Civil Case No. 397 of 2025, whereby the revision preferred by the petitioner under Section 25 of the Provincial Small Cause Courts Act came to be dismissed as not maintainable.

3. The dispute has its genesis in SCC Suit No. 6 of 2019 instituted by the respondent-plaintiff seeking eviction of the petitioner-defendant from a shop situated at Meena Bazar, Mohalla Tanda, near Imambara Baheri, District Bareilly. The plaintiff asserted his ownership over the premises on the strength of a registered sale deed dated 15.04.1988 and pleaded that the shop in question formed part of Kadri Market, which was constructed during the years 2000-2001.

4. It was the specific case of the plaintiff that the shop was let out to the defendant in the year 2003 at a monthly rent of Rs.2,500/- per shop and that the defendant was in occupation of two shops at a total monthly rent of Rs.5,000/- per month. It was alleged that the defendant committed default in payment of rent after August 2018. Consequently, a notice dated 16.01.2019 terminating the tenancy and demanding arrears of rent was issued. Alleging non-compliance with the said notice, the eviction suit came to be instituted.

5. The plaintiff further pleaded that on the same date he had instituted several eviction suits against different tenants occupying various shops in the same market, namely SCC Suit Nos. 4 to 9 of 2019. It was asserted that each of the said suits was filed along with the respective notices terminating tenancy, postal receipts evidencing dispatch, and reply notices submitted by the concerned defendants. According to the plaintiff, owing to the simultaneous filing of multiple suits, an inadvertent and *bona fide* mistake occurred at the stage of presentation, resulting in the basic documents relating to SCC Suit No. 6 of 2019 being wrongly tagged with the record of SCC Suit No. 7 of 2019 and vice versa.

6. During the course of proceedings, the defence of the defendant was struck off. The plaintiff led his evidence and, during cross-examination, PW-1, after perusing Paper No.8C2, stated that the said document was the notice issued to the defendant. It was thereafter, at the stage of final arguments, that the plaintiff moved an application dated 19.08.2025 (Paper No.81C) seeking summoning of the relevant documents from the record of SCC Suit No. 7 of 2019.

7. By order dated 03.09.2025, the Trial Court directed summoning of the record of SCC Suit No. 7 of 2019 from the record room. Subsequently, by order dated 09.10.2025, the application was allowed, the Trial Court accepting the explanation furnished by the plaintiff that the omission was bona fide and occurred on account of an inadvertent mistake while filing multiple suits simultaneously. While allowing the application, the Trial Court expressly granted liberty to the

defendant to move an application for recalling witnesses for further cross-examination in respect of the documents so summoned.

8. Aggrieved thereby, the petitioner preferred a revision under Section 25 of the Provincial Small Cause Courts Act, which came to be registered as Misc. Civil Case No. 397 of 2025. The revisional court, by order dated 20.11.2025, dismissed the revision holding that the impugned order did not amount to a "case decided" and, therefore, was not amenable to revisional jurisdiction.

9. Before this Court, counsel for the petitioner initially assailed the impugned orders contending that permitting summoning of documents at the stage of final arguments amounted to allowing the plaintiff to fill up lacunae in the case and defeated a valuable right which had accrued in favour of the defendant. However, after making submissions to some extent, learned counsel could not seriously dispute that the order passed by the Trial Court summoning the documents on the ground of a *bona fide* mistake could not be said to be perverse or wholly unjustified, inasmuch as it was passed in furtherance of the ends of justice.

10. Learned counsel for the respondent-plaintiff, on the other hand, submitted that the omission in filing the correct set of documents at the time of institution of the suit was wholly inadvertent and was a direct consequence of the simultaneous filing of multiple eviction suits against different tenants on the same date. It was urged that the documents sought to be summoned were not new documents being introduced for the first time in the proceedings, but were already part of the judicial record of a connected SCC suit and constituted the foundational documents of the plaintiff's case. It was further submitted that no prejudice whatsoever was caused to the defendant, particularly in view of the liberty granted by the Trial Court to recall witnesses for further cross-examination and to address arguments on the basis of the said documents.

11. The principal grievance of the petitioner which survives for consideration is that by a subsequent order dated 20.01.2026, the Trial Court has fixed the matter for arguments/orders without affording adequate opportunity to the petitioner to cross-examine witnesses and to advance submissions in the light of the additional documents brought on record. Learned counsel for the respondent, in all fairness, does not oppose the prayer that such opportunity be granted before the suit is finally decided.

12. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is intended to ensure that subordinate courts act within the bounds of their authority, exercise jurisdiction vested in them in accordance with law, and adhere to the principles of natural justice. Though this Court does not sit as a court of appeal over interlocutory or procedural orders, it is obliged to intervene where a procedural irregularity results in denial of a fair opportunity to a party.

13. Order VII Rule 14(3) of the Code of Civil Procedure places a procedural embargo on the reception in evidence of documents which were required to be produced or listed at the time of presentation of the plaint but were not so produced. The object underlying the provision is to ensure procedural transparency and fairness by mandating early disclosure of the documentary foundation of the plaintiff's claim and by preventing surprise to the opposite party at a later stage of the proceedings. At the same time, the provision itself confers discretion upon the Court to grant leave

for production of documents at a subsequent stage, thereby indicating that the rule is directory and not mandatory.

14. A code of procedure is a body of law designed to facilitate justice and further its ends, and should not be treated as an enactment providing for punishments and penalties. The laws of procedure are grounded on the principles of natural justice, which require that a person should not be condemned unheard, that decisions should not be reached behind the back of a party, and that proceedings affecting life or property should not continue without affording an effective opportunity of participation. Subject to clearly defined exceptions, procedural provisions must therefore be construed, wherever reasonably possible, in the light of these principles.

15. The discretion under Order VII Rule 14(3) CPC is required to be exercised judiciously by applying a three fold test: (i) whether the omission to file the document earlier was bona fide; (ii) whether the document is relevant and necessary for effective adjudication of the dispute; and (iii) and whether permitting its production at a later stage would occasion serious prejudice or irreparable injustice to the defendant.

16. In the present case, the Trial Court has recorded a clear finding that the omission occurred due to an inadvertent and *bona fide* mistake arising out of the simultaneous filing of several eviction suits against different tenants on the same date. The documents sought to be summoned pertain to the notice terminating the tenancy, postal receipts evidencing dispatch, and the reply notice submitted by the defendant, all of which form the very foundation of the eviction proceedings. Significantly, the documents were already part of the judicial record of a connected SCC suit and were not sought to be introduced for the first time.

17. The exercise of discretion by the Trial Court is further reinforced by the safeguards incorporated in the order itself. Liberty was expressly granted to the defendant to recall witnesses for further cross-examination in respect of the documents so summoned. Such an approach is in consonance with the settled principle that procedural laws are handmaids of justice and ought to be applied in a manner that advances, rather than obstructs, the cause of substantive justice. The Supreme Court in **Sangram Singh v. Election Tribunal, Kotah1** and **State of Punjab v. Shamlal Murari2** has consistently held that rules of procedure are intended to advance justice and not to defeat it. It has also been emphasised that procedural provisions should be construed pragmatically so as to further the cause of fair trial rather than frustrate it on technical grounds. This principle has also been consistently reiterated that where the Court is satisfied about the bona fides of a party and adequate opportunity is afforded to the opposite side, production of documents at a later stage does not vitiate the proceedings.

18. The inherent powers of the Court preserved under Section 151 CPC are intended to supplement the procedural framework of the Code and to ensure that justice is done in situations where rigid adherence to procedure may result in injustice. The scope and amplitude of Section 151 CPC have been authoritatively explained by the Supreme Court in **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal3,** wherein it was held that the inherent powers of the Court are complementary to the powers expressly conferred by the Code and may be exercised to secure the ends of justice or to prevent abuse of the process of the Court, so long as their exercise is not in

conflict with any express provision of law. A conjoint reading of Order VII Rule 14(3) CPC and Section 151 CPC makes it clear that where the interests of justice so demand, and where adequate opportunity is afforded to the opposite party to meet the case set up by the additional documents, the Court is well within its jurisdiction to permit their production, subject to appropriate safeguards, for processual law is meant to be not an obstruction but an aid to justice. The Court is invested with the widest possible discretion to ensure that justice is done to all concerned, and such discretion must be exercised to advance the cause of justice while safeguarding fairness to the opposite party and strict adherence to the principles of natural justice.

19. At the same time, fairness in procedure necessarily requires that once such documents are permitted to be brought on record, the opposite party must be afforded a real, effective, and meaningful opportunity to meet the same by way of cross-examination and by advancing arguments. Any denial of such opportunity would offend the principles of natural justice and would warrant supervisory interference by this Court.

20. In view of the foregoing discussion, this Court finds no illegality, jurisdictional error or perversity in the orders dated 03.09.2025 and 09.10.2025 passed by the Trial Court, nor in the order dated 20.11.2025 passed by the revisional court, insofar as they relate to summoning and taking on record the relevant documents. The approach adopted by the courts below is in consonance with the law laid down by the Supreme Court in **K.K. Velusamy v. N. Palanisamy4**, wherein it has been held that procedural provisions, including the power to permit additional evidence or recall of witnesses, are intended to advance justice and can be exercised where the Court is satisfied about the bona fides of the party and where the opposite side is afforded adequate opportunity to rebut the material so brought on record. Consequently, the relief sought by the petitioner for setting aside the impugned orders is declined.

21. However, having regard to the subsequent fixation of the matter for final orders and the concern expressed on behalf of the petitioner regarding lack of adequate opportunity, this Court is of the considered opinion that the ends of justice would be best served by directing the Trial Court to afford full opportunity to the parties before proceeding to pronounce final judgment.

22. Accordingly, the petition is **disposed of** with a direction to the Judge, Small Causes Court, Bareilly to afford adequate opportunity to the parties to adduce evidence, to recall and cross-examine witnesses, if so prayed, in respect of the documents summoned from the record of SCC Suit No. 7 of 2019, and thereafter to hear and decide the matter after granting reasonable opportunity of arguments to both sides. The Trial Court may regulate the proceedings, subject to appropriate terms, so as to balance procedural fairness with expeditious disposal.

23. It is made clear that this Court has not expressed any opinion on the merits of the case, which shall be decided independently by the Trial Court in accordance with law.

(2026) 2 ILRA 736
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 252 of 2026

Lko. Development Authority ...Petitioner
Versus
Prem Chandra ...Respondent

Issue for Consideration

Whether interest can only be awarded from the date of notification under Section 4 and not from any date prior to initiation of proceedings under the Land Acquisition Act. and the award of interest from the date of taking possession on 30.12.1984 is without jurisdiction and, therefore, the award cannot be executed to the extent it awards interest for the period prior to the notification under Section 4 of the Land Acquisition Act

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908-Section 47; The Land Acquisition Act, 1894- Section 4, 28 & 34- Perusal of the order dated 19.12.2025 indicates that it nowhere assigns any reason for rejecting the objection of the petitioner that the Land Acquisition Act does not stipulate payment of interest from a date prior to issuance of notification under Section 4 of the Act which was the sole ground raised in the application under Section 47 C.P.C. The submissions of the learned counsel for the opposite party-decree holder recorded in the impugned order also do not contain any reply to the solitary ground raised in the application under Section 47 C.P.C. and the only objection is application under Section 47 C.P.C. advanced during pressing submissions was that the application had been filed with an intention to cause delay in execution proceedings- The opposite party is claiming is that although he was deprived of the possession of the land in the year 1984, he should be paid compensation at the rates prevalent on 19.04.2010, i.e., 26 years later, and he should be given interest on the amount of compensation calculated at the rates prevalent on 19.04.2010, since 31.12.1984. This claim is not equitable.

Held- LARA had no jurisdiction to award interest for any period prior to 19.04.2010 – the date of issuance of the notification under Section 4(1) of the Land Acquisition Act. It is settled law that the plea of lack of jurisdiction can be raised at any stage, even during execution proceedings by filing an application under Section 47 CPC. LARA has passed the impugned orders without dealing with the plea of lack of jurisdiction raised by the petitioner which makes the orders unsustainable in law- **Petition allowed.** (E-15)

Case Law Cited

Sadhana Lodh v. National Insurance Co. Ltd.: (2003) 3 SCC 524; . C.G. Thampi v. Jyothis: 2022 SCC OnLine Ker 704; Tapan Chandra Deb Barma v. Dulal Chandra Deb Barma: 1979 SCC OnLine Gau 17; State of A.P. v. V. Sarma Rao: (2007) 2 SCC 159; Bhavnagar University v. Palitana Sugar Mill (P) Ltd.: (2003) 2 SCC 111,; Shiv Shakti Coop. Housing Society v. Swaraj Developers: (2003) 6 SCC 659; Shalini Shyam Shetty v. Rajendra Shankar Patil: (2010) 8 SCC 329; Union of India v. Budh Singh: (1995) 6 SCC 233; R.L. Jain (D) by LRs. Vs. DDA and others: (2004) 4 SCC 79; Madishetti Bala Ramul v. Land Acquisition Officer: (2007) 9 SCC 650; Tahera Khotoon v. Land Acquisition Officer: (2014) 13 SCC 613; Dhanush Vir Singh v. Ila Sharma: 2024 SCC OnLine All 3693

List of Acts

The Constitution of India, 1950; The Code of Civil Procedure, 1908; The Land Acquisition Act, 1894

List of Keywords

Section 4 Land Acquisition Act; Payment of interest; from the date; issuance of notification u/s 4; plea of lack of jurisdiction; raised at any stage; even during execution proceedings

Case Arising From

Petitioner has challenged the validity of three orders passed by the Land Acquisition and Rehabilitation and Resettlement Authority, Lucknow in Execution Case No. 42 of 2024 (i) an order dated 25.09.2025, whereby the petitioner's objections against a calculation chart submitted by the opposite party have been rejected, (ii) an order dated 19.12.2025, whereby the petitioner's application under Section 47 C.P.C. has been rejected and (iii) an order dated 23.12.2025 rejecting the petitioner's objections against the decree holder's application under Order XXI, Rule 37 CPC.

Appearances for Parties

Counsel for Petitioner(s) : Bhanu Bajpai,
Counsel for Respondent(s) : Amit Jaiswal, Ankit Verma, Ashish Kumar Singh

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

1. Heard Sri Mukund Tiwari, Senior Advocate, assisted by Sri Bhanu Bajpai, Advocate, the learned counsel for the petitioner, Sri Amit Jaiswal, Advocate, the learned counsel for the opposite party and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of three orders passed by the Land Acquisition and Rehabilitation and Resettlement Authority, Lucknow (hereinafter referred to as "the LARA") in Execution Case No. 42 of 2024 titled Prem Chandra Vs. State and another namely - (i) an order dated 25.09.2025, whereby the petitioner"s objections against a calculation chart submitted by the opposite party have been rejected, (ii) an order dated 19.12.2025, whereby the petitioner"s application under Section 47 C.P.C. has been rejected and (iii)"an order dated 23.12.2025 rejecting the petitioner"s objections against the decree holder"s application under Order XXI, Rule 37 CPC.

3. Sri. Amit Jaiswal, the learned counsel for the opposite party has raised a preliminary objection that the petitioner has got the remedy of challenging these orders by filing a revision under Section 115 CPC and, therefore, the petition under Article 227 is not maintainable. In support of this contention he has relied upon a judgment of a Single Judge Bench of the High Court of Kerala at Ernakulam in the cases of **C.G. Thampi v. Jyothis:** 2022 SCC OnLine Ker 704, **Tapan Chandra Deb Barma v. Dulal Chandra Deb Barma**: 1979 SCC OnLine Gau 17, **Sadhana Lodh v. National Insurance Co. Ltd.**: (2003) 3 SCC 524,

4. In **Sadhana Lodh v. National Insurance Co. Ltd.**: (2003) 3 SCC 524, it was held that: -

"7."The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does

not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8."For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law."

5. In **C. G. Thampi v. Jyothis:** 2022 SCC OnLine Ker 704, it was held that: -

"...wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence the High Court ought not to have entertained the Revision under Article 227 of the Constitution of India, in a case where a specific remedy of appeal is provided under the code of Civil Procedure. Further the availability of such a remedy under the Code of Civil Procedure to be construed as near to total bar for the remedy under Article 227 of the Constitution of India."

6. In **Tapan Chandra Deb Barma v. Dulal Chandra Deb Barma:** 1979 SCC OnLine Gau 17 : AIR 1980 Gau 3, it was held that determinations made under Section 47 of the CPC on or after 01.02.1977 are not decrees and therefore not appealable, The Gauhati High Court ordered the appellate Court to return the memorandum of appeals for due presentation before the High Court as revisions.

7. Per contra, Sri. Mukund Tiwari, the learned Senior Counsel appearing for the petitioner, has invited attention of the Court to the provision contained in Section 53 of the Land Acquisition Act, 1894, which is as follows: -

*"53. **Code of Civil Procedure to apply to proceedings before Court.-** Save in so far as they may be inconsistent with anything contained in this Act, the provision of the"Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act."*

8. The definition of Court given in Section 3(d) of the Land Acquisition Act, 1894 is as follows: -

"(d) the expression "Court"means a principal Civil Court of original jurisdiction, unless the"appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act"

9. The State Government has issued a Notification dated 04.08.2022 authorising the Presiding Officers of the Land Acquisition and Rehabilitation and Resettlement Authority to perform the duties of Courts and that declaring that they shall work as Special Judicial Officers. Thereafter the Government Order dated 21.02.2024 has clarified that the Presiding Officers of the Land Acquisition and Rehabilitation and Resettlement Authority are also authorised to adjudicate upon all the pending matters under the Land Acquisition Act, 1894, including the execution cases.

10. The learned Counsel for the petitioner has submitted that while deciding cases under the Land Acquisition Act, 1894, LARA acts as a Court under the Land Acquisition Act hence the provision of the"Code of Civil Procedure, 1908, shall apply to all proceedings before the LARA. However, in the case of **State of A.P. v. V. Sarma Rao**: (2007) 2 SCC 159, the Hon"ble Supreme Court has held that: -

"12.... Despite applicability of the provisions of the Code of Civil Procedure (CPC) in relation to the proceedings pending before it, its substantive part is not applicable. A right of appeal is provided for under Section 96 of the Civil Procedure Code. Such appeals are to be filed before the forums laid down under the Civil Procedure Code or the courts governed by the statute. However, no appeal from a judgment of the Land Acquisition Judge can be filed before the Principal Court of civil jurisdiction or in other words, the District Judge of the district, as such appeals lie only before the High Court. No appeal"ex facie"or filed against the order passed by the Reference Court is maintainable before the District Judge."

11. Sri. Tiwari has submitted that the provision under Section 115 of CPC is also a substantive provision like the substantive provision of appeal under Section 96 CPC. Therefore, in view of the law laid down in **State of A.P. v. V. Sarma Ra**o (Supra), revision under Section 115 CPC would not lie against an order passed by LARA.

12. The learned Counsel for the opposite party has submitted that **State of A.P. v. V. Sarma Rao** (Supra) was decided in view of the peculiar facts of that case and it does not lay down a general principle of universal application that no revision would lie against an order passed by LARA. He has placed reliance on the judgment in the case of **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.:** (2003) 2 SCC 111, wherein the Hon"ble Supreme Court held that a decision is an authority for which it is decided and not what can logically be deduced therefrom.

13. I agree with the submission of the learned Counsel for the opposite party that **State of A.P. v. V. Sarma Rao** (Supra) does not lay down that an order passed by LARA is not amenable to revisional jurisdiction under Section 115 CPC. In **Shiv Shakti Coop. Housing Society v. Swaraj Developers:** (2003) 6 SCC 659, it was held that *"It is fairly a well-settled position in law that the right of appeal is a substantive right. But there is no such substantive right in making an application under Section 115". The Hon"ble Supreme Court clarified that "Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under Section 115 is not linked with a substantive right."*

14. The learned counsel for the petitioner has next submitted that although the order rejecting the application under Section 47 CPC may be amenable to the revisional jurisdiction of this court,"the other two orders do not fall within the category of "case decided"and, therefore, those are not amenable to the revisional jurisdiction of this court. He has submitted that when three orders passed in the same proceedings between the same set of parties are required to be challenged before this court, challenging one order by filing a revision under Section 115 CPC, whereas filing a petition under Article 227 of the Constitution of India for challenging the validity of the other two orders, will only lead to multiplicity of proceedings. Moreover, the power of superintendence conferred upon this court under Article 227 of the Constitution of India is not abridge the revisional power of this court under Section 115 CPC.

15. Sri. Mukund Tiwari Senior Advocate has relied upon the judgment in the case of **Shalini Shyam Shetty v. Rajendra Shankar Patil:** (2010) 8 SCC 329, in which the Hon"ble Supreme Court considered various precedents on the point of scope of interference under Article 227 of the Constitution of India and summarised the following principles: -

"48."The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

49."On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. ***In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.***

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in"Waryam Singh"[AIR 1954 SC 215] and the principles in"Waryam Singh"[AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in"Waryam Singh"[AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), ***High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.***

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) ***The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in"L. Chandra Kumar"v."Union of India"[(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.***

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) ***This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.***

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

16. The learned counsel for the opposite party has not placed any judgment in support of his submission that the orders dated 25.09.2025 and 23.12.2025 would fall within the category of "case decided"and would be amenable to the revisional jurisdiction of this court.

17. I find force in the submission of the learned Counsel for the petitioner that although the order rejecting the application under Section 47 CPC may be amenable to the revisional jurisdiction of this court,"the other two orders do not fall within the category of "case decided"and, therefore, those are not amenable to the revisional jurisdiction of this court. When three orders passed in the same proceedings between the same set of parties are required to be challenged before this court, challenging one order by filing a revision under Section 115 CPC, whereas filing a petition under Article 227 of the Constitution of India for challenging the validity of the other two orders, will only lead to multiplicity of proceedings. The power of superintendence conferred upon this court under Article 227 of the Constitution of India is not abridge the revisional power of this court under Section 115 CPC and this power can be exercised where the order under challenge suffers from a patent error of jurisdiction which can be established without any detailed factual inquiry.

18. In view of the foregoing discussion, I turn down the preliminary objection that the petition is not maintainable and I proceed to examine the merits of the case.

19. Grievance of the petitioner is that under provisions of the Land Acquisition Act, interest can be paid since the date of notification under Section 4 and not prior to it. In **Union of India v. Budh Singh**: (1995) 6 SCC 233, the Hon"ble Supreme Court held that the question whether the respondents-owners of the lands are entitled to interest from the date on which possession was initially taken, preceding the date on which the notification under Section 4(1) was published, is a jurisdictional issue and the finding in this behalf touches and trenches into the jurisdictional power

of the court, acting under the Act regarding award of interest. This is the precise issue involved in the present case, where the LARA has awarded interest since prior to the notification.

20. The dispute between the parties emanates from an award dated 12.07.2012, passed by the Land Acquisition Officer Nagar Mahapalika-I, Lucknow / Additional District Magistrate, Lucknow. The award states that a notification under Section 4/17 of the Land Acquisition Act was issued on 19.04.2010 and a notification under Section 6/17 of the Land Acquisition Act was published on 04.01.2011. As against the date of taking possession of the acquired land, the award states that the land is in possession of the petitioner since before. The award directs payment of interest from the date of taking possession of the land.

21. The opposite party had filed a reference no.119 of 2015, which was decided by LARA by means of a judgment and order dated 10.04.2024. The following issues were framed by the authority: -

"1."Whether the compensation declared by the Special Land Acquisition Officer is improper and insufficient, if yes, what was the market value of the property on the date of publication of the notification under Section 4 of the Land Acquisition Act?

2."Other relief which the claimant is entitled to."

22. Apparently, no issue was framed regarding the date of taking possession of the land. However, while deciding issue no.1, the authority has held that it is clear that possession of the land had been taken in the year 1983-84, but as the date of taking possession has not been ascertained, the authority assumed 30.12.1984 to be the date of taking over possession. LARA held that the claimant is entitled to get compensation at the market"value of the land as on the date of issuance of the notification under Section 4 of the Land Acquisition Act, i.e., 19.04.2010, which was Rs.6,771/- per square meter. The opposite party was also held entitled to receive interest at the rate of 12% from the date of notification i.e. 09.04.2010 till the date of the award, i.e., 12.07.2012 and 30% solatium. The opposite party was further held entitled to get interest at the rate of 9% per annum from the date of possession i.e. 30.12.1984, for a period of one year and thereafter interest at the rate of 15%.

23. The aforesaid order dated 10.04.2024, passed in reference has been challenged by filing a belated appeal which is yet to be admitted."The delay has not yet been condoned and the appeal is yet to be admitted.

24. The opposite party filed Execution Case No.42 of 2024 for execution of the award passed in reference. The opposite party "decree holder filed a calculation chart calculating interest from the date of possession and not from the date of the notification under Section 4 of the Land Acquisition Act. The petitioner filed objections against it and filed its own calculation chart calculating interest from the date of notification under Section 4 of the Act. The LARA rejected the petitioner"s objection by means of the impugned order dated 25.09.2025 (Annexure No.2 to the petition) by holding that the petitioner had not taken possession of the land after its acquisition and it had been taken earlier. The award states that the interest will be payable from the date of taking

over possession of the land. Therefore, the objections of the petitioner against the calculation chart calculating interest from the date of possession i.e. 31.12.1984 were rejected and"the calculation chart of the petitioner calculating interest from the date of notification under Section 4 of the Act was also rejected. The authority accepted the calculation chart of the opposite party-decree holder for calculating interest from the date of possession.

25. Thereafter the petitioner filed an application under Section 47 CPC, stating that interest can only be awarded from the date of notification under Section 4 and not from any date prior to initiation of proceedings under the Land Acquisition Act. The award of interest from the date of taking possession on 30.12.1984 is without jurisdiction and, therefore, the award cannot be executed to the extent it awards interest for the period prior to the notification under Section 4 of the Land Acquisition Act. In support of this contention the petitioner relied upon the judgment of the Hon"ble Supreme Court in the case of **R.L. Jain (D) by LRs. Vs. DDA and others**: (2004) 4 SCC 79.

26. From the record it appears that the opposite party did not file any objection against the petitioner's application under Section 47 C.P.C."

27. The application has been rejected by means of the impugned order dated 19.12.2025, wherein the objection raised in the application under Section 47 C.P.C. is mentioned and it is mentioned that counsel for the opposite party-decree holder opposed the application under Section 47 C.P.C. stating that the petitioner is merely causing delay in execution proceedings. The authority has held in the impugned order that a sum of Rs.15,33,11,140/- has already been attached as per the report (C-17) submitted by the accounts officer and the judgment debtor has made an endorsement "no objection". The grounds raised in the application under Section 47 CPC amounts to questioning the validity of the award. The award has been challenged in First Appeal No.84 of 2024, wherein no interim order has been passed. The authority held that the application had been filed merely to cause delay in execution proceedings and accordingly rejected the application."

28. A bare perusal of the order dated 19.12.2025 indicates that it nowhere assigns any reason for rejecting the objection of the petitioner that the Land Acquisition Act does not stipulate payment of interest from a date prior to issuance of notification under Section 4 of the Act which was the sole ground raised in the application under Section 47 C.P.C. The submissions of the learned counsel for the opposite party-decree holder recorded in the impugned order also do not contain any reply to the solitary ground raised in the application under Section 47 C.P.C. and the only objection is application under Section 47 C.P.C. advanced during pressing submissions was that the application had been filed with an intention to cause delay in execution proceedings.

29. Section 34 of the Land Acquisition Act contains provision for payment of interest and it provides as follows: -

"34. Payment of interest. *-When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of"nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:*

Provided that if such compensation or any part thereof is not paid or deposited within 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 compensation or part thereof which has not been paid or deposited before the date of such expiry."

30. The other provision relevant for payment of interest is Section 28, which provides as follows: -

*"**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"53[nine per centum] 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."

31. In **Union of India v. Budh Singh**: (1995) 6 SCC 233, the Hon"ble Supreme Court held that: -

"5.""the statute covers the entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when land has been taken over and possession in consequence thereof, the land owner was deprived of the enjoyment thereof. Thus, it could be seen that the court has no power to impose any condition to pay interest in excess of the rate and manner prescribed by the statute as well as for a period anterior to the publication of Section 4(1) notification under the Act. The parameter for initiation of the proceedings is the publication of the notification under Section 4(1) of the Act in the State Gazette or in an appropriate case in District Gazette as per the local amendments. But the condition precedent is publication of the notification under Section 4(1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Any possession otherwise would not be considered to be possession taken under the Act. In fact, a situation has been envisaged under Section 48(2) of the Act, namely, that when proceedings under the Act were initiated and in the midstream the proceedings were dropped, the owner who has been deprived of the enjoyment of the property, the statute prescribes the remedy of determination of the amount of compensation due to the owner for the damages suffered by the owner in consequence of the notice of the proceedings under the Act. The statute also imposes liability on the State to reimburse the costs incurred by the owner to defend the proceedings under the Act. The Act is a self-contained code and common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute."

32. In **R.L. Jain v. DDA:** (2004) 4 SCC 79, the Hon"ble Supreme Court discussed numerous precedents, ncluding the case of **Budh Singh** (Supra) and concluded that: -

"17.1."The normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof. But here the land has been acquired only after the preliminary notification was issued on 9-9-1992 as earlier acquisition proceedings were declared to be null and void in the suit instituted by the landowner himself and consequently, he was not entitled to compensation or interest thereon for the anterior period.

18."In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

19."The case may be examined from the equitable consideration as well. In the earlier acquisition proceedings the notification under Section 4(1) had been published on 13-11-1959 and the Collector had made an award for Rs. 6301 for the plot in dispute on 30-12-1961. The award was made within 1"months of dispossession which allegedly took place on 10-11-1961. This amount was paid to R.L. Jain and was retained by him. Learned counsel for the respondent has placed before the Court a copy of the sale certificate issued in favour of R.L. Jain on 31-8-1961 which shows that the plot was purchased by him for Rs. 3200 only and thus he had received almost double amount of compensation. Therefore, even on equitable ground he is not entitled to any amount from the date of dispossession till the date of second notification under Section 4(1) of the Act which was issued in 1992."

33. The learned Counsel for the opposite party has submitted that in **R.L. Jain v. DDA** (supra), the Hon"ble Supreme Court held that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof.

34. Sri. Jaiswal has also relied upon the following observation made in **Madishetti Bala Ramul v. Land Acquisition Officer:** (2007) 9 SCC 650: -

"20."In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the amount of compensation

to which the appellants would be entitled for being remained out of possession since 1979, we are of the opinion that the interest of justice would be met if this appeal is disposed of with a direction that additional interest @ 15% per annum on the amount awarded in terms of award dated 2-1-1999 for the period 16-3-1979 till 22-12-1991, should be granted, which, in our opinion, would meet the ends of justice."

35. The learned Counsel for the opposite party as also relied upon the judgment in the case of **Tahera Khotoon v. Land Acquisition Officer:** (2014) 13 SCC 613, wherein the Hon"ble Supreme Court referred to the decisions in the cases of **R.L. Jain"v."DDA"**(supra) and"**Madishetti Bala Ramul"**(supra) and held that: -

"13."Keeping in view the peculiar facts and circumstances of the case, we are of the opinion that the exercise that has been done by this Court in"Madishetti Bala Ramul"requires to be adopted.

14."In the instant case, it is not in dispute nor can it be disputed by either side that the property in dispute was in possession of the Warangal Municipal Committee. In fact the said Municipal Committee had developed the aforesaid land into a park. Since there was a dispute among the owners of the land with the Municipal Committee, the Municipal Committee had sought the assistance of the State Government to acquire the property and to hand over the same to the Municipal Committee for its use and development.

15."It is also not in dispute that the Municipal Committee was in possession of the aforesaid property right from 1-1-1938 till the Notification was issued by the State Government on 10-1-1996. Keeping in view the observations made by this Court in"Madishetti Bala Ramul, we direct the State Government to pay rents/damages at the rate of 15% on the compensation awarded from the date the landowners were dispossessed, namely, from 1-1-1938 till the date of issuance of the preliminary Notification i.e. 10-1-1996. The calculations shall be made by the State Government as expeditiously as possible and disburse the aforesaid amount to the appellants as early as possible, at any rate, within three months from the date of receipt of copy of this order."

36. The learned Counsel for the opposite party has submitted that the award in question awards interest since the date of taking over possession to compensate the undue loss suffered by the opposite party by illegally being deprived of the possession of his property without its acquisition.

37. In the present case, the land has been acquired only after a notification under Section 4 of the Act was issued on 09.09.1992, as the earlier acquisition proceedings were declared to be null and void in the suit instituted by the opposite party himself. Neither the opposite party had claimed the relief for payment of compensation for having been deprived of possession of the land, nor was the said relief granted to him.

38. As has already been discussed above, the Land Acquisition Act, 1894 does not contain any provision for payment of interest for a period anterior to issuance of the notification under Section

4 of the Act. The Act contains a provision for payment of additional compensation in Section 23 (1-A), which is as follows: -

"(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court"shall"be excluded."

39. Section 23 (1-A) of the Act also provides for payment of additional amount calculated at the rate of twelve per cent per annum on the market value of the land for the period commencing on and from the date of the notification under section 4 (1) to the date of the award or the date of taking possession of the land, whichever is earlier. This provision also stipulates payment of additional amount only after the date of issuance of notification under Section 4 (1) but the amount will be calculated till the date of the award or the date of taking possession, whichever is earlier. It does not stipulate payment of any additional amount for any period prior to issuance of a notification under Section 4 of the Act.

40. Payment of interest for a period prior to issuance of the notification under Section 4 of the Land Acquisition Act is based on equitable considerations because a person who has been deprived of the use and enjoyment of his land, should be provided compensation in respect of the same. However, the Land Acquisition Act provides that the amount of compensation shall be determined considering the value of the land as on the date of notification under Section 4 of Land Acquisition Act and interest will also be payable from the same date. Equity demands that the land owner should be granted compensatory benefits from the date he is deprived of the enjoyment of the possession of his land. In case we reconcile the statutory provisions with equitable considerations, the opposite party has the statutory right to receive compensation at the rates prevalent on the date of notification under Section 4(1) of the Act, i.e., from 19.04.2010 and he is entitled to receive interest on this amount from 19.04.2010. On equitable considerations, the opposite party was entitled to receive compensation on the date of being deprived of the possession and enjoyment of his land, i.e. 31.12.1984 and in that case, the compensation will be payable at the rates prevalent on 31.12.1984 and he would get interest on this amount since 31.12.1984.

41. However, in the present case, although the opposite party is said to have been deprived of the possession of his land in the year 1984, the rate of compensation has been assessed on the value of the land prevailing on the date of notification under Section 4 i.e. the 19.04.2010, which obviously is many times higher than the rates prevalent on 31.12.1984. What the opposite party is claiming is that although he was deprived of the possession of the land in the year 1984, he should be paid compensation at the rates prevalent on 19.04.2010, i.e., 26 years later, and he should be given interest on the amount of compensation calculated at the rates prevalent on 19.04.2010, since 31.12.1984. This claim is not equitable.

42. Had the opposite party claimed and was paid land acquisition compensation on equitable considerations promptly after taking over possession of the land in the year 1984, he would have got the same at the rates prevalent in the year 1984 and in that case, he would be entitled to receive interest on the amount payable in the year 1984 from the date of taking possession till the date of making payment. However, neither the opposite party claimed compensation immediately after taking over possession of the land, nor was the same paid to him. The amount of compensation has now been assessed as on the date of notification under Section 4(1) of the Act, i.e. 19.04.2010, which was Rs.6,771/- per square meter and he has been awarded interest at the rate of 12% from the date of notification i.e. 09.04.2010 till the date of the award, i.e., 12.07.2012 and 30% solatium. The opposite party was further held entitled to get interest at the rate of 9% per annum from the date of possession i.e. 30.12.1984, for a period of one year and thereafter interest at the rate of 15%. The delay of 26 years between taking over possession of the land and issuance of the notification under Section 4 has resulted in the compensation being assessed at the rates prevalent 26 years after the date of taking over possession, which in any case, is much higher than the amount that would be payable had the compensation been determined in the year 1984, when the possession was taken and interest would be added on it. Therefore, the opposite party stands adequately compensated even on equitable considerations by assessment of compensation at the rates prevalent 26 years after the date of taking possession of the land.

43. The learned counsel for the opposite party has submitted that the intent of the State for acquisition of the land was expressed on the date of publication of notification under Section 4 i.e. 19.04.2010 and therefore the compensation is to be assessed as on 14.04.2010. If this submission is accepted interest will also be payable since 19.04.2010 since no intent for acquisition had been expressed prior to that.

44. In view of the foregoing discussions, I am of the view that the LARA had no jurisdiction to award interest for any period prior to 19.04.2010 "the date of issuance of the notification under Section 4(1) of the Land Acquisition Act. It is settled law that the plea of lack of jurisdiction can be raised at any stage, even during execution proceedings by filing an application under Section 47 CPC. LARA has passed the impugned orders dated 25.09.2025 and 19.12.2025, without dealing with the plea of lack of jurisdiction raised by the petitioner which makes the orders unsustainable in law.

45. Accordingly, the impugned orders dated 25.09.2025 and 19.12.2025 are set aside. It is held that the opposite party is entitled to receive interest on the amount of compensation from the date of notification under Section 4 i.e. 19.04.2010.

46. Now, I proceed to deal with the legality of the order dated 23.12.2025 rejecting the petitioner's objection that any officer of the petitioner cannot be arrested in execution proceedings for execution of the award passed against the petitioner. The learned Counsel for the petitioner has placed reliance on a judgment in the case of **Dhanush Vir Singh v. Ila Sharma**: 2024 SCC OnLine All 3693, wherein the moot question for consideration was whether the Directors/Authorized representatives of a Limited Company can be arrested and detained in civil prison for execution of a money decree against the company or so to say whether the directors/authorized representatives of the company are bound in a representative capacity for the

judgment debtor company for the execution of the said decree. A coordinate Bench of this Court has held that there is no provision in the"CPC"which provides for execution of a money decree against the judgment debtor company by effecting arrest and detention of its employee, director or General Manager. The learned Counsel for the petitioner has submitted that the petitioner Lucknow Development Authority is a body corporate and its officers cannot be arrested for effecting execution of an award or a decree issued against the Authority.

47. Opposing this submission of the learned counsel for the petitioner, the learned counsel for the opposite party has submitted that the petitioner Lucknow Development Authority is a juristic person and it acts through the natural persons who are in-charge of its affairs. Therefore, for any default committed by the petitioner Lucknow Development Authority as a judgment debtor, where the statute permits incarceration of the judgment debtor, the judgment debtor being a juristic person, the natural persons who are in charge and responsible for the affairs of the petitioner will have to undergo incarceration. However, the learned counsel for the opposite party has not submitted any case law in support of this submission.

48. Keeping in view the law laid down in **Dhanush Vir Singh v. Ila Sharma** (supra), I am of the view that the executing court has no authority to order arrest and detention of the officers and officials of the petitioner "judgment debtor for execution of the order passed against the petitioner "judgment debtor. Therefore, the impugned order dated 23.12.2025 is also unsustainable in law and the same is also set aside.

49. It will be open for LARA to proceed with the execution of the award in question in accordance with the provisions provided in the CPC by taking appropriate steps against the Lucknow Development Authority itself and not taking any coercive measure against the persons who are holding any post or office in Lucknow Development Authority.

50. The petition stands ***allowed*** in the aforesaid terms.

(2026) 2 ILRA 750
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 555 of 2026

Mohd. Shakeel **...Petitioner**
Versus
Munni Devi & Ors. **...Respondents**

Issue for Consideration

Whether the action of alienation in favour of the opposite party no. 4 is not bona fide and the opposite party no. 4 is entitled to be impleaded under the provisions contained in Order XXII Rule 10 C.P.C.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908-Order XXII Rule 10, Order I Rule 10, Order IX Rule 13; The Transfer of Property Act, 1882- Section 58- There is nothing in the present case to even prima facie establish that the action of alienation in favour of the opposite party no. 4 is not bona fide. In absence of the alienation being held to be not bona fide, the opposite party no. 4 is entitled to be impleaded under the provisions contained in Order XXII Rule 10 C.P.C- The suit proceeded with and decreed ex-parte and there is nothing on record to show that the defendant had knowledge of the temporary injunction order. Therefore, it cannot be said that the sale deed had been executed in deliberate violation of the temporary injunction order- The plaintiff himself had filed an application for impleadment of opposite party no. 4 in the execution proceeding which application was allowed by means of an order dated 30.09.2013. Thereafter the ex-parte decree was set aside upon an application filed by the opposite party no. 4. These facts also provide support to the claim for impleadment of the opposite party no. 4 as a defendant to the suit.

Held- No error or illegality in the impugned order- **Petition lacks merit and the same is hereby dismissed at the admission stage**. (E-15)

(Para 19, 22, 23 & 25)

Case Law Cited

Amit Kumar Shaw v. Farida Khatoon: (2005) 11 SCC 403,; Anil Kumar Singh v. Shivnath Mishra: (1995) 3 SCC 147; Vijay Pratap v. Sambhu Saran Sinha: (1996) 10 SCC 53; Bibi Zubaida Khatoon v. Nabi Hassan Saheb; Gurmit Singh Bhatia v. Kiran Kant Robinson: (2020) 13 SCC 77;

List of Acts

The Constitution of India, 1950; The Code of Civil Procedure, 1908; The Transfer of Property Act, 1882

List of Keywords

Order 1 Rule 10; Order XXII Rule 10; Opposite Party No.4 entitled to be impleaded; No knowledge of temporary injunction; Alienation being held to be not bona fide

Case Arising From

Order dated 13.03.2024 passed by the learned Additional Civil Judge (J.D.), Court No.48, Lucknow in Regular Suit No.973 of 2000 whereby an application filed by the third party- (the opposite party No.4 to the petition) has been allowed.

Appearances for Parties

Counsel for Petitioner(s) : Pramod Kumar, S.Mohd Kazim, Syed Jamal Ahmad
Counsel for Respondent(s) :

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

1. Heard Shri S. Mohd Kazim, the learned counsel for the petitioner.

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of an order dated 13.03.2024 passed by the learned Additional Civil Judge (J.D.), Court No.48, Lucknow in Regular Suit No.973 of 2000 titled Mohd. Shakeel v.

Munni Devi whereby an application filed by the third party- Babu Lal (the opposite party No.4 to the petition) has been allowed.

3. The petitioner had filed the aforesaid suit against Munni Devi, mother of the opposite party Nos.2 and 3- Ramesh Kumar and Naresh Kumar, for specific performance of contract. On 23.12.2000, the trial Court had passed an ex-parte order of temporary injunction restraining the defendant from selling the property to any other person and from changing the nature of the property. Thereafter, the suit was decreed ex-parte on 30.05.2002.

4. The plaintiff filed Execution Case No.08 of 2002 for execution of the ex-parte decree dated 30.05.2002.

5. Prior to filing of the Execution Case, the defendant ? judgment debtor Munni Devi had already executed a sale deed dated 26.03.2002 in respect of the property in question in favour of one Qadir Hussain and had handed-over physical possession of the property to the purchaser. The name of purchaser Qadir Hussain was mutated in the revenue records. Qadir Hussain executed a registered sale deed dated 15.02.2005 in respect of the property in question in favour of opposite party No.4 - Babu Lal and handed over possession of the property to the purchaser. The name of opposite party No.4- Babu Lal has been mutated in the revenue records.

6. The plaintiff - decree holder filed an application for impleadment of Qadir Hussain and Babu Lal in execution proceeding which application was allowed by means of an order dated 30.09.2013, and Qadir Hussain and Babu Lal were impleaded in the execution case. The opposite party no. 4 stated that prior to it, he had no knowledge of the execution proceedings.

7. The opposite party no. 4 filed an application for setting aside the ex-parte decree dated 30.05.2002, which application has been allowed by means of an order dated 07.08.2023. Thereafter the opposite party no. 4 requested for his impleadment in the suit.

8. The petitioner - Shakeel Ahmad filed objections against the application *inter alia* stating that the trial Court had passed a temporary injunction order dated 23.12.2000 restraining the defendants from transferring the property. Munni Devi had sold away the property to Qadir Hussain and their Qadir Hussain had sold the property to the opposite party no. 4 in violation of the provision contained in Section 58 of the Transfer of Property Act and the purchaser has no right to seek his impleadment. Regarding impleadment of the opposite party no. 4 in execution proceedings, the plaintiff stated that it was wrongly done by some other Counsel, whereas the newly engaged Counsel of the plaintiff was of a different view. The newly engaged Counsel had moved an application for deletion of the added defendants but the application under Order IX Rule 13 C.P.C. had been allowed. The plaintiff had challenged the order setting aside the ex-parte decree by filing Civil Revision No. 167 of 2023, which was pending in the Court of Additional District Judge, Court No. 9, Lucknow

9. The Trial Court allowed the impleadment application by means of the impugned order dated 13.03.2024 holding that the opposite party No.4 is a transferee pendente lite and he can seek his impleadment keeping in view the statutory provisions contained in Order I Rule 10 (2), Section 146

and Order XXII Rule 10 CPC. The Court also noted that the original defendant and her transferee having sold away the property are not interested in defending the proceedings. In these circumstances, non-impleadment of the opposite party No.4 would adversely affect his interests in the litigation. The Trial Court further held that the question of legality of the sale would be decided in the suit. The trial Court has relied upon the judgment of the Hon'ble Supreme Court in the case of **Amit Kumar Shaw v. Farida Khatoon: (2005) 11 SCC 403** in which it has been held that a transferee pendente lite is a necessary party to the suit.

10. The petitioner had challenged the aforesaid order by filing Civil Revision No.65 of 2024 which has been dismissed by means of the judgment and order dated 17.11.2025 passed by the learned Additional District Judge, Court No.12, Lucknow and validity of the revisional order has also been challenged by the petitioner.

11. Assailing validity of the aforesaid orders, the learned counsel for the petitioner has placed reliance upon the judgments of the Hon'ble Supreme Court in the case of **Anil Kumar Singh v. Shivnath Mishra** (1995) 3 SCC 147, **Vijay Pratap v. Sambhu Saran Sinha:** (1996) 10 SCC 53, **Bibi Zubaida Khatoon v. Nabi Hassan Saheb**: (2004) 1 SCC 191 and **Gurmit Singh Bhatia v. Kiran Kant Robinson**: (2020) 13 SCC 773.

12. Section 52 of the Transfer of Property Act provides as follows: -

*"52. T**ransfer of Property pending suit relating thereto.** - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.*

Explanation.?For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

13. Order I Rule 10, C.P.C. provides as follows: -

Order 1 Rule 10

*"10. **Suit in name of wrong plaintiff.?**(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in*

dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties.?The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.?Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

14. Rule 10 of XXII C.P.C. provides as follows: -

"10. Procedure in case of assignment before final order in suit. -*(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.*

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

15. In **Amit Kumar Shaw v. Farida Khatoon:** (2005) 11 SCC 403, the Hon'ble Supreme Court held that: -

"14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

* * *

16. The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But ***the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."***

(Emphasis added)

16. In **Anil Kumar Singh v. Shivnath Mishra**: (1995) 3 SCC 147, the Hon'ble Supreme Court held that: -

"3. ***Order 22, Rule 10 postulates continuation of suit by or against a person who has, by devolution, assignment or creation, acquired any interest during the pendency of a suit, by leave of the court.*** *The obtaining of a decree and acquiring the status as a co-owner during the pendency of a suit for specific performance, is not obtaining, by assignment or creation or by devolution, an interest. Therefore, Order 22, Rule 10 has no application to this case."*

17. In **Vijay Pratap v. Sambhu Saran Sinha:** (1996) 10 SCC 53, the suit was filed for specific performance wherein the father during his lifetime was alleged to have entered into compromise and requested to delete his name from the array of parties as Respondent 1. His name was deleted after his demise. Pending suit before the compromise was recorded, the petitioners sought impleadment under Order 1 Rule 10. The trial court rejected the application holding that to decide right, title and interest of co-plaintiffs in suit property is beyond the scope of this suit and a suit of specific performance of contract can't be turned into a regular title suit and, therefore, the petitioners are not necessary and proper parties under Order 1 Rule 10 CPC. The question of impleadment / substitution of a transferee under Order XXII Rule 10 C.P.C. was not involved in this case.

18. In **Bibi Zubaida Khatoon v. Nabi Hassan Saheb**: (2004) 1 SCC 191, the Hon'ble Supreme Court held that: -

"9. It is not disputed that the present petitioner purchased the property during pendency of the suit and without seeking leave of the court as required by Section 52 of the Transfer of Property Act. The petitioner being a transferee pendente lite without leave of the court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983. ***It is true that***

when the application for joinder based on transfer pendente lite is made, the transferee should ordinarily be joined as a party to enable him to protect his interest*. But in the instant case, the trial court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and prima facie the action of the alienation does not appear to be bona fide. The trial court saw an attempt on the part of the petitioner to complicate and delay the pending suits."*

19. There is nothing in the present case to even prima facie establish that the action of alienation in favour of the opposite party no. 4 is not bona fide. In absence of the alienation being held to be not bona fide, the opposite party no. 4 is entitled to be impleaded under the provisions contained in Order XXII Rule 10 C.P.C.

20. In **Gurmit Singh Bhatia v. Kiran Kant Robinson:** (2020) 13 SCC 773, the short question for consideration was, whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him? The Hon'ble Supreme Court relied upon a judgment in the case of Kasturi v. Iyyamperumal, (2005) 6 SCC 733 wherein it was held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It was further observed and held that two tests are to be satisfied for determining the question as to who is a necessary party. The tests are: (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. In a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject-matter involved in the proceedings for specific performance of contract to sell. In a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. The parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. A third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. A third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.

21. In the present case, as the opposite party no. 4 has purchased the property in question through a registered sale deed and presently he is the owner of the property in question, the plaintiff has the right to claim relief against the opposite party no. 4 relating to the subject-matter involved in the proceedings for specific performance of contract to sell and his presence is necessary to adjudicate the controversy involved in the suit. The opposite party no. 4 is not claiming an independent title and possession adverse to the title of the vendor, rather he is claiming the same under a sale deed executed by the vendor. Therefore, he is entitled to be impleaded under Order XXII Rule 10 C.P.C.

22. Regarding the submission of the learned Counsel for the petitioner that the original defendant had executed the sale deed in violation of an order of temporary injunction restraining transfer of the property, suffice it to say that the suit was proceeded with and decreed ex-parte and there is nothing on record to show that the defendant had knowledge of the temporary injunction order. Therefore, it cannot be said that the sale deed had been executed in deliberate violation of the temporary injunction order.

23. Further, the plaintiff himself had filed an application for impleadment of Qadir Hussain and Babu Lal (opposite party no. 4) in the execution proceeding which application was allowed by means of an order dated 30.09.2013. Thereafter the ex-parte decree dated 30.05.2002 was set aside by means of an order dated 07.08.2023 passed upon an application filed by the opposite party no. 4. These facts also provide support to the claim for impleadment of the opposite party no. 4 as a defendant to the suit.

24. The submission of the learned Counsel for the petitioner that it was wrongly done by some other Counsel, whereas the newly engaged Counsel of the plaintiff was of a different view, also does not deserve acceptance, because the mere change of Counsel would not justify a change towards the approach adopted by the party when the case was being conducted by another Counsel.

25. Keeping in view the foregoing discussion, there appears to be no error or illegality in the impugned order dated 13.03.2024 passed by the learned Additional Civil Judge (J.D.), Court No.48, Lucknow in Regular Suit No.973 of 2000 allowing the application for impleadment filed by Babu Lal - the opposite party No.4 to the petition.

26. The petition lacks merit and the same is hereby **dismissed** at the admission stage.

(2026) 2 ILRA 757
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.02.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 650 of 2026

Shri Gopal Kishan Khandewal ...Petitioner
Versus
Smt. Archana Tripathi ...Respondent

Issue for Consideration

The petition raises a significant question concerning the scope and application of Order XVIII Rule 17 of the Code of Civil Procedure read with Sections 137, 138 and 145 of the Indian Evidence Act, 1872, particularly the fine distinction between an impermissible attempt to fill up lacunae in evidence and a permissible exercise of seeking clarification of an ambiguity in a witness's testimony, so as to enable the Court to arrive at the truth and ensure a fair adjudication.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order XVIII Rule 17- The Indian Evidence Act, 1872- Sections 137, 138 & 145- The determinative factor is the object and purpose of the recall or reexamination- If the exercise is aimed at repairing a weak case or introducing evidence that was available but deliberately withheld, it would amount to filling up lacunae. However, where an apparent ambiguity arises on record, particularly one that goes to the root of the matter, and where clarification would assist the Court in arriving at the truth without causing prejudice to the opposite party, refusal to permit such clarification would defeat the ends of justice- Order XVIII Rule 17 CPC confers a discretionary power upon the Court to recall any witness at any stage of the proceedings, including even at the stage of writing the judgment, if such recall is found necessary for the proper adjudication of the case.

Held- Court is of the considered opinion that the ends of justice would be served by permitting recall of DW-1, strictly for the limited and specific purpose of clarifying the ambiguity arising from the statement made by him during cross-examination, which stands at variance with his affidavit and the other evidence on record. Such recall shall not be construed as permitting the petitioner to fill up any lacuna in the evidence, but only as an aid to the Court in arriving at a just and proper adjudication of the controversy- Impugned orders set aside**- Petition disposed of**. (E-15)

(Para 14, 15 & 18)

Case Law Cited

Shubhkaran Singh vs. Abhayraj Singh (2025) SCC Online SC 1028 ; K.K. Velusamy vs. N. Palanisamy (2011) 11 SCC 275 ; Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate (2009) 4 SCC 410; Sangram Singh vs. Election Tribunal, Kotah AIR 1955 SC 425; State of Punjab vs. Shamlal Murari AIR 1976 SC 1177

List of Acts

The Constitution of India, 1950- The Code of Civil Procedure, 1908- The Indian Evidence Act, 1872

List of Keywords

Order XVIII Rule 17; discretionary power upon the Court to recall any witness at any stage; apparent ambiguity; particularly one that goes to the root of the matter; clarification in arriving at the truth; refusal to permit such clarification would defeat the ends of justice

Case Arising From

Order dated 04.02.2025 passed by the Judge, Small Cause Court, Kanpur Nagar whereby Application No. 99C/99-Ga filed by the petitioner–tenant seeking recall/reexamination of witness DW-1 was rejected. The petitioner has also assailed the subsequent order dated 19.09.2025 passed by the Additional District Judge, in SCC Revision, whereby the revision against the trial court's order was dismissed.

Appearances for Parties

Counsel for Petitioners(s) : Prakhar Tandon
Counsel for Respondent(s) : Manish Tandon

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

The present petition under Article 227 of the Constitution of India has been filed challenging the order dated 04.02.2025 passed by the Judge, Small Cause Court, Kanpur Nagar in SCC Suit No.12 of 2020 (Archana Tripathi vs. Gopi Kishan Khandelwal), whereby Application No. 99C/99-Ga filed by the petitione-'tenant seeking recall/re-examination of witness DW-1 was rejected. The petitioner has also assailed the subsequent order dated 19.09.2025 passed by the Additional District

Judge, Court No. 24, Kanpur Nagar in SCC Revision No. 81 of 2025, whereby the revision against the trial court's order was dismissed.

2. The petition raises a significant question concerning the scope and application of Order XVIII Rule 17 of the Code of Civil Procedure read with Sections 137, 138 and 145 of the Indian Evidence Act, 1872, particularly the fine distinction between an impermissible attempt to fill up lacunae in evidence and a permissible exercise of seeking clarification of an ambiguity in a witness's testimony, so as to enable the Court to arrive at the truth and ensure a fair adjudication.

3. The underlying SCC Suit No.12 of 2020 was instituted by the respondent'plaintiff seeking eviction, recovery of arrears of rent and damages, claiming ownership over the suit property on the basis of a Will dated 10.11.2010. The petitioner'defendant contested the suit by filing a written statement dated 18.02.2021, asserting that rent since the year 2010 had not been paid to the plaintiff but was being received by one Devendra Kumar Tripathi, son of Satyawati Tripathi, original owner of the premises. It was further pleaded that the Will dated 10.11.2010 relied upon by the plaintiff stood cancelled by a subsequent Will dated 21.01.2012 executed by the original owner, who admittedly died on 23.04.2019. According to the defendant, rent continued to be received by Devendra Kumar Tripathi both prior to and after the death of the original owner.

4. In the replication, the plaintiff admitted that Devendra Kumar Tripathi had been receiving rent earlier, though she claimed that thereafter she became entitled to receive rent. During trial, PW-1, namely Karmendra Tripathi, admitted in his cross-examination that the signatures appearing on the rent receipts, marked as paper nos. 81-Ga to 86-Ga, were those of Devendra Kumar Tripathi and that the said signatures tallied with the originals.

5. The defendant entered the witness box as DW-1 and filed his affidavit in evidence, wherein he categorically stated that rent was received by Devendra Kumar Tripathi and that rent receipts were issued by him. Original rent receipts bearing the signatures of Devendra Kumar Tripathi were also brought on record. However, during cross-examination dated 16.12.2024, DW-1 made a statement to the effect that Devendra Kumar Tripathi did not issue rent receipts. It is not in dispute that at the time when this statement was recorded, the counsel for the defendant was not present.

6. Despite the apparent inconsistency between the affidavit and the statement made during cross-examination, the plaintiff's counsel did not confront DW-1 with his earlier affidavit or with the rent receipts on record, as required under Section 145 of the Evidence Act. Nor was DW-1 afforded any opportunity to explain the discrepancy. Thus, on a cumulative reading of the material on record, there existed three apparently consistent pieces of evidence supporting the case that rent was received by Devendra Kumar Tripathi and rent receipts were issued by him, namely, the admission of the plaintiff in the replication, the admission of PW-1 in cross-examination, and the categorical statement of DW-1 in his affidavit in evidence.

7. In these circumstances, the defendant filed Application No. 99C-2/99Ga under Sections 137 and 138 of the Evidence Act seeking re-examination of DW-1 strictly for the purpose of clarifying the ambiguity created by the statement made during cross-examination, without seeking to introduce any additional or fresh evidence. The Trial Court rejected the application by order dated

04.02.2025, holding that the prayer amounted to filling up lacunae in the evidence. The Revisional Court, by order dated 19.09.2025, affirmed the rejection, observing that the power under Order XVIII Rule 17 CPC is to be exercised sparingly, that the inconsistency arose from statements of different witnesses, and that the application appeared to be an attempt to fill up deficiencies at a belated stage when the suit was ripe for final arguments and subject to directions for expeditious disposal.

8. Learned counsel for the petitioner has contended that both courts below have misdirected themselves in law by mechanically branding the request for re-examination as an attempt to fill up lacunae, without appreciating the settled distinction between curing a defect in evidence and clarifying an ambiguity arising on record. It is submitted that the alleged contradiction was never put to DW-1 in accordance with Section 145 of the Evidence Act and therefore could not be treated as a contradiction in the eye of law. Denial of re-examination, it is urged, has resulted in serious prejudice and denial of a fair opportunity, warranting interference under Article 227 of the Constitution.

9. Per contra, learned counsel for the respondent has supported the impugned orders, submitting that Order XVIII Rule 17 CPC does not confer a right upon a party to recall or re-examine a witness and that the discretion exercised by the courts below does not suffer from any perversity or jurisdictional error.

10. The law on the subject is no longer res integra. In **Shubhkaran Singh vs. Abhayraj Singh1**, it has been authoritatively held that the power under Order XVIII Rule 17 CPC is necessary for the proper conduct of a case and can be exercised by the Court at any stage, even at the stage of writing judgment. It was, however, simultaneously emphasized that such power is to be exercised sparingly and only in exceptional situations, and that its object is confined to removing ambiguities or clarifying statements and not to fill up lacunae in a party's case. It was further observed that while the power under Order XVIII Rule 17 primarily vests in the Court, recall or re-examination at the instance of a party may, in appropriate cases, be permitted in the exercise of inherent powers under Section 151 CPC.

11. The position was reiterated in **K.K. Velusamy vs. N. Palanisamy**2, wherein it was underscored that Order XVIII Rule 17 CPC is primarily intended to enable the Court to clarify any doubt or issue arising from the evidence on record, and that procedural provisions are meant to advance justice and not to thwart it. It was observed that where the application is bona fide and the clarification sought would assist the Court in rendering justice, the discretion to recall or re-examine a witness may be exercised, subject to appropriate safeguards against delay or abuse of the process of the Court.

12. At the same time, in **Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate3**, it was cautioned that recall cannot be permitted to fill omissions or lacunae noticed after cross-examination, and that the power must be exercised judiciously and not as a matter of routine.

13. The consistent thread running through the aforesaid decisions is that the determinative factor is the object and purpose of the recall or re-examination. If the exercise is aimed at repairing

a weak case or introducing evidence that was available but deliberately withheld, it would amount to filling up lacunae. However, where an apparent ambiguity arises on record, particularly one that goes to the root of the matter, and where clarification would assist the Court in arriving at the truth without causing prejudice to the opposite party, refusal to permit such clarification would defeat the ends of justice.

14. The legal principles governing the exercise of power under Order XVIII Rule 17 CPC, as crystallised by settled judicial precedents, may be summarised as follows:

14.1 Order XVIII Rule 17 CPC confers a discretionary power upon the Court to recall any witness at any stage of the proceedings, including even at the stage of writing the judgment, if such recall is found necessary for the proper adjudication of the case.

14.2 The power under Order XVIII Rule 17 CPC is primarily intended to enable the Court itself to clarify any ambiguity, doubt or inconsistency in the evidence already on record, so as to arrive at the truth and render a just decision.

14.3 The said power is discretionary in nature and is to be exercised sparingly, cautiously and in exceptional circumstances, and not as a matter of routine or merely because recall would not cause prejudice to the opposite party.

14.4 Recall of a witness under Order XVIII Rule 17 CPC cannot be permitted for the purpose of filling up omissions, repairing weaknesses, or curing lacunae in the evidence already adduced by a party.

14.5 The power of recall primarily vests in the Court and may be exercised suo motu or at the instance of a party, but only where the Court is satisfied that such recall is necessary for the proper conduct of the case and for removal of an ambiguity in the evidence.

14.6 Order XVIII Rule 17 CPC is not intended to provide a right to a party to recall and re-examine a witness merely because, upon hindsight, a party perceives inadequacy or inconsistency in its earlier examination of the witness.

14.7 Where an application for recall is bona fide in nature and is confined to seeking clarification of an apparent inconsistency or ambiguity, and where such clarification would assist the Court in arriving at the truth, recall may be permitted, subject to appropriate safeguards.

14.8 While allowing recall, the Court must ensure that the process is not misused as a delaying tactic, and must impose suitable conditions, including limitation of the scope of examination, denial of unnecessary adjournments, and expeditious conclusion of the proceedings.

14.9 The controlling and determinative test is whether the recall is sought to fill up lacunae in the evidence, which is impermissible, or to reconcile inconsistencies and clarify ambiguities, which is permissible and may be necessary to prevent failure of justice.

15. In the present case, the affidavit of DW-1, the pleadings and the admission of PW-1 form a consistent evidentiary foundation. The isolated statement made by DW-1 during cross-examination, recorded in the absence of his counsel and without being confronted as required by Section 145 of the Evidence Act, has created an apparent ambiguity rather than exposing any deliberate omission. The prayer for re-examination is confined strictly to clarifying this ambiguity and does not seek to introduce any new material. Treating such a request as an attempt to fill up lacunae reflects a misapplication of the settled legal position and amounts to a failure to exercise jurisdiction vested in the court.

16. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is intended to ensure that subordinate courts act within the bounds of their authority, exercise jurisdiction vested in them in accordance with law, and adhere to the principles of natural justice. Though this Court does not sit as a court of appeal over interlocutory or procedural orders, it is duty-bound to intervene where refusal to exercise jurisdiction results in manifest injustice or denial of a fair opportunity to a party. Procedural law, as repeatedly held by the Supreme Court in **Sangram Singh vs. Election Tribunal, Kotah4** and **State of Punjab vs. Shamlal Murari5,** is the handmaid of justice and must be applied in a manner that advances, rather than obstructs, substantive justice.

17. It has been pointed out that the next date fixed before the Trial Court is 10th February, 2026. Learned counsel for the petitioner has undertaken that DW-1 shall be produced on the said date and that no adjournment shall be sought. Learned counsel for the respondent has fairly stated that he has no objection if the witness is examined on the said date strictly for the limited purpose of clarifying the ambiguity regarding issuance of rent receipts by Devendra Kumar Tripathi.

18. In view of the aforesaid discussion, this Court is of the considered opinion that the ends of justice would be served by permitting recall of DW-1, strictly for the limited and specific purpose of clarifying the ambiguity arising from the statement made by him during cross-examination, which stands at variance with his affidavit and the other evidence on record. Such recall shall not be construed as permitting the petitioner to fill up any lacuna in the evidence, but only as an aid to the Court in arriving at a just and proper adjudication of the controversy. The impugned orders dated 04.02.2025 passed by the Judge, Small Causes Court, Kanpur Nagar in SCC Suit No.12 of 2020 and dated 19.09.2025 passed in SCC Revision No.81 of 2025 are, therefore, unsustainable in law and are accordingly set aside.

19. The petition is, consequently, disposed of with a direction that on the next date fixed before the Trial Court, i.e. 10th February, 2026, the witness DW-1 shall be produced by the tenant-defendant and shall be examined by the Trial Court strictly within the aforesaid limited scope. No adjournment shall be granted to either of the parties on the said date. The Trial Court shall thereafter proceed to conclude the suit expeditiously, in accordance with law. It is made abundantly clear that in the event of failure on the part of the tenant-defendant to produce or examine the aforesaid witness on the said date, no further opportunity shall be granted for recall or re-examination of DW-1, and the Trial Court shall proceed to decide the suit on the basis of the evidence already on record.

(2026) 2 ILRA 763
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.02.2026

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Matters Under Article 227 No. 1534 of 2015
connected with
Matters Under Article 227 No. 1535 of 2015

Vijendra Singh & Ors. ...Petitioners
Versus
Jai Bhagwan & Ors. ...Respondent

Issue for Consideration

Whether there was an obligation upon the plaintiff to honour the decree which attained finality upto the Hon'ble Supreme Court in his favour but he failed to discharge the same and did not deposit the balance money as required under the first appellate court's judgment and order, the contract stood rescinded in view of Section 28 of the Act, 1963 and, therefore, both the orders impugned are liable to be set aside.

Head Notes

The Constitution of India, 1950-Article 227; The Specific Relief Act, 1963- Section 28; The Code of Civil Procedure, 1908-Section 47 & 148- The nature of application 10-C certainly reflects the intention of the decree-holder to deposit the balance money and, for that purpose, he rightly sought permission from the court to pass the tender, in absence whereof he could not go ahead with the execution.

Once the application was allowed in the year 2011, in terms of the order impugned in the petition, it would certainly amount to extension/enlargement of time to make deposit- Neither Section 28 of the Specific Relief Act, 1963 nor Section 148 of C.P.C. provides for the starting point of the exercise of power to grant further time or to enlarge the same. The legislative intent speaks only of discretion of the Court to do so depending on the facts of a case. The only embargo, if at all it can be put on the power of the Court, may be felt from Section 148 C.P.C. where power to enlarge time has been restricted 'not beyond thirty days in total', but that is the outer limit for enlargement of time and not the starting point thereof. At the same time, there is no such apparent statutory restriction under Section 28 of the Specific Relief Act, 1963. Hence, the question as to when did the decree-holder move application 10-C becomes redundant.

Even if time of one (1) month for making deposit of amount is computed from the date of decision of Hon'ble Supreme Court, since Civil Appeal was dismissed on 09.12.2004, one month period would begin to run from the said date and would end on 09.01.2005 and, on or before the said date, the decree holder should have deposited the balance amount. In the opinion of the Court, even in that situation, the occasion to seek extension/enlargement of time would arise only after 09.01.2005 and not before that. Therefore, moving of application 10-C seeking to clear the tender of Rs. 95,000/- on 06.02.2005 was a rightful act on his part and there was no delay in moving the same. Delay, if any, could be of 28 days but cannot be said to be fatal to claim of decree-holder so as to frustrate the decree affirmed upto Hon'ble Supreme Court or hold the contract as rescinded. Therefore, timing, stage, nature and contents of application 10-C are

found to be in accordance with law and executing Court did not commit any error in allowing the same. In totality of facts and circumstances, no case for rescission of contract as per Section 28 stands made out.

Held- Considering the entire facts and circumstances, the law referred above and balancing the equities in the matter of specific performance of agreement when lis, after going through multiple stages, is being finally decided after a long period of time, while dismissing both the petitions and upholding the orders impugned, it is hereby provided that the decree-holder shall deposit a further sum of Rs.2,00,000/- (Rupees two lacs) before the executing court within a period of two months from today-**Petition dismissed.** (E-15)

(Para 16, 22, 26 & 31)

Case Law Cited

Savitri Devi vs. Ashok Kumar, 2009 (2) ARC 211; V.S. Palanichamy Chettiar Firm vs. C. Alagappan and another, AIR 1999 SC 918; Ishwar vs Bhim Singh and another, AIR 2024 SC 4232; Ramankutty Guptan Vs. Avara, (1994) 2 SCC 642; K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar, (1980) 1 SCC 630; Chanda v. Rattni, (2007) 14 SCC 26; P. Shyamala vs. Gundlur Mathan, Civil Appeal Nos. 1363-1364 of 2023; 2023 AIR SC 1224; Vansh S/o Prakash Dolas v. Ministry of Education and the Ministry of Health & Family Welfare and others : 2024 AIR SC 1924; Manoj Kumar v. Union of India : 2024 (3) SCC 563

List of Acts

The Constitution of India, 1950; The Specific Relief Act, 1963; The Code of Civil Procedure, 1908

List of Keywords

Section 28 Specific Relief Act; Rescission of contract; Decree-holder to deposit the balance money; Permission of court; Section 148 CPC; Grant further time; Not beyond thirty days

Case Arising From

Two orders were passed by the executing court, one rejecting an application 3-C filed by the judgment-debtor under Section 28 of Specific Relief Act, 1963 and declining to hold the contract as rescinded and the other allowing an application 10-C filed by the decree-holder whereby permission to pass tender of Rs.95,000/- enclosed with the application was sought by him. The orders were upheld in two revisions preferred by judgment-debtor.

Appearances for Parties

Counsel for Petitioner(s) : M.K. Gupta, Pankaj Agarwal, Shreya Gupta
Counsel for Respondent(s) : Gulrez Khan, Onkar Singh, S.C., W.H.Khan

(Delivered by Hon'ble Kshitij Shailendra, J.)

RESCISSION OF CONTRACT UNDER SECTION 28 OF SPECIFIC RELIEF ACT, 1963

1. Heard Mr. Pankaj Agarwal, learned counsel for judgment-debtor-petitioners and Mr. Gulrez Khan, learned counsel appearing for decree-holder-respondents in both the petitions.

2. These two petitions arise out of execution proceedings in pursuance of a decree for specific performance of an agreement for sale that has attained finality upto the Hon'ble Supreme Court.

3. Two orders were passed by the executing court, one rejecting an application 3-C filed by the judgment-debtor under Section 28 of Specific Relief Act, 1963 and declining to hold the contract as rescinded and the other allowing an application 10-C filed by the decree-holder whereby

permission to pass tender of Rs.95,000/- enclosed with the application was sought by him. The orders were upheld in two revisions preferred by judgment-debtor.

FACTS AND PROCEEDINGS

4. An agreement for sale was executed by the petitioners in favour of respondents on 23.09.1979. When the same was not honoured, Original Suit No. 283 of 1980 for specific performance of the agreement was filed by the respondents. The suit was dismissed by the trial court on 09.02.1982 against which Civil Appeal No. 269 of 1982 was filed by the plaintiff, which was allowed on 05.03.1999 and the suit was decreed. The defendants filed Second Appeal before this Court, which was dismissed on 24.03.1999. Thereafter, Special Leave Petition No. 8127 of 1999 was filed by the defendants before Hon'ble Supreme Court, which, after its conversion into Civil Appeal, was dismissed on 09.12.2004.

5. Controversy between the parties arose thereafter in relation to execution of the decree. Whereas the decree-holder filed Execution Case No. 5 of 2005 on 16.02.2005 and an application 10-C requesting the executing court to pass tender of Rs.95,000/- and permit him to present draft of proposed sale deed, an application 3-C was filed by the judgment-debtor under Section 28 of Specific Relief Act praying that the contract stands rescinded on account of default committed by the decree-holder to obey the directions issued by the first appellate court regarding deposit of balance money in one month. Application 3-C was rejected and application 10-C was allowed. Two revisions preferred by the petitioners against both the orders met the fate of dismissal.

SUBMISSIONS ON BEHALF OF THE JUDGMENT DEBTOR-PETITIONERS

6. Learned counsel for the petitioners submits that once there was an obligation cast upon the plaintiff to honour the decree which attained finality upto the Hon'ble Supreme Court in his favour but he failed to discharge the same and did not deposit the balance money as required under the first appellate court's judgment and order, the contract stood rescinded in view of Section 28 of the Act, 1963 and, therefore, both the orders impugned are liable to be set aside. It is further submitted that question of readiness and willingness of a plaintiff continues to survive under test till the decree is finally executed and, in the present case, the conduct of the plaintiff was sufficient to disentitle him from getting the decree executed, inasmuch as once the appellate court passed the decree in the year 1999, the decree-holder did not file any execution application till 2005 and it was filed two months after the Hon'ble Supreme Court dismissed the Civil Appeal filed by the judgment-debtor, therefore, delay on the part of the decree-holder in depositing the amount under the first appellate court's order/decree beyond one month as per the decree itself, would render the contract rescinded.

7. It is further submitted that though the principle of merger may or may not be strictly applicable in the present case as it is not known to the parties whether or not there was any interim order in S.L.P. or Civil Appeal staying execution of the decree, even if pendency of S.L.P./Civil Appeal before Hon'ble Supreme Court is treated to be an impediment in execution of the decree, the plaintiff chose to file application two months after the Civil Appeal was dismissed and, therefore, since one month time granted by the first appellate court for the purpose of making

deposit expired in January, 2005, the executing court did not have power to extend the time for making deposit, particularly when even no such prayer was made by the decree-holder in his application 10-C.

SUBMISSIONS ON BEHALF OF THE DECREE HOLDER- RESPONDENTS

8. Per contra, learned counsel for the respondents contends that the submissions advanced on behalf of the petitioners are contrary to the terms of the decree drawn by the first appellate court, operative portion whereof did not contain any direction for the decree-holder to deposit the money, rather the direction was for the judgment-debtor to accept the balance money after deducting Rs.8000/- which had been paid as advance money earlier and, therefore, the plea based upon the applicability of Section 28 of the Act, 1963 is misconceived. It is further submitted that, immediately after the Civil Appeal was dismissed by the Hon'ble Supreme Court, execution case was filed and when judgment-debtor was not ready to accept balance money, application 10-C was filed seeking permission to deposit the amount through tender and the same would certainly amount to seeking extension of time and, hence, contrary arguments advanced have no force.

DISCUSSION

9. I have considered the submissions advanced and have perused the material available on record.

The appellate decree

10. The operative portion of the decree drawn by the first appellate court has quite significance in this case. The same is reproduced as under:-

"आदेश

अपीलार्थी की अपील सव्यय स्वीकार की जाती है । अधीनस्थ न्यायालय द्वारा मूल वाद सख्या 283/1980 जय भगवान आदि बनाम राज सिंह आदि मे पारित निर्णय दिनांक 9-2-1982 निरस्त किया जाता है।

प्रतिवादीगण को आदेश किया जाता है कि वह वादीगण से विवादित जमीन के सन्दर्भ मे इकरारनामे के अनुसार तय धनराशि मे से अंकन 8000/- रुपये अग्रिम की धनराशि घटाकर शेष धनराशि 30 दिन के अन्दर प्राप्त कर पंजीकृत बयनामा वादीगण के पक्ष मे निष्पादित कर दे। अन्यथा वादीगण को यह अधिकार होगा कि वह न्यायालय द्वारा बयनामा निष्पादित करा ले।"

11. Apparently, there was no direction by the first appellate court under which the decree-holder was required to deposit any amount, rather the decree, when read as it is, cast an obligation on the judgment-debtor to receive balance money from the decree-holder within a period of 30 days. Nevertheless, effect of the terms of the decree shall be discussed hereinlater.

Rescission of contract

12. Under the peculiar nature of the operative portion of the appellate decree, language used in Section 28 of the Specific Relief Act, 1963 is important to be perused. The relevant portion of the provision reads as under:-

'**28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decree**d.'(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and **the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay**, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) ""..'

13. A perusal of Section 28 indicates that when the purchaser (i.e. the plaintiff) does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor may apply in the same suit in which the decree is made to have the contract rescinded. Therefore, consequences arising out of non-deposit of money would arise only when direction to pay the amount is issued but not honoured by the decree-holder and not otherwise.

14. Though there is no such direction in the present case requiring the decree-holder to pay the balance money, even if the argument of petitioners is accepted to the effect that it is always for the decree-holder to offer the balance money and not for the judgment-debtor to ask the decree-holder to pay the money, proceedings during the course of litigation in the present matter require a thoughtful consideration.

15. Apparently, the Hon'ble Supreme Court finally dismissed the Civil Appeal on 09.12.2004. Execution Case No. 5 of 2005 as well as application 10-C was filed immediately after two months. The contents of application 10-C read as under:-

'निवेदन है कि उपरोक्त इजराय डिग्रीदारान ने मदयूनान के विरुद्ध इकरारनामा महायदा बय के आधार पर पारित डिग्री के आधार पर अपने हक में बैनामा निष्पादित व पंजीकृत कराने के लिये योजित की है। डिग्रीदारान को अंकन 95,000/- रुपये की धनराशि बजरिये टेण्डर जमा करनी है तथा विक्रयपत्र का प्रारूप दाखिल करना है, जिसकी अनुमति का डिग्रीदारान को दिया जाना आवश्यक है।

अतः श्रीमान जी से प्रार्थना है कि उपरोक्त कारण व न्यायहेतु डिग्रीदारान को अंकन 95,000/- की धनराशि न्यायालय में जमा करने की अनुमति प्रदान करते हुये प्रार्थनापत्र के साथ संलग्न टैण्डर पास किया जावे तथा विक्रयपत्र का प्रारूप दाखिल करने की अनुमति प्रदान की जाये। अति कृपा होगी।"

16. Though, learned counsel for the petitioners has made vehement submissions that mere request made from the executing court to pass a tender would not amount to seeking extension of time, in the opinion of the Court, the nature of application 10-C certainly reflects the intention of

the decree-holder to deposit the balance money and, for that purpose, he rightly sought permission from the court to pass the tender, in absence whereof he could not go ahead with the execution. Once the application was allowed in the year 2011, in terms of the order impugned in the petition, it would certainly amount to extension/enlargement of time to make deposit. No other interpretation of the nature of application 10-C or the order passed thereon can be made or accepted.

Power to extend/enlarge time

17. Power of execution court to grant/extend/enlarge time in this regard has been dealt with in **Savitri Devi vs. Ashok Kumar, 2009 (2) ARC 211**, wherein, after placing reliance upon various decisions including the judgment of Hon'ble Supreme Court in **V.S. Palanichamy Chettiar Firm vs. C. Alagappan and another, AIR 1999 SC 918**, it has been held that executing court can extend the time and the powers of the trial court and the executing court in this regard are common.

18. Recently, in **Ishwar vs Bhim Singh and another, AIR 2024 SC 4232**, under almost identical circumstances, one of the issues that fell for consideration before the Hon'ble Supreme Court was as to whether the execution court had jurisdiction to deal with the application(s) for rescission of contract and extension of time to deposit the balance sale consideration. Reference was made to a judgment in **Ramankutty Guptan Vs. Avara, (1994) 2 SCC 642**, holding that when a suit for specific performance is dismissed by the trial court, but decreed in appeal and the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay.

19. In **K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar, (1980) 1 SCC 630,** Hon'ble Supreme Court held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court, direction was issued to the appellant to deposit the amount within six months from that date together with interest and other conditions mentioned therein. It was further held that an application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the appellate court which decree is under execution. It was further held that the procedure is the handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in the way to subserve substantive justice.

20. In **Chanda v. Rattni, (2007) 14 SCC 26**, Hon'ble Supreme Court has held that the power to rescind the contract under Section 28 of the 1963 Act is discretionary in nature and is to do complete justice to the parties. The Court does not cease to have the power to extend the time even though the decree may have directed that payment of balance price is to be made by a certain date. While exercising discretion in this regard, the Court is required to take into account facts of the case so as to ascertain whether the default was intentional or not. If there is a bona fide reason for the delay/ default, such as where there appears no fault on the part of the decree holder, the Court may refuse to rescind the contract and may extend the time for deposit of the defaulted amount.

21. In this connection, the court may also take aid of the provisions of Section 148 of Code of Civil Procedure, which reads as under:-

'**148. Enlargement of time**.'Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, **enlarge such period**, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.'

22. It is apparent from Section 148 C.P.C. that the Court may, in its discretion, enlarge any period which is fixed for doing of any act. In the opinion of the Court, neither Section 28 of the Specific Relief Act, 1963 nor Section 148 of C.P.C. provides for the starting point of the exercise of power to grant further time or to enlarge the same. The legislative intent speaks only of discretion of the Court to do so depending on the facts of a case. The only embargo, if at all it can be put on the power of the Court, may be felt from Section 148 C.P.C. where power to enlarge time has been restricted 'not beyond thirty days in total', but that is the outer limit for enlargement of time and not the starting point thereof. At the same time, there is no such apparent statutory restriction under Section 28 of the Specific Relief Act, 1963. Hence, the question as to when did the decree-holder move application 10-C becomes redundant.

23. Therefore, in a case where grant of further time to deposit money pursuant to a decree for specific performance is the question before the Court, it would be seen as to whether decree-holder was on default/successive defaults in complying with the terms of the decree but even then the Court either cursorily, wrongly or unreasonably granted further time or enlarged the time or as to whether the decree-holder himself or Court itself was precluded from making or entertaining a request for grant of further time for which neither the decree-holder nor the Court can be blamed.

24. As far as reliance placed on behalf of the petitioners on the judgment of Hon'ble Supreme Court in **P. Shyamala vs. Gundlur Mathan, Civil Appeal Nos. 1363-1364 of 2023; 2023 AIR SC 1224**, in that case rescission of the contract was upheld, however the facts were entirely different. In that case, the decree was passed in the year 2013 and application seeking enlargement of time was filed under Section 148 C.P.C. with a delay of 853 days without any intervening obstruction. In the facts of that case, after dealing with the relevant dates, the Hon'ble Supreme Court found the huge delay as fatal to the claim of the decree-holder. In the present case, once the operative portion of the appellate decree did not cast any obligation upon the decree-holder to deposit the balance amount and, even if, the decree is read in that sense against the decree-holder requiring him to deposit money, though he was not even asked to do so, moving of application 10-C, two months after the Hon'ble Supreme Court dismissed the Civil Appeal, would not be fatal to the claim of the decree-holder.

25. In the present case, the suit was decreed in appeal in 1999. The defendants' Second Appeal was dismissed in 1999, immediately whereafter the matter, in 1999 itself, reached to the Hon'ble Supreme Court which dismissed the Civil Appeal on 09.12.2004. Therefore, occasion to move and consider any application seeking permission to pass the tender to go ahead with the process of execution, arose at that very time. The decree-holder filed application 10-C on 16.02.2005 just after two months from dismissal of Civil Appeal by the Hon'ble Supreme Court and even going to the

extent of reading the decree in a way that it was the decree-holder who was required to pay balance money, though the terms of the decree were otherwise, since money could not be accepted unless the Court granted time for the said purpose and cleared the tender on being requested to do so, no sum could be deposited.

26. Now the Court tests the submission of Shri Agrawal that even if time of one (1) month for making deposit of amount is computed from the date of decision of Hon'ble Supreme Court, since Civil Appeal was dismissed on 09.12.2004, one month period would begin to run from the said date and would end on 09.01.2005 and, on or before the said date, the decree holder should have deposited the balance amount. In the opinion of the Court, even in that situation, the occasion to seek extension/enlargement of time would arise only after 09.01.2005 and not before that. Therefore, moving of application 10-C seeking to clear the tender of Rs. 95,000/- on 06.02.2005 was a rightful act on his part and there was no delay in moving the same. Delay, if any, could be of 28 days but cannot be said to be fatal to claim of decree-holder so as to frustrate the decree affirmed upto Hon'ble Supreme Court or hold the contract as rescinded. Therefore, timing, stage, nature and contents of application 10-C are found to be in accordance with law and executing Court did not commit any error in allowing the same. In totality of facts and circumstances, no case for rescission of contract as per Section 28 stands made out.

27. In view of above discussion, this Court does not find any error in any of the orders impugned.

Balancing the equities and length of litigation

28. In the last, Shri Pankaj Agarwal, Advocate submits that the suit being that of specific performance of agreement and the value of immovable property covered by that having gone up over a period of time, equities should be balanced as regards deposit and payment of money. To this submission, Shri Gulrez Khan, Advocate submits that over the entire period of litigation, it was the judgment-debtor who continued to remain in possession of the property and the decree-holder has already deposited the amount in the year 2011 itself pursuant to the permission granted by the executing court, therefore, he cannot be penalized in any manner.

29. In the present case, the agreement for sale was executed in 1979, Original Suit was filed in 1980, it was dismissed in 1982 against which appeal was filed by the plaintiff in 1982 itself, which was allowed after 17 years in 1999 and the suit was decreed. The defendants' Second Appeal was dismissed in 1999, whereafter, S.L.P. was filed in 1999 itself, Civil Appeal was dismissed by Hon'ble Supreme Court by a very detailed order on 09.12.2004. Thereafter, applications were filed by the contesting parties in February 2005 and were decided after 6 years, whereafter, revisions preferred by the judgment-debtor were dismissed in 2011. This petition was filed in 2012 under Article 226 of Constitution of India and later on, it was converted into Matter under Article 227 in the year 2015. In the meantime, an interim order was passed on 05.05.2014 staying further proceedings in Execution Case of 2005. The matter is now being finally decided by this Court in the year 2026.

30. The Court here deems it appropriate to refer a judgment in **Vansh S/o Prakash Dolas v. Ministry of Education and the Ministry of Health & Family Welfare and others : 2024 AIR SC 1924**, wherein the Hon'ble Supreme Court, by referring to its previous decision in Manoj Kumar v. Union of India : 2024 (3) SCC 563, observed that in public law proceedings, when it is realized that the prayer is unattainable due to passage of time, claim should not be dismissed by the Constitutional Courts on the ground of their perceived futility and in the life of litigation, passage of time can stand both as an ally and adversary and it is the duty of the Court to transcend the constraints of time and perform the primary duty to control and regulate the exercise of power or arbitrary action. It has further been observed that the temporal gap between the actions and their subsequent adjudication by the courts introduces complexities in the provision of restitution, however, the Court should try to subserve the primary purpose and object of public law proceedings by appropriately providing remedial measures and relief in the nature of restitution.

31. Considering the entire facts and circumstances, the law referred above and balancing the equities in the matter of specific performance of agreement when lis, after going through multiple stages, is being finally decided after a long period of time, while dismissing both the petitions and upholding the orders impugned, it is hereby provided that the decree-holder shall deposit a further sum of Rs.2,00,000/- (Rupees two lacs) before the executing court within a period of two months from today. On deposit of the said amount, executing court shall make all endeavour to execute the decree forthwith and not later than one month in terms of getting the sale deed executed by the judgment-debtor and, on his failure to do so, to execute the same itself in favour of the decree-holder.

32. Both the petitions are, therefore, **DISMISSED** with the above observations.

(2026) 2 ILRA 771
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.02.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 5796 of 2023

Dayanand & Ors. **...Petitionesr**
Versus
Mohan @ Ghure **...Respondent**

Issue for Consideration

Whether in view of the proviso to Rule 17 of Order 6 amendment cannot be allowed in the present case and the proposed amendment will change the nature of the suit.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order VI Rule 17- The contention that in view of proviso to Rule 17 of Order 6, the said amendment could not be allowed is misconceived as the suit is of the year 1997 which is pre amendment and therefore,

amended proviso will not apply to the suit in view of the judgment of the Apex Court in case of State Bank of Hyderabad v. Town Municipal Council reported in reported in (2007) 1 SCC 765- Delay in filing an application for amendment by itself cannot be a ground for rejecting the application.

Held- Impugned order set aside- Amendment application allowed. (E-15)

(Para 8, 9 & 10)

Case Law Cited

Sampath Kumar Vs. Ayyakannu and another reported in (2002) 7 SCC 559; State Bank of Hyderabad v. Town Municipal Council (2007) 1 SCC 765;

List of Acts

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

List of Keywords

Amendment application; Order 6 Rule 17;

Case Arising From

Petition filed challenging the order dated 16.11.2022 passed by the trial court rejecting the application for amendment filed by the petitioner in the plaint. Revision against the said order has also been dismissed by order dated 10.04.2023 in Civil Revision No. 124 of 2022

Appearances for Parties

Counsel for Petitioner(s) : Ashok Kumar Shukla
Counsel for Respondent(s) : Vivek Singh Shrinet

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

1. Heard Shri Ashok Kumar Shukla, learned counsel for the petitioner, Shri Vivek Singh Shrinet, learned counsel for the respondent and perused the record.

2. This petition has been filed challenging the order dated 16.11.2022 passed by the trial court i.e. Additional Civil Judge (Junior Division), Court No. 3, Gorakhpur, rejecting the application for amendment filed by the petitioner in the plaint. Revision against the said order has also been dismissed by order dated 10.04.2023 passed by the Additional District and Sessions Judge, Court No. 4, Gorakhpur in Civil Revision No. 124 of 2022.

3. Contention of the learned counsel for the petitioner is that by the amendment, the petitioner has only changed the relief from mandatory injunction directing the defendants to remove their constructions and to hand over the possession to the plaintiff to the prayer for possession of the property in dispute apart from minor corrections in the plaint. The said application has been erroneously rejected on the ground that the application has been filed after a long lapse of time and therefore, the same cannot be allowed.

4. Learned counsel for the respondent submitted that in view of the proviso to Rule 17 of Order 6 such amendment cannot be allowed. He further submitted that the proposed amendment will change the nature of the suit.

5. I have perused the order impugned. The relief claimed by the petitioner in the plaint which is at page no.33 of the paper book is quoted as under:

"1- बसदूर डिग्री Mandatory Injunction प्रतिवादीगण को यह आदेश दिया जावे कि वे मकान जैल मुन्दर्जा लिस्ट (ग) मय नक्शा जो नक्शा लिस्ट (ख) जैल में भी बरंग हरा से प्रदर्शित है पर से अपना कब्जा दखल जो दखिनी पश्चिमी पहली मंजिल के कमरे पर एवं दूसरी मंजिल के पश्चिमी उत्तरी कमरे पर तनहा है व बकिया हिस्से पर वादी गण के साथ मुश्तर्का है को उठाकर मकान लिस्ट (ग) जैल पर तनहा कब्जा दखल वादीगण को दे देवे।"

6. The said relief has been sought to be substituted /amended by the relief as quoted in the amendment application at page no. 39 and the same is quoted as under:

"यह कि बसदुर डिक्री दखल बहक वादीगण खिलाफ प्रतिवादीगण, प्रतिवादीगण को आदेशित कर दिया जावे कि वे मकान जैल मुन्दर्जा लिस्ट (ग) मय नक्शा जो नक्शा लिस्ट (ख) जैल वाद पत्र में बरंग हरा से दर्शित है पर से प्रतिवादीगण का कब्जा दखल जो दखिनी पश्चिमी पहली मंजिल के कमरे पर एंव दूसरी मंजिल के पश्चिमी उत्तरी कमरा पर से कब्जा दखल प्रतिवादीगण हटवाकर न्यायालय द्वारा निर्धारित समय के अन्दर वादीगण को जायदाद नजाई पर कब्जा दखल दिलवा दिया जाय। यदि प्रतिवादीगण न्यायालय द्वारा निर्धारित समय के अन्दर कब्जा दखल वादीगण को नहीं देते है तो उस सूरत में न्यायालय अमीन अथवा वकील कमिश्नर द्वारा कब्जा दखल दिलवा दिया जावे।"

7. I do not find any change in the nature of the suit as the relief in substance is same.

8. So far as the contention of the learned counsel for the petitioner that in view of proviso to Rule 17 of Order 6, the said amendment could not be allowed, is also misconceived. The suit is of the year 1997 which is pre amendment and therefore, amended proviso will not apply to the suit in view of the judgment of the Apex Court in case of State Bank of Hyderabad v. Town Municipal Council reported in reported in (2007) 1 SCC 765. Paragraph nos. 5, 6, 7, 8 & 9 of the aforesaid judgment are quoted as under:

"5. Order VI, Rule 17 of the Code reads, thus:
"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."

6. Proviso appended thereto was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 1.07.2002. It reads as under:

"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."

7. Section 16(2) of the Amending Act of 2002 reads as under:

"16(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub- section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 -

*(a) *** ****

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;"

8. In view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order VI, Rule 17 of the Code shall not apply.

9. The High Court relied upon the said proviso and opined that having regard thereto the plaintiff was obligated to establish that in spite of due diligence it could not have raised the matter before commencement of the trial of the suit. The High Court evidently committed an illegality in relying upon the said provision."

9. The Supreme Court in case of Sampath Kumar Vs. Ayyakannu and another reported in (2002) 7 SCC 559 has held that delay in filing an application for amendment by itself cannot be a ground for rejecting the application. Paragraph No. 9 of the judgment in case of Sampath Kumar Vs. Ayyakannu(supra) is quoted as under:-

"*9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment."*

10. In my view, orders impugned cannot be sustained, therefore, the order dated 16.11.2022 passed by the trial court i.e. Additional Civil Judge (Junior Division), Court No. 3, Gorakhpur and 10.04.2023 passed by the Additional District and Sessions Judge, Court No. 4, Gorakhpur in Civil Revision No. 124 of 2022, are hereby set-aside.

11. In exercise of power under Article 227 of Constitution of India, I am not remitting the matter back for decision afresh. The application for amendment filed by the petitioner being Paper No. 140 Ka-2 is allowed. The petitioner is directed to carry out the necessary amendment within three weeks from the date of the order.

12. Since the suit is of the year 1997, it is expected that the court below i.e. Additional Civil Judge (Junior Division) Court No. 3, Gorakhpur to consider and decide the aforesaid case, in accordance with law, expeditiously, preferably within a period of **six months** from the date of production of a certified copy of this order after ensuring service upon all the parties concerned and 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.

13. With the aforesaid observation, this petition stands **allowed.**

(2026) 2 ILRA 775
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 14134 of 2024

Anendra Singh **...Petitioner**
Versus
Ram Kishan & Anr. **...Respondents**

Issue for Consideration

Whether the amendment application filed by the plaintiff-petitioner was highly delayed as the same was filed almost after three years of the alleged possession being taken by them, which was not admitted to the defendants as they were already in possession and the amendment application was hit by the proviso to Rule 17 of Order VI of C.P.C. as the issues have been framed in the suit and the suit has commenced.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order VI Rule 17- The amendment sought by the plaintiff was only to incorporate a relief, based on a cause of action which arose after filing of the suit. Since the allegation of the plaintiff was that in June, 2019 the possession was taken and the consequential amendment application was filed in May, 2022 well within three years, the plaintiff could have filed a separate suit for the same relief which he sought to add in the plaint by seeking an amendment. Once a separate suit is permissible, there is no reason to deny a relief by amendment in the pending suit as the same will avoid multiplicity of the proceedings- The merit of amendment cannot be prejudged at the stage of considering the application for amendment. The question as to whether which of the parties is in possession has to be considered and decided after the evidence is led by both the parties.

Held- The courts below erred in rejecting the application for amendment- Impugned orders dated 23.02.2024 and 03.07.2024 are hereby quashed. **The petition is allowed**. (E-15)

(Para 6, 9 & 13)

Case Law Cited

Chitranshi Vs. Rajnarayan Tripathi reported in 2025 (5) AWC 4867; Mohinder Kumar Mehra Vs. Roop Rani Mehra and others reported in (2018) 2 SCC 132; Sampath Kumar versus Ayakannu and others reported in (2002) 7 SCC 559;

List of Acts

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

List of Keywords

Amendment application; Order 6 Rule 17 CPC; Cause of action; arose after filing of suit; consequential amendment application.

Case Arising From

Petition filed challenging the order dated 23.02.2024 passed by the trial court i.e. Additional Civil Judge (Senior Division) Court No. 8, Farrukhabad, rejecting an application for amendment filed by the plaintiff-petitioner in the suit. Against the order dated 23.02.2024, a revision was filed by the petitioner and the same has also been dismissed

Appearances for Parties

Counsel for Petitioner(s) : Devesh Kumar Verma, Suresh Chandra Verma
Counsel for Respondent(s) : Ajai Singh Kushwaha

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

1. Heard Sri Devesh Kumar Verma, learned counsel for the petitioner and Sri Ajai Singh Kushwaha, learned counsel for the respondents.

2. This petition has been filed challenging the order dated 23.02.2024 passed by the trial court i.e. Additional Civil Judge (Senior Division) Court No. 8, Farrukhabad, rejecting an application for amendment filed by the plaintiff-petitioner in the suit. Against the order dated 23.02.2024, a revision was filed by the petitioner and the same has also been dismissed.

3. Brief facts of the case are that a suit for declaration was instituted on 29.05.2015, claiming ownership of the property in dispute on the basis of Will executed by the original owner of the property in dispute in favour of the petitioner. During pendency of the suit, an amendment application was filed by the petitioner, who was the plaintiff before the court below, in May, 2022 with the allegation that during the pendency of the suit in June, 2019, the defendants have taken forcible possession of the property in dispute and therefore, the decree of possession may also be passed in favor of the plaintiff-petitioner. The said application was opposed by the defendants and was ultimately dismissed by the trial court. Revision filed against the said order has also been dismissed.

4. It has been contended by learned counsel for the petitioner that the petitioner was only claiming a consequential relief because a cause of action for the same arose after filing of the suit. It has been further submitted by learned counsel for the petitioner that as per the case of the petitioner, the possession was taken forcibly by the defendants in June, 2019 and the consequent amendment application was filed by the petitioner in May, 2022 well within the limitation for filing a suit for possession. It has also been submitted by learned counsel for the petitioner that once a separate suit could have been filed by the petitioner, there was no impediment in allowing the amendment application as the same would result in avoiding the multiplicity of the proceedings.

5. *Per contra*, learned counsel for the respondents vehemently contended that the courts below have committed no illegality in rejecting the amendment application. The amendment application filed by the plaintiff-petitioner was highly delayed as the same was filed almost after three years of the alleged possession being taken by them, which was not admitted to the defendants as they were already in possession. It has been further submitted that the amendment application was hit by the proviso to Rule 17 of Order VI of C.P.C. as the issues have been framed in the suit and the suit has commenced.

6. Considering the rival submissions of the parties, I am of the opinion that the amendment sought by the plaintiff was only to incorporate a relief, which was based on a cause of action which arose after filing of the suit. Since the allegation of the plaintiff was that in June, 2019 the possession was taken and the consequential amendment application was filed in May, 2022 well within three years, the plaintiff could have filed a separate suit for the same relief which he sought to add in the plaint by seeking an amendment. Once a separate suit is permissible, there is no reason to deny a relief by amendment in the pending suit as the same will avoid multiplicity of the proceedings.

7. In case of **Sampath Kumar versus Ayakannu and others** reported in **(2002) 7 SCC 559,** the Supreme Court was considering the question whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. In paragraph Nos. 6 and 7, the Supreme Court has held as under:-

"6. It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings"

8. Order VI Rule 17 of C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real question in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has

proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof.

9. So far as contention of learned counsel for the respondents that trial court has rejected the application for amendment on the ground that the issues have been framed in the suit and in the application for amendment, it has not been disclosed as to why the delay has been occurred in filing the amendment application. It has also been held that defendants in their written statement has specifically stated that defendants are in possession over the property in dispute, in such a situation, amendment application cannot be allowed. The same view has been reaffirmed by the revisional court. The view taken by the courts below is erroneous. The merit of amendment cannot be prejudged at the stage of considering the application for amendment. The question as to whether which of the parties is in possession has to be considered and decided after the evidence is led by both the parties.

10. Further, this Court in the case of **Chitranshi Vs. Rajnarayan Tripathi reported in 2025 (5) AWC 4867** relied upon the judgment of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and others** reported in **(2018) 2 SCC 132** and held that normally the trial commences with the leading of evidence and the proviso to Order VI Rule 17 of C.P.C. 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.

11. In the present case, only issues have been framed and it is not the case of either of the parties that any evidence was led at the time of filing of the amendment application.

12. The Supreme Court in case of **Sampath Kumar Vs. Ayyakannu** (supra) has held that delay in filing an application for amendment by itself cannot be a ground for rejecting the application. Paragraph No. 9 of the judgment in case of Sampath Kumar Vs. Ayyakannu(supra) is quoted as under:-

"9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment."

13. In my view, the courts below have erred in law in rejecting the application for amendment. Consequently, the orders dated 23.02.2024 and 03.07.2024 are hereby quashed. The petition is allowed.

14. As the matter is pending since 2019, I am not remitting the same to be decided by the trial court itself and in exercise of powers under Article 227 of the Constitution of India, I am allowing the application for amendment filed by the petitioner. The petitioner shall carry out the amendment within three weeks from the date of production of certified copy of this order before the court below.

(2026) 2 ILRA 779
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 19.02.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482. No. 871 of 2026

Gayatri Nanjundappa @ Dr. Gayatri Singh ....Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the complaint filed by the Additional Chief Medical Officer, under the PCPNDT Act, 1994, is maintainable in law.
Whether the authorization order issued by the District Magistrate was legally valid despite absence of recorded reasons.
Whether the discharge application could be allowed on the ground that the complaint was based on hearsay evidence.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 482 - Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 – Section 17, 17(1), 17(3), 17(3)(b), 23, 28, 28(1), 28(1)(a), 30, 30(1) - Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 – Rule 11: - Application u/s 482 CrPC – for quashing impugned orders whereby the trial court rejected discharge application and further the dismissal of criminal revision subsequently – Complaint filed under PCPNDT Act, 1994 – cognizance – summoning order - bail granted – applicant pleaded that complaint not filed by Appropriate Authority and authorization defective and complaint was based on hearsay evidence – State contended District Magistrate validly authorized ACMO under Section 28(1)(a) and Rule 11 PCPNDT Rules – Court finds delegation permissible, authorization lawful, and evidentiary challenge premature – held - Section 28 allows complaint by officer duly authorized -and Rule 11 permits inspection authorization without reasons – further, Section 482 jurisdiction does not extend to mini-trial – consequently, complaint maintainable, discharge rightly rejected – petition fails – accordingly, rejected. (Para – 18, 20, 21, 22)
Application Dismissed. (E-11)

CASE LAW CITED

Ravinder Kumar v. State of Haryana, 2024 (SC)

Dr. Vinod Kumar Bassi v. State of U.P., 2024 (Allahabad HC)
State of M.P. v. Manvinder Singh Gill, SLP (Crl.) No. 2226/2014, SC (2015)
Suo Motu v. State of Gujarat, 2008 SCC OnLine Guj 294 (FB)
Dr. Brij Pal Singh v. State of U.P., 2024 AHC 159207

LIST OF ACTS

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 - Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

PCPNDT Act, Appropriate Authority, Delegation of Power, Complaint Maintainability, Authorization Order, Search and Seizure, Discharge Application, Section 482 CrPC, Hearsay Evidence.

CASE ARISING FROM

Complaint Case No. 9713 of 2008, *Dr. A.K. Chaudhary v. Dr. Gayatri Singh & Another*
Criminal Revision No. 517 of 2024, *Dr. Gayatri Singh v. State of U.P. & Another*
Orders dated 13.06.2024 (CJM, Lucknow) and 18.11.2025 (Special Judge, PC Act, Lucknow)

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Dhirendra Singh Panwar.
Counsel for Respondent(s): Shri S.M. Singh Royekwar, Additional Advocate General; Sri Rajdeep Singh, AGA-I

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The present application has been filed seeking setting aside the order dated 13.06.2024 passed by the Chief Judicial Magistrate, Lucknow in Complaint Case No.9713 of 2008, Dr. A.K. Chaudhary Vs Dr. Gayatri Singh and another, under Section 23 of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as the 'Act, 1994'), Police Station Bakshi Ka Talab, District Lucknow, whereby the application for discharge preferred by the applicant was rejected and further the order dated 18.11.2025 passed by the Special Judge, Prevention of Corruption Act, Court No.7, Lucknow in Criminal Revision No.517 of 2024, Dr. Gayatri Singh Vs. The State of U.P. and another, whereby the revision filed by the applicant was dismissed.

2. The facts, in nut shell, are that a complaint was filed by opposite party no.2 under Section 23 of the Act, 1994 at Police Station Bakshi Ka Talab, District Lucknow on 18.11.2008, which was registered as Complaint Case No.9713 of 2008 before the Magistrate, whereupon the Magistrate took cognizance on 20.11.2008 and thereafter summon was issued against the applicant. The applicant surrendered and was enlarged on bail on 14.09.2010. The applicant moved an application for discharge, which was rejected on 13.06.2024. Being aggrieved by the said order, applicant preferred a revision, which too was dismissed by the revisional court vide order dated 18.11.2025. Hence, the instant application has been filed.

3. Sri Dhirendra Singh Panwar, learned counsel for the applicant has submitted that applicant is an M.B.B.S. doctor and she has been a Registered Medical Practitioner since 1999 in the field of Obstetrics. Applicant is not the owner of Maa Chandrika Devi Maternity and Surgical Center and she was practicing there as Gynecologist at the time of alleged incident of search and seizure and the entire complaint is based on the hearsay evidence. He has further submitted that Dr. A.K.

Chaudhary (opposite party no.2), the then Additional Chief Medical Officer, Lucknow is not the appropriate authority within the meaning of Section 17 of the Act, 1994 and he has no legal authority to file the present complaint. It is submitted that only single member of the Appropriate Authority cannot authorize any official to take action or decision as provided under Section 30(1) of the Act, 1994. The complaint is based on the proceedings of search and seizure conducted by the members of the search team on 13.11.2008, who were authorized by only single person of the party, as such the entire proceeding is vitiated.

4. Learned counsel for the applicant has further invited the attention of the Court towards the Government Notification No.3020/V-9-2007-6(74)-94-T.C. dated 30.11.1997, which has been issued in pursuance of Section 17 of the Act, 1994 and has submitted that as per clause (3) of the said Notification, the District Magistrate may nominate an executive Magistrate of the district as his/her nominee to assist him/her in monitoring the implementation of the Pre-conception and Pre-natal Diagnostic Techniques Act, as deemed necessary.

5. In sum and substance, learned counsel for the applicant has taken two legal grounds; firstly, that complaint was not filed by the Appropriate Authority as provided under Section 28 of the Act, 1994, i.e. District Magistrate, but the same was filed by the Additional Chief Medical Officer, Lucknow, which is not sustainable and; secondly, while taking action under Section 30 of the Act, 1994, it is imperative upon the District Magistrate to record reasons, but he has passed the order without recoding any reasons. In support of his contention, counsel for the applicant has relied upon the following judgments:

1. ***Ravinder Kumar Vs. State of Haryana,*** 2024 (4) JIC 742 (SC);

2. ***Dr. Vinod Kumar Bassi Vs. State of U.P. and another,*** 2024:AHC-LKO:25839

6. On the other hand, Sri S.M. Singh Royekwar, learned Additional Advocate General assisted by Sri Rajdeep Singh, learned AGA-I for the State has submitted that the issue raised by the applicant has engaged attention of the Hon'ble Supreme Court in S***pecial Leave to Appeal (Crl.) No. 2226 of 2014, State of Madhya Pradesh Vs. Manvinder Singh Gill,*** decided on 03.08.2015 and after going through the provisions of Section 28(1)(a) and Section 17(3)(b) of the Act 1994, it emerges that the complaint in respect of an offence under the Act, 1994 can be filed by the District Magistrate himself or by any officer authorised in this behalf by him. The District Magistrate has authorized the Additional Chief Medical Officer, Lucknow vide order dated 18.08.2008, which clearly indicates that the District Magistrate has authorized Additional Chief Medical Officer, Lucknow to do pairvi and file the complaint. In view of the express provision contained in Section 28(1)(a) of the Act, 1994, the Appropriate Authority has been authorized or empowered to delegate his power to file complaint to an officer, therefore, the complaint was maintainable and there is no illegality or infirmity in the summoning order.

7. Learned Additional Advocate General by citing the judgement of the Full Bench of the Gujarat High Court in the case of ***Suo Motu Vs. State of Gujarat,*** 2008 SCC OnLine Guj 294 and a judgement of this Court in the case of ***Dr. Brij Pal Singh Vs. State of U.P. and another,*** 2024 AHC 159207 has submitted that there is no ambiguity in Section 28(1) of the Act, 1994, which

clearly conveys that complaint could be filed by an officer who is authorised in that behalf by the Central Government, State Government or the appropriate authority. The power of delegation is stipulated in all the three authorities under the provisions of Section 28 of the Act, 1994.

8. Learned Additional Advocate General has further invited the attention of the Court towards the order dated 18.08.2008, by which the District Magistrate has exercised his power as envisaged under Section 28(1)(a) of the Act, 1994 and has authorized Dr. A.K. Chaudhary, Additional Chief Medical Officer, Lucknow to file complaint in competent court under the Act, 1994. He has further submitted that vide order dated 13.11.2008, the District Magistrate issued an order under Rule 11 of the Rules, 1996, which pertains to inspection for facilities at Ultrasound Clinic, Imaging Centre, etc. Thus, the argument of learned counsel for the applicant that the authorization dated 13.11.2008 is against the Act, is not sustainable. It is also submitted that Section 30 of the Act, 1994 also provides that if the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place, such Authority ***or any officer authorised in this behalf*** may, subject to such Rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority ***or officer*** considers necessary, such Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act. He has submitted that vide order dated 13.11.2008, the District Magistrate/Appropriate Authority under Rule 11 of the Rules, 1996 has authorised two officers to take action.

9. Learned Additional Advocate General has further invited the attention of the Court towards the Government Notification dated 30.11.1997 and has submitted that as per clause (3) of the said Notification, the District Magistrate may nominate an executive Magistrate of the district as his/her nominee to assist him/her in monitoring the implementation of the Pre-conception and Pre-natal Diagnostic Techniques Act and he has been empowered under clause (a) read with clause (b) of Sub-Section (3) of Section 17 of the Act, 1994. He has, therefore, submitted no interference is required by this Court in the impugned orders while exercising its inherent powers under Section 482 Cr.P.C.

10. I have heard learned counsel for the parties and perused the record.

11. For the sake of reference, Sections 17 and 28 of Act, 1994 are quoted below:-

'17. Appropriate Authority and Advisory Committee.-

1. The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.

2. The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide

3. The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,'

(a) when appointed for the whole of the State or the Union territory, consisting of the following three members-

i) an officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson;

ii) an eminent woman representing women's organization; and

iii) an officer of Law Department of the State or the Union territory concerned:

Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled within three months of that occurrence.

(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

4. The Appropriate Authority shall have the following functions, namely:-

(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;

(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;

(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section

(5), on application for registration and on complaints for suspension or cancellation of registration;

(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

5. The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

6 The Advisory Committee shall consist of'

(a) three medical experts from amongst gynaecologists, obstericians, paediatricians and medical geneticists;

(b) one legal expert;

(c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

7. No person who has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

8. The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon:

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

9. The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed

28. Cognizance of offences:

1. No court shall take cognizance of an offence under this Act except on a complaint made by'

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.'For the purpose of this clause, 'person' includes a social organisation.

2. No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

3. Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.'

12. Hon'ble Supreme Court in the case of ***Manvinder Singh Gill*** (supra) while considering the provisions of Sections 17 and 28 of the Act, 1994, held as under:-

'We perused Section 28 (1) (a) of the Act which reads as under:-

"28. Cognizance of offences. (1) No court shall take cognizance of an offence under this Act except on a complaint made by-- (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be or the appropriate authority:'

When read carefully it emerges that the Authority vested in three officers, namely, authority the as Appropriate Authority, i.e. the notified under Section 17 (3) of the Act apart from any officer authorised in that behalf either by the Central Government or the State Government or by the concerned Appropriate Authority notified under Section 17(3) itself.'

Hon'ble Supreme Court in the aforesaid case has further observed as under:-

"Learned counsel for the petitioner, however, drew our attention to paragraph 11 of the impugned judgment wherein while considering Section 17 (3) (b) and (28) (1) (a) of the Act, the High Court stated that action under the Act can be taken by the Court only when a complaint is made by "the appropriate authority" or "by any officer authorised by the Central Government or State Government, otherwise such action would not be valid in law. While stating so, the High Court has omitted to note that under Section 28 (1)(a) any officer authorised by the "Appropriate Authority" notified under Section 17 (3) would also be entitled to initiate action under the Act."

13. The aforesaid judgment of the Hon'ble Supreme Court has given the verdict that under Section 28(1)(a) of the Act 1994, any officer authorised by the Appropriate Authority notified under Section 17(3) of the Act, 1994 would also be entitled to initiate action under the Act, 1994. Thus, the authorization done by the District Magistrate is valid and the Additional Chief Medical Officer, Lucknow was empowered to file the complaint and there is no illegality in it.

14. The issue of authorization under Section 28(1)(a) of the Act 1994 has again considered by this Court in the case of ***Dr. Brij Pal Singh*** (supra). Relevant paragraph of the aforesaid judgement is extracted below:

"ISSUE (E)

78. In view of Section 28 of the PC & PNDT Act, the following persons are authorized to file complaint case for any offence under the PC & PNDT Act, Le. (1) the Appropriate Authority; (ii) any other person authorized by the Central Government or the State Government, as the case may be; (iii) or any person authorized by the Appropriate Authority and (iv) a person who has given a notice of not less than 15 days to the appropriate authority for filing of the complaint before the Magistrate."

15. The aforesaid judgment also indicates that any person authorized by the Appropriate Authority is empowered to file a complaint before the Magistrate.

16. Similar question has been cropped up before the Full Bench of the Gujarat High Court in the case of ***Suo Motu Vs. State of Gujara***t (supra) and the Full Bench has considered the provisions of Section 28(1)(a) of the Act 1994. Relevant paragraph of the said judgement is quoted below:-

"Use of the words 'Appropriate Authority' twice, at the beginning and end of clause (a) of sub-section (1) of section 28, clearly conveys that complaint could be made by an officer who is authorised in that behalf by the Central Government, the State Government or the Appropriate Authority, besides the Appropriate Authority itself. The power to delegate and authorise an officer to make a complaint is clearly conferred upon all the three authorities under the provisions of section 28, and therefore, a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in that behalf by the Appropriate Authority."

17. The said judgment also clearly indicates that complaint could be filed by any officer, who is authorized by the Appropriate Authority. It appears that a coordinate Bench of this Court in the case of ***Dr. Vinod Kumar Bassi*** (supra) could not consider the judgement of Hon'ble Supreme Court rendered in the case of ***Manvinder Singh Gill*** (supra).

18. The second legal aspect that while passing the order dated 13.11.2008, the District Magistrate has not recorded his reasons. A critical reading of the order dated 13.11.2008 indicates that the same is issued under Rule 11 of the Rules, 1996 which provides facilities for inspection at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, etc. and this Rule 11 further

provides that the Appropriate Authority may authorized any other person to act in this behalf and there is no illegality in the order of authorization.

19. The second limb of argument advanced by the applicant's counsel also fails.

20. It is further to be noted that as per Clause 3 of the Notification dated 30.11.2017, District Magistrate may nominate an executive magistrate of the district as his/her nominee to assist him/her in monitoring the implementation of the Pre-conception and Pre-natal Diagnostic Techniques Act. He has been empowered under empowered under Clause (a) read with Clause (b) of Sub-Section 3 of Section 17 of the Act, 1994.

21. The scope of Section 17(1) has been considered by the Full Bench of Gujarat High Court in the case of ***Suo Motu Vs. State of Gujarat*** (supra) and by this Court in the case of ***Dr. Brij Pal Singh*** (supra).

22. It is pertinent to note that the applicant has challenged the order rejecting the application for discharge. At this stage, this Court cannot embark upon a mini-trial or undertake an evaluation of the evidentiary material on record. The contention that the complaint is founded on hearsay evidence is not tenable in proceedings under Section 482 of the CrPC. The inherent jurisdiction of this Court does not extend to assessing the probative value of evidence, which is a matter to be determined during trial upon the parties leading evidence in accordance with law.

23. In view of the aforesaid legal and factual aspects, the petition fails and has no merits. Accordingly, it is ***rejected.***

(2026) 2 ILRA 787
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.02.2026

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Application U/S 528 BNSS. No. 1980 of 2025

Kamlesh Agnihotri @ Kamal & Ors. ....Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the FIR, charge sheet, and summoning order under Sections 308(2), 351(2), 352 BNS against elected Resident Welfare Association (RWA) members for alleged extortion/harassment in parking disputes disclose any offence and justify continuation of criminal proceedings.

HEADNOTES

Criminal Law – Criminal Procedure Code - Section – 482, - Bharatiya Nagarik Surakhash Sanhita, 2023 (BNSS) - Section - 180, 528, - Bharatiya Nyaya Sanhita, 2023 (BNS) - Section - 308(1),

308(2), 351(2), 351, 351(3), 352 - Uttar Pradesh Apartment Act – Section - 14: - Application u/s 482 CrPC – for quashing of entire criminal proceedings - FIRs - offences of cheating, intentional insult, and criminal intimidation (in year 2004 case) and causing hurt by poison, gang rape, criminal breach of trust, and unlawful religious conversion (in year 2024) – investigation - arrest – Mistaken Identity – Non-verification of particulars in NBW – Applicant wrongly apprehended – Violation of Article 21 - charge sheet - cognizance order – Trial - applicants pleaded mistaken identity, no evidence under Section 161 Cr.P.C., and mechanical cognizance – State admitted factual confusion due to identical names and incomplete particulars in NBW – Court finds that, arrest based on mistaken identity, violating Article 21 – held - arrest must be justified, not routine; deprivation of liberty impermissible without due verification – hence, impugned orders and proceedings quashed – applications allowed with direction to police to take lawful action against erring officers, compliance report to be filed - applicants at liberty to seek compensation under Article 226. (Para – 31, 23, 34, 35, 36, 38)
Application Allowed. (E-11)

CASE LAW CITED

Sanjeev @ Kallu Sethiya v. State of U.P. (2022).
Manik Taneja v. State of Karnataka (2015).
Beri Manoj v. State of A.P. (2026).
Anukul Singh v. State of U.P. (2025 INSC 1153).
Manmohan Krishna v. State of U.P. (2024 AHC 31717).
Isaac Isanga Musumba v. State of Maharashtra (2015 ALL SC 3483).
CBI v. Aryan Singh (2023).
M/s Balaji Traders v. State of U.P. (2025 INSC 806).
Dhananjay Kumar Singh v. State of Bihar (2007 AIR SCW 923).

LIST OF ACTS

Code of Criminal Procedure - Bharatiya Nagarik Surakhash Sanhita, 2023 - Bharatiya Nyaya Sanhita, 2023 - U.P. Apartment Act.

LIST OF KEYWORDS

Criminal Case – FIR – Quashing of proceedings - Mistaken identity - non-bailable warrant (NBW) - Personal liberty – Article 21 - Wrongful arrest - Compensation for unlawful detention - Police accountability.

CASE ARISING FROM

Case Crime No.392 of 2025, P.S. Sushant Golf City, Lucknow - Proceedings in Case No.115214 of 2025 (State v. Kamal @ Kamlesh Agnihotri & Ors.) - Charge Sheet No.01 of 2025 dated 25.07.2025.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Mohit Mishra.
Counsel for Respondent(s): Shri Dr. L.P. Mishra, Shri Sriniwas Bajpai, Shri Abhay Shukla, Shri V.K. Singh, Government Advocate assisted by Shri Bhanu Pratap Singh, AGA-I.

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Shri Mohit Mishra, learned counsel for the applicants; Shri V.K. Singh, learned Government Advocate assisted by Shri Bhanu Pratap Singh, learned AGA - I appearing for the State and Dr. L.P. Mishra, learned counsel alongwith Shri Sriniwas Bajpai and Shri Abhay Shukla, learned counsel(s) for respondent no.2.

2. Present application has been filed seeking to quash the Charge Sheet No.01 of 2025 Dated 25.07.2025 submitted in Case Crime No.392 of 2025, under Sections 308(2), 351(2), 352 of BNS,

P.S. Sushant Golf City, District Lucknow alongwith summoning order and entire criminal proceedings of Case No.115214 of 2025 (State v. Kamal @ Kamlesh Agnihotri & Ors.).

3. The facts, in brief, are that the applicants and Opposite Party No.2 are residents of a society known as Celebrity Greens. The said society is inhabited by a substantial number of members who are the apartment owners. The society was formed by the residents of the society and was also duly registered. Applicant No.1 is the Secretary to the said society duly elected, and Applicant Nos.2 & 3 are President and Caretaker of the said society respectively. It is pleaded that the said society was formed after taking the NOC from the builder and has been constituted under Section 14 of the U.P. Apartment Act and works according to the provisions of the Act and the bye-laws. It is pleaded that the general body of the society holds regular meeting and actions are taken as per the bye-laws, regulations etc.

4. It is stated that in the board meeting held on 24.11.2024 the issue with regard to haphazard parking was taken up and guidelines were issued and the residents were allotted one slot of their choice for parking of their vehicles with an advice to the resident to park in the allotted parking space. The said welfare measure was taken to avoid obstruction in traffic movement within the colony. It was also decided that in the event of not following the guidelines, at the first instance advice would be issued to the residents and in case of repeat, vehicles will be locked and locks will be opened by giving warning and at the third instance, steps would be taken for levy of penalty of Rs.500/- as per the board meeting.

5. It is stated that Opposite Party No.2 was wrongly parking his vehicle which was opposed, as such, he lodged the FIR in question being FIR No.392 of 2025 (Annexure ' 1) wherein it was alleged that the informant was a B.Tech and was an entrepreneur and social worker; it was stated that he was a trustee of Bhavrao Devras Trust of Rastriye Swyamsevak Sangh (RSS) and was residing in the said apartment since 2022. It was stated that applicants were engaged in extracting money from the residents and threats were issued on 1st of May to the informant for levying a penalty of Rs.500/-. It was also stated that the applicants were recovering money from various persons after forming a gang and on account of non payment, harassment was being meted out to the residents. It was also stated that as per the information of the informant, there was no sanction for the said recoveries and even the receipts were not issued and thus, a request was made to lodge the FIR under Sections 308(2), 351(2), 352 of IPC.

6. Investigation was conducted by Investigating Officer Mr. Shiv Kant Tiwari. While investigating, the Investigating Officer recorded the statement of the informant and also prepared a site plan. He also recorded the evidences given by Opposite Party No.2 which are contained in Annexure ' 8. The evidences collected was only in the form of statement of the informant wherein he stated that the Resident Welfare Association (for short 'RWA') was only a headless body without having any rights and has no rights to take any decision with regard to the management of the society etc. The same are on record as Annexure ' 8. Other allegations were also levelled of not utilising the funds properly.

7. Statement of the informant is also on record as Annexure ' 6 wherein it is stated that threats were being issued by RWA for improper parking of vehicles including that of the informant.

8. Statement of the applicants were also recorded under Section 180 of BNSS to the effect that the informant was habitual of wrongly parking his vehicle which was opposed by the residents and a Whatsapp message was also floated that the vehicle should be removed and information was also given that despite advice, vehicle was being wrongly parked and in case the owner repeat the same, steps shall be taken for locking the vehicle. The said statements are on record as Annexures ' 9, 10 & 11.

9. Based upon the said material, charge sheet came to be filed which is on record, on which the statements were referred including the statements under Section 180 BNSS of the all three accused and abruptly a conclusion was drawn that the applicant nos.1 & 2 had got the Jammers installed on the car and a demand of Rs.500/- was made for removing the lock. Based upon this material, a charge sheet came to be filed under Sections 308(2), 351(3), 352 IPC.

10. Based upon the said charge sheet, Chief Judicial Magistrate, Lucknow gook cognizance and summoned the applicants in Case No.115214 of 2025. Summoning order is on record as Annexure ' 13.

11. Summoning order, on perusal, does not reflect any application of mind except that the charge sheet has been submitted, documents perused and there was sufficient material to proceed, and the summons were issued.

12. Challenging the said, present application has been filed.

13. Submission of learned counsel for the applicant is that the entire allegations even if treated to be gospel truth, do not amount to the offence under Sections 308(2), 351(2), 352 of BNS. It is further argued that the proceedings have been initiated at the instance of the informant only with a view to harass the duly elected members of the RWA and to browbeat the applicants which is also reflected from the description of the membership of the informant in the organization. It is further argued that the entire proceedings are malafide. It is argued that the charge sheet has been filed without investigating properly, no statement of any of the other members of the society was recorded, the resolution of the RWA was not even looked into, no material was recorded that any amount was charged.

14. It is also essential to notice that the wife of the same informant had filed a complaint on 07.06.2025 before the Additional Secretary under the U.P. Apartment Acct which was disposed off with direction to the society to work as per the judgment of the High Court in Writ Petition No.33826 of 2012 (M/s. Designarch Infrastructure Pvt. Ltd. & Ors. v. Vice Chairman, Ghaziabad Development Authority & Ors.). The said complaint filed by the informant and the order passed are contained in Annexures ' 14 & 15.

15. In view of the said, it is argued that continuation of the proceedings are nothing but an abuse of process of law. It is also pleaded that challenging the FIR, Criminal Misc. Writ Petition No.5311 of 2025 was filed, however, after the filing of the charge sheet, the same has rendered infructuous. It is also stated that interim protection was also granted to the applicants in the said matter.

16. Learned counsel for respondent no.2 has filed a counter affidavit wherein it has been stated that the deponent was peacefully living in the society till 'kleptocracy type of management was thrust on him' and the other society members are now defunct. It is stated that many other vehicles were stopped by putting lock and were allowed to be released on payment basis. It is further argued that the allocation of parking lots were also arbitrary and the residents were being harassed. It is also pleaded that the deponent and family was feeling small, pipsqueak. The exact statement is quoted herein below:

"*4. 'Deponent and family was feeling small, pipsqueak. The egregious, bellicose orders were causing fear and resentment among residents. Extortion became routine affair. Last straw on capacity to endure hardship was when, while going for urgent work, deponent found car tyre jammed. The deponent and other society members made fervent request to alleged titular RWA, working like mafia, to not take law into hands but it was going in-vain giving mental tension. Therefore, upon finding no alternatives to tyranny, the deponent opted to file the FIR in question against the Petitioners as a last resort.'*

Other allegations have also been levelled in the counter affidavit. The manner of handing over of project to the RWA is also pleaded in the counter affidavit.

17. It is argued by learned counsel for Opposite Party No.2 that the allegations would constitute an offence under Sections 308(2), 351(2) & 352 of BNS and thus, present application was liable to be dismissed. It was further argued that the informant was well within his rights to disclose his social status which include the membership of a trust run by RSS.

18. Learned AGA has also filed a counter affidavit reiterating the versions in the FIR and justifying the manner in which the investigation was carried out and with a prayer that the present application is liable to be dismissed as the investigation was fair and the charge sheet discloses the cognizable offence.

19. Learned counsel for the applicant has relied upon the observations made by this Court in the case of ***Sanjeev @ Kallu Sethiya v. State of U.P.*** passed in ***Criminal Misc. Bail Application No.18458 of 2022*** decided on **17.10.2022** with an emphasis from Paras 29 to 36 highlighting the importance of a fair investigation. The same read as under:

"29. The U.P. Police Regulation 107 and 108 detail the procedure required to be followed by the Investigating Officer as follows:-

107. An Investigating Officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to observe and to infer. In every case, he must use his own exprt observations of the scene of the offence and of the general circumstances to check the evidence of witnesses, and in cases in which the culprits are unknown to determine the direction in which he shall look for them. He must study the methods of local offenders who are known to the police with a view to recognizing their handiwork, and he must be on his guard against accepting the suspicions of witness and complaints when they conflict with obvious inferences from facts. He must remember that it his duty to find out the truth and not merely to obtain convictions. He must

not prematurely commit himself to any view of the facts for or against any person and though he need not go out of his way to hunt up evidence for the defence in a case in which he has satisfactory grounds for believing that an accused person is guilty, he must always give accused persons an opportunity of producting defence evidence before him, and must consider such evidence carefully if produced. Burglary investigations should be conducted in accordance with the special orders on the subject.

108. The first step of the Investigating Officer should be to note in the case diary prescribed by Section 172 of the Code of Criminal Procedure the time and place at which he has received the information on which he acts and to make in the diary a copy of the first information report. When beginning his investigation, he must note in the diary the time and place at which he begins. He should then inspect the scene of the alleged offence and question the complainant and any other person who may be able to throw light on the circumstances. At an early stage of the investigation, he should consult the village crime note-book to learn of any matter recorded there which may have a bearing on the case.

30. A perusal of the aforesaid regulations shows that for the Investigating Officer, the accused and the complainant are equal at the time of conducting investigation. He has to consider the case of both the parties and thereafter, arrive at a fair conclusion regarding the investigation into the allegations made against the accused. He is not required to simply prove that the allegations in the F.I.R are correct and should necessarily collect evidence to implicate the accused, justifying his implication. This was done when the country was under colonial rule but it appears that even after independence the police investigation is still the same. Its aim is only to justify the implication. Rarely the statements of the accused side are recorded by the investigating officers of police.

31. What is fair investigation has been considered by the Hon'ble Supreme Court in number of judgements, considered hereinbelow:-

1) State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222, at page 258 :

48. From this perspective, the function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connecting the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime,. Often individual liberty of a witness or an accused person are involved and inconvenience is inescapable and unavoidable. The investigating officer would conduct indepth investigation to discover truth while keeping in view the individual liberty with due observance of law. At the same time he has a duty to enforce criminal law as an integral process. No criminal justice system deserves respect if its wheels are turned by ignorance. It is never his business to fabricate the evidence to connect the suspect with the commission of the crime. Trustworthiness of the police is the primary insurance. Reputation for investigative competence and individual honesty of the investigator are necessary to enthuse public confidence. Total support of the public also is necessary.

2) Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336, at page 268 :

32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

3) Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762, at page 792 :

48. What ultimately is the aim or significance of the expression "fair and proper investigation' in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

4) Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348 : (2014) 1 SCC (Cri) 309, at page 383 :

58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.

58.10. The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.

5) Manohar Lal Sharma v. Prinicipal Secy., (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1, at page 553 :

26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

27. Section 2(h) of the Code of Criminal Procedure (for short "the Code") defines investigation to include all the proceedings under the Code for collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by the Magistrate in this behalf.

28. In H.N. Rishbud, this Court explained that the investigation generally consists of the following steps : (AIR p. 201, para 5)

(1) Proceeding to the spot;

(2) ascertainment of the facts and circumstances of the case;

(3) discovery and arrest of the suspected offender;

(4) collection of evidence relating to the commission of the offence which may consist of the examination of :

(a) various persons (including the accused) and the reduction of statement into writing, if the officer thinks fit;

(b) the search of places and seizure of things, considered necessary for the investigation and to be produced at the trial;

(5) formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial, if so, take the necessary steps for the same for filing necessary charge-sheet under Section 173 Cr.P.C.

6) Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384, at page 643 :

48. Undoubtedly, the essence of criminal justice system is to reach the truth. The underlying principle is that whilst the guilty must not escape punishment; no innocent person shall be punished unless the guilt of the suspect/accused is established in accordance with law. All suspects/accused are presumed to be innocent till their guilt is proved beyond reasonable doubt in a trial conducted according to the procedure prescribed under law. Fair, unbiased and transparent investigation is a sine quo non for protecting the accused. Being dissatisfied with the manner in which the investigation was being conducted, the father of the victim filed the petition seeking an impartial investigation.

7) Rajiv Singh v. State of Bihar, (2015) 16 SCC 369, at page 397 :-

79. The investigating agency as the empowered mechanism of the law enforcing institution of the State is entrusted with the solemn responsibility of securing the safety and security of the citizens and in the process, act as the protector of human rights. The police force with the power and resources at its disposal is a pivotal cog in the constitutional wheel of the democratic polity to guarantee the sustenance of an orderly society. It is usually the first refuge of one in distress and violated in his legal rights to seek redress. The police force, thus is bestowed with a sacrosanct duty and is undisputedly required to be impartial, committed and relentless in their operations to unravel the truth and in the case of a crime committed, make the offender subject to the process of law. The investigating agency, thus in the case of a probe into any offence has to maintain a delicate balance of the competing rights of the offenders and the victim as constitutionally ordained but by no means can be casual, incautious, indiscreet in its approach and application. A devoted and resolved intervention of the police force is thus an assurance against increasingly pernicious trend of escalating crimes and outrages of law in the current actuality.

80. As a criminal offence is a crime against the society, the investigating agency has a sanctified, legal and social obligation to exhaust all its resources, experience and expertise to ferret out the truth and bring the culprit to book. The manifest defects in the investigation in the case demonstrate an inexcusable failure of the authorities concerned to abide by this paramount imperative.

81. This Court, amongst others, in Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and another (2013) 6 SCC 348, while underlining the essentiality of a fair, in-depth and fructuous investigation had observed that investigating officers are the kingpins in the criminal justice system and reliable investigation is a leading step towards affirming complete justice to the victims of the case. It was ruled that administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It was held that the daunting task, though a compelling responsibility, is vested on the court of law to protect and shield the rights of both. That a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court was emphatically underlined. We are left appalled by the incomprehensible omissions of the investigating agency in the instant case and we would expect and require that the authorities in-charge of ensuring fair, competent and effective investigation of criminal offences in particular would take note of this serious concern of the Court and unfailingly take necessary remedial steps so much so that these observations need not be reiterated in future entailing punitive consequences.

8) Suresh Chandra Jana v. State of W.B., (2017) 16 SCC 466, at page 480 :-

34. The last aspect is regarding the defective investigation and prosecution. If a negligent investigation or omissions or lapses, due to perfunctory investigation, are not effectively rectified, the faith and confidence of the people in the law enforcing agency would be shaken. Therefore the police have to demonstrate utmost diligence, seriousness and promptness. [refer Ram Bihari Yadav v. State of Bihar & Ors., (1998) 4 SCC 517].

35. The basic requirement that a trial must be fair is crucial for any civilized criminal justice system. It is essential in a Reportable society which recognizes human rights and is based on values such as freedoms, the rule of law, democracy and openness. The whole purpose of the trial is to convict the guilty and at the same time to protect the innocent. In this process courts should always be in search of the truth and should come to the conclusion, based on the facts and circumstances of each case, without defeating the very purpose of justice.

32. The Hon'ble Supreme Court has held in number of cases that fair investigation, which precedes filing of charge-sheet, is a fundamental right under Article 21 of the Constitution of India. Therefore, it must be fair, transparent and judicious. A tainted and biased investigation leads to filing of a charge-sheet which is infact based on no investigation and therefore, the charge-sheet filed in pursuance of such an investigation cannot be held to be legal and in accordance with law. Some of such observations are as follows :-

1) Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523, at page 455:

28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases.

2) Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336, at page 272 :

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

3) Azija Begum v. State of Maharashtra, (2012) 3 SCC 126, at page 128 :

12. In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution.

13. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic set up which must be taken care of by the Courts.

33. This country has inherited the present police system from the British Government. The main objective of British rule was to maintain status quo by using the police force as effective weapon to put down any challenge to its authority by iron hand. The police had to take repressive measures on account of the directions of the British Government. The investigation was accordingly carried out keeping in view the direction of the government and their object of ruling this country. Charge-sheets were submitted accordingly which were not the result of free and fair investigation. The fundamental rights of the people of the country were not in existence and the Criminal Procedure Code was designed in a manner which was not in accordance with the rights of the people of this country before independence. The code no where clearly provides that the investigating officer shall necessarily record the statements of witnesses of both the sides, viz., the accused and the informant / complainants, while conducting the investigation into an alleged offence.

34. After India became independent, it became a welfare state from the police state of the Britishers. The legislations which were framed after independence were in conformity with the fundamental rights of the people of this country. In the welfare state, the role of the police became more difficult in view of deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, increase in white-collar crimes, etc. The police force, in addition to the aforesaid new challenges, came under stress and strain. Long hours of duty in connection with law and order situation, V.I.P duty, etc., left the police with lesser time to properly investigate the cases. Under the pressure of work, police started mechanical investigation of the crimes entrusted to it for free and fair investigation. The investigating officer is subjected to pressure by the influential persons of society to give report as per their command. The influence of money in conducting investigation is quite evident and it is a very big hurdle in the free and fair investigation of a crime and case. It was suggested by number of Law Commission Reports that the investigation wing of the police should be separated from the law and order wing but it has not materialized as yet. The separation of investigation wing from law and order wing has its hazards. If they are separated it would be difficult to control law and order situation time the mischief mongers and the criminals will not tear the law and order wing of the police, once it is clear to them but the investigation of the case after report is lodged will be done by different wing of police. This is the practical drawbak in separation of the wings of police at local level. The investigating officer is also under pressure of Senior Officers, who do not favourable see any departure from established practice of justifying implication of an accused by collecting evidence in this regard. They feel it safe to justify implication of an accused by submitting investigation reports against the accused, except in few cases, where they or their political patron is interested otherwise.

35. Therefore, it is clear that the Court has to be cautious in considering the bail applications filed by the accused before and after submission of charge-sheet. There are number of impediments in the way of Investigating Officer in submission of charge-sheet after free and fair investigation as considered hereinabove.

36. Right to liberty is sacrosanct and guaranteed under Article 21 of the Constitution of India. Under Article 14 of the Constitution of India, there is equal protection of law to everyone, informant/complainant and accused, alike. During investigation stage or during trial stage, "presumption of innocence of accused" is intact and it is so till he is convicted either under Section 255 Cr.P.C. (summons case), Section 248 Cr.P.C. (warrant case) or under Section 335 Cr.P.C. (sessions case). Only when he is convicted, presumption of innocence gets replaced by a judgement of conviction."

20. Learned counsel for the applicant also places reliance on the judgment of the Supreme Court in the case of ***Manik Taneja & Anr. v. State of Karnataka & Anr***. passed in ***Criminal Appeal No.141 of 2015 on 20.01.2015*** with emphasis on Paras 13 to 16 to argue that no offence can be said to be made out under Section 351(3) of BNS, as no allegation of criminal intimidation was alleged. The said paragraphs are quoted herein under:

'13. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

'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.'

14. A reading of the definition of 'Criminal intimidation' would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

15. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of 'Criminal intimidation'. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.

16. Of course, in exercise of its jurisdiction under Section 482 Cr.P.C., the court should be extremely cautious to interfere with the investigation or trial of a criminal case and should not stall the investigation, save except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that continuance of the criminal prosecution would amount to abuse of process of the court. As noted earlier, the page created by the traffic police on the Facebook was a forum for the public to put forth their grievances. In our considered view, the appellants might have posted the comment online under the bona fide belief that it was within the permissible limits. As discussed earlier, even going by the uncontroverted allegations in the FIR, in our view, none of the ingredients of the alleged offences are satisfied. We are of the view that in the facts and circumstances of the case, it would be unjust to allow the process of the court to be continued against the appellants and consequently the order of the High Court is liable to be set aside."

21. Learned counsel for the applicant places reliance upon the judgment of the Supreme Court in the case of ***Beri Manoj v. State of Andhra Pradesh & Anr.*** passed in ***Criminal Appeal No.362 of 2026 on 20.01.2026*** with emphasis on Paras 5, 6 & 7 to argue that the offence under Section 352 of IPC is also not made out. The said paragraphs read as under:

"5. Having heard the learned counsel appearing for the parties and after bestowing our careful considerations to the rival contentions raised at the Bar, we notice at the initial stage itself in the statement recorded under Section 161 of the CrPC of the prosecutrix for reasons best known has not even whispered of any threat having been posed by the appellant herein except to the extent of stating that she had gone to the appellant's house. However, after seven days, namely after much water having flown down the bridge, she gave her statement under Section 164 of the CrPC and improved her version as is evident from her statement itself which reads as under:

'Chandu tej's father, uncle and two aunts came there and threatened me stating 'whatever happens I should talk in favour of Chandu tej, I should keep the blame on me, failing which I will be killed.'

6. In fact, we may quote with benefit the judgments of this Court in Naresh Aneja Vs. State of U.P., (2025) 2 SCC 604 and Sharif Ahmad Vs. State of U.P. (2024) 14 SCC 122, wherein it has been held that mere threats without intention to cause alarm do not constitute criminal intimidation under Section 506 of the IPC. In the instant case, as could be seen from the records, the prosecutrix improved her statement which came to be recorded under Section 164 of the CrPC alleging that 'two aunts and an uncle threatened' her which is a clear improvement from the statement recorded under Section 161 of the CrPC. This contradiction in timing of events create a serious doubt in the prosecution's version or in other words, the appellant's name suddenly surfaced after seven days through a vague reference to 'an uncle' and thereby further weakening the prosecution's case. Even otherwise, mere expression of words, without any intention to cause alarm cannot amount to criminal intimidation. Hence, we are of the considered view that the allegation in the prosecutrix statement recorded under Section 164 of the CrPC would be insufficient in law to proceed against the appellant for being prosecuted under Section 506 of the IPC.

7. That apart, we notice from the clear statement recorded under Section 164 of the CrPC that no intention of criminal intimidation was prima facie established since prosecution of a person for criminal intimidation requires clear intention to cause alarm, irrespective of whether the victim was alarmed or not. In the absence thereof continuation of the prosecution against the appellant by virtue of a vague reference to the expression 'an uncle' cannot by itself would not disclose any offence. Vague allegations unsupported by prima facie cogent evidence cannot constitute offence indicated under Section 506 of the IPC. Last but not the least, the mere presence of a lawyer (appellant in the instant case) in his capacity of discharging professional duty of either giving advice or suggestion cannot amount to intimidation and this is foundational fact being conspicuously absent in the instant case, we are perforced to disagree with the contention of learned counsel for the complainant (victim) and the learned counsel appearing for respondent No.1 the State. In other words, we are of the considered view that contentions urged, grounds pressed into service by the learned counsel appearing for the appellant deserves to be accepted. Accordingly, it it accepted.'

22. Learned counsel for the applicant also places reliance on the judgment of the Supreme Court in the case of ***Anukul Singh v. State of Uttar Pradesh & Anr.; 2025 INSC 1153*** to argue that the present case is a fit case for quashing the proceedings. He emphasis on Paras 11.1 & 11.4 of the said judgment which read as under:

11.1. This Court in State of Haryana v. Bhajan Lal; 1992 SCC (Cri) 426 , at paragraph 102, laid down illustrative categories where quashing of proceedings is justified. These are:

"(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.'

11.4. Nevertheless, an exception has been recognized where the defence relies upon unimpeachable, incontrovertible evidence of sterling quality ' such as documents of undisputed authenticity ' which ex facie demonstrate that continuation of criminal proceedings would be unjust and oppressive. This principle was recognized in Suryalakshmi Cotton Mills Ltd v. Rajvir Industries Ltd., (2008) 13 SCC 678, and followed in subsequent decisions.'

Emphasis was also placed on Paras 17, 18 & 19 of the said judgment, which read as under:

'17. This Court has, in a long line of decisions, deprecated the tendency to convert civil disputes into criminal proceedings. In Indian Oil Corporation v. M/s. NEPC India Ltd.; (2006) 6 SCC 738 , it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters, and that such misuse amounts to abuse of process. The following paragraphs from the decision are apposite:

'9. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed.

Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.'

18. Similarly, in Inder Mohan Goswami and another v. State of Uttaranchal and others; AIR 2008 SC 251, it was emphasized that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In Ganga Dhar Kalita v. State of Assam; (2015) 9 SCC 647, this Court again reiterated that criminal complaints in respect of property disputes of civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

19. Most recently, in Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh and others; 2025 INSC 869, this Court disapproved the practice of using criminal proceedings as a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil. The Court cautioned High Courts not to direct settlements in such matters but to apply the settled principles in Bhajan Lal. The following paragraphs are relevant in this context:

"9. What we have been able to understand is that there is an oral agreement between the parties. The Respondent No.4 might have parted with some money in accordance with the oral agreement and it may be that the appellant ' herein owes a particular amount to be paid to the Respondent No.4. However, the question is whether prima facie any offence of cheating could be said to have been committed by the appellant.

10. How many times the High Courts are to be reminded that to constitute an offence of cheating, there has to be something more than prima facie on record to indicate that the intention of the accused was to cheat the complainant right from the inception. The plain reading of the FIR does not disclose any element of criminality.

11. The entire case is squarely covered by a recent pronouncement of this Court in the case of 'Delhi Race Club (1940) Limited vs. State of Uttar Pradesh' reported in (2024) 10 SCC 690. In the said decision, the entire law as to what constitutes cheating and criminal breach of trust respectively has been exhaustively explained. It appears that this very decision was relied upon by the learned counsel appearing for the petitioner before the High Court. However, instead of looking into the matter on its own merits, the High Court thought fit to direct the petitioner to go for mediation and that too by making payment of Rs. 25,00,000/- to the 4th respondent as a condition precedent. We fail to understand why the High Court should undertake such exercise. The High Court may either allow the petition saying that no offence is disclosed or may reject the petition saying that no case for quashing is made out. Why should the High Court make an attempt to help the complainant to recover the amount due and payable by the accused. It is for the Civil Court or Commercial Court as the case may be to look into in a suit that may be filed for recovery of money or in any other proceedings, be it under the Arbitration Act, 1996 or under the provisions of the IB Code, 2016.

12. Why the High Court was not able to understand that the entire dispute between the parties is of a civil nature.

13. We also enquired with the learned counsel appearing for the Respondent No.4 whether his client has filed any civil suit or has initiated any other proceedings for recovery of the money. It appears that no civil suit has been filed for recovery of money till this date. Money cannot be recovered, more particularly, in a civil dispute between the parties by filing a First Information Report and seeking the help of the Police. This amounts to abuse of the process of law.

14. We could have said many things but we refrain from observing anything further. If the Respondent No.4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse of criminal proceedings.

15. We are quite disturbed by the manner in which the High Court has passed the impugned order. The High Court first directed the appellant to pay Rs.25,00,000/- to the Respondent No.4 and thereafter directed him to appear before the Mediation and Conciliation Centre for the purpose of settlement. That's not what is expected of a High Court to do in a Writ Petition filed under Article 226 of the Constitution or a miscellaneous application filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR or any other criminal proceedings. What is expected of the High Court is to look into the averments and the allegations levelled in the FIR along with the other material on record, if any. The High Court seems to have forgotten the wellsettled principles as enunciated in the decision of this Court in the 'State of Haryana & Others vs. Bhajan Lal & Others' Reported in 1992 Supp.(1) SCC 335."

23. Learned counsel for the applicant also places reliance upon the judgment of this Court in ***Application U/S No.38781 of 2016 (Manmohan Krishna v. State of U.P. & Anr.), 2024:AHC:31717*** to press that the offence under Section 504 of IPC cannot be said to be made out. He emphasised on Paras 28 to 32 of the said judgment, which read as under:

"28. He further submitted that the allegations made against the applicant under Section 504 IPC is not made out as to attract the provisions of Section 504 IPC. The relevant provision of Section 504 IPC is quoted herein for ready reference:

"504. 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.'"

29. The necessary ingredients for invocation of Section 504 are-(a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break public peace or to commit any other offence, in such a situation the ingredients of section 504 are satisfied. One of the essential elements constituting the offence is that the there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504.

30. To buttress this argument, he has placed reliance on paragraph 13 of a judgment passed by Hon'ble the Supreme Court in the matter of Fiona Shrikhande vs. State of Maharashtra and another; AIR 2014 SC 957, which read as under:-

"Section 504 comprises of the following ingredients, viz., (a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break public peace or to commit any other offence, in such a situation the ingredients of section 504 are satisfied. One of the essential elements constituting the offence is that the there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504.'

4th Argument

31. Learned counsel for the applicant further submitted that applicant had been charged for the offence under Section 506 IPC, but the same is not attracted in the present case. Section 506 IPC is quoted hereunder for ready reference:

"506. Punishment for criminal intimidation.-Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.-And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.'"

32. He further submitted that there are three ingredients to attract Section 506 IPC. Firstly, there must be an act of threatening another person. Secondly, of causing injury to the person's reputation; or property of the persons threatened or to the person in whom the 'threatened person is interested and Thirdly, the threat must be with the intent to cause alarm to the persons threatened or it must be to do any act, which is not legally bound to do or omit to do an act, which he is legally entitled to do."

24. Learned counsel for the applicant lastly places reliance on the judgment of the Supreme Court in the case of ***Isaac Isanga Musumba & Ors. v. State of Maharashtra & Ors.; 2015 ALL SC 3483*** with emphasis on Para 3, which reads as under:

"3. We have read the FIR which has been annexed to the writ petition as Annexure P-7 and we find therefrom that the complainants have alleged that the accused persons have shown copies of international warrants issued against the complainants by the Ugandan Court and letters written by Uganda Ministry of Justice & Constitutional Affairs and the accused have threatened to extort 20 million dollars (equivalent to Rs.110 crores). *In the complaint, there is no mention whatsoever that pursuant to the demands made by the accused, any amount was delivered to the accused by the complainants. If that be so, we fail to see as to how an offence of extortion as defined in Section 383, IPC is made out. Section 383, IPC states that whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'. Hence, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 could not have been registered by the police.'*

25. Learned counsel for the Opposite Parties, on the other hand, places reliance on the judgment of the Supreme Court in the case of C***entral Bureau of Investigation v. Aryan Singh Etc***. passed in ***Criminal Appeal Nos.1025 ' 1026 of 2023 on 10.01.2023 t***o argue that the proceedings are not liable to be quashed in exercise of powers under Section 482 of Cr.P.C. / 528 of BNSS. He emphasises on Para 4.1, which reads as under:

"4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal

principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not'."

26. Reliance is also placed upon the judgment of the Supreme Court in the case of ***M/s Balaji Traders v. State of U.P. & Anr.; 2025 INSC 806*** to argue that the case for extortion is made out based upon the evidences collected. He places emphasis on Para 14 of the said judgment to impress that the power under Section 482 of Cr.P.C. should be exercised sparingly. The same reads as under:

"14. Thus, it can be said in terms of Sections 386 (an aggravated form of 384 IPC) and 387 IPC that the former is an act in itself, whereas the latter is the process; it is a stage before committing an offence of extortion. The Legislature was mindful enough to criminalize the process by making it a distinct offence. Therefore, the commission of an offence of extortion is not sine qua non for an offence under this Section. It is safe to deduce that for prosecution under Section 387 IPC, the delivery of property is not necessary."

27. Reliance is also placed upon the judgment of the Supreme Court in the case of ***Dhananjay @ Dhananjay Kumar Singh v. State of Bihar & Anr.; 2007 AIR SCW 923*** wherein Section 383 was interpreted as under:

'Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Indian Penal Code in the following terms:

"383. Extortion:- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion"."

A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence :

1. The accused must put any person in fear of injury to that person or any other person.

2. The putting of a person in such fear must be intentional.

3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.

4. Such inducement must be done dishonestly.

A First Information Report as is well known, must be read in its entirety. It is not in dispute that the parties entered into transactions relating to supply of bags. The fact that some amount was due to the appellant from the First Informant, is not in dispute. The First Information Report itself disclosed that accounts were settled a year prior to the date of incident and the appellant owed a sum of about Rs.400-500 from Gautam Dubey."

28. In the light of the arguments and the case laws relied upon by the parties, it is essential to notice the provision of Section 308(1) & (2), Section 351(2) and Section 352 of the BNS, which are quoted herein under:

***'308. Extortion.-**(1) Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion.*

Illustrations.

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

(e) A threatens Z by sending a message through an electronic device that "Your child is in my possession, and will be put to death unless you send me one lakh rupees." A thus induces Z to give him money. A has committed extortion.

(2) Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.'

Section 351(1) & (2) of the BNS reads as under:

*'**351. Criminal intimidation**.-(1) Whoever threatens another by any means, 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.

Illustration.

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn Bs house. A is guilty of criminal intimidation.

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.'

Section 352 of the BNS reads as under*:*

***'Section 352. Intentional insult with intent to provoke breach of peace.-** Whoever intentionally insults in any manner, 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.'*

29. From plain reading of the FIR, the statements as well as the charge sheet which includes only the statements of the informant as well as the applicants, neither there is any allegation of intentional putting any person in fear of any injury, or to any other, and thereby dishonestly inducing the person so put in fear to deliver to any person any property, or valuable security.

30. In the present case, the allegations were that the RWA was unauthorizedly charging Rs.500/- and it was stated that in case the vehicles are not removed Rs.500/- would be charged after putting in locks at the third instance.

31. No material exists that the applicants intentionally put the informant or any other residents in fear of any injury or any effort was made to dishonestly induce any resident or the informant to deliver to any person any property or any security. No amount was extracted or taken from the informant.

32. The ingredients of Section 352 of BNS even if all the material are treated to be gospel truth is not made out, as there is no allegation of any intentional insult whereby it provokes any person which is likely to cause him to break the public peace or to commit any other offence.

33. The allegation of criminal intimidation as defined under Section 351 of BNS is also not discerned from the material filed alongwith the charge sheet which only includes the statement of the informant as well as the applicants.

34. Thus, from the plain reading of the materials collected including the statement and forming a part of the charge sheet, even if admitted to be gospel truth, the same do not constitute any offence whatsoever under the Sections in which the applicants have been charged/summoned.

35. This Court cannot ignore the manner in which the investigation has been carried out in the present case. In terms of the statement given by the informant, allegation of extortion by RWA was made which was denied in the statements made by the applicants, thus, it was incumbent upon the Investigating Officer to have taken the statement of the residents, verify the resolution passed by the RWA including their bye-laws, to form an opinion whether the allegations alleged amounted to offence or not. There is no material that any amount was actually taken from the informant which is a sine qua non for extortion. The charge sheet was filed in a hurried manner only after recording the statement of the informant as well as the applicants; even the material given by the informant was not got cross checked. As per the records, no material exists in the form of statement of any residents that any threat was issued at any point of time or any extortion was done. This Court has already emphasised the need for fair investigation as is evident from the observations made by this Court in the case of Sanjeev @ Kallu Sethiya (supra) as extracted above. None of the parameters laid down for fair investigation have been followed in the present case. The investigation is clearly half baked and appears to be under the influence of the office said to be held by Opposite Party No.2. A copy of this order shall be placed in the Annual Confidential Report of the Investigating Officer and a copy of this order shall be sent to the Director General of Police to take a decision as to whether the role of investigation can be entrusted on Mr. Shiv Kant Tiwari, Investigating Officer of the present case.

36. Thus, on the reasoning recorded above, this Court has no hesitation in holding that the entire FIR, Charge Sheet as well as summoning order are nothing but an abuse of process of law at the instance of a disgruntled resident against the duly elected members of the RWA.

It was proposed to be argued that the registration of the RWA has been cancelled. Irrespective of the said cancellation subsequently, the applicants were the duly elected members of the RWA and had taken decision based upon the resolution passed in the general body. The same could in no way be termed as 'extortion' as has been alleged and averred.

37. In view thereof, the entire proceedings of Case No.115214 of 2025 (State v. Kamal @ Kamlesh Agnihotri & Ors.) arising out of Case Crime No.392 of 2025, under Sections 308(2), 352, 351(2) of BNS, P.S. Sushant Golf City, District Lucknow as well as the Charge Sheet No.01 of 2025 dated 25.07.2025 are quashed.

38. 'With great powers come great responsibility'. The Opposite Party No.2 has clearly not gained responsibilities with the great powers that have come his way as claimed by him. It will be open to the organization of which the informant claims to be a member to see whether the browbeating of their members to the common public is sanctioned in favour of the Opposite Party

No.2 owing to his office. Prima-facie, a highly disciplined and respected cultural organization like the RSS has been maligned and the membership has been misused in the present case by Opposite Party No.2, however, this Court is not well equipped to go any further with regard to the acts of Opposite Party No.2 in misusing the name of a respected cultural organisation in the manner in which it has been done.

39. Present application stands ***allowed*** in above terms.

(2026) 2 ILRA 810
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.02.2026

BEFORE

THE HON'BLE PADAM NARAIN MISHRA, J.

Application U/S 528 BNSS. No. 3690 of 2026

Awadhesh Nishad & Ors. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the issuance of Non-Bailable Warrants (NBW) by the trial court on the very first date of listing, without recording objective satisfaction or considering other modes of securing presence, was legally justified?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 90, 528, - Indian Penal Code, 1860 - Sections 34, 323, 325, 504, 506 - Constitution of India - Article 21: - **Application under Section 528 BNSS – for quashing the** impugned order of Non-Bailable Warrants – Incident – FIR - cross-cases also registered from the said incident – Trial transferred from District Judge - NBW issued at the very first instance after the transfer of the case district judge to Special Judge - applicants pleaded that issuance of NBW was arbitrary, without judicial satisfaction, and contrary to Section 90 BNSS – Court finds that NBW was issued hastily, without recording reasons or exploring other means to secure presence – and NBW is a serious matter that impacts an individual's personal freedom as protected by Article 21 - reliance placed on *Inder Mohan Goswami v. State of Uttaranchal* and *State of Haryana v. Bhajan Lal,* court held that - (i) High Court's inherent powers under Section 528 BNSS invoked to prevent abuse of process and secure ends of justice and (ii) NBW should be a last resort, not the first step – therefore, impugned order quashed - directions issued to the Trial court to pass a fresh order, accordingly. (Para – 5, 7, 8)
Application Allowed. (E-11)

CASE LAW CITED

Inder Mohan Goswami & Another v. State of Uttaranchal & Others (2007) 12 SCC 1
State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335)

LIST OF ACTS

Bhartiya Nagarik Suraksha Sanhita, 2023 - Indian Penal Code, 1860 - Constitution of India.
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LIST OF KEYWORDS

Non-Bailable Warrant (NBW) - Judicial discretion - Article 21 - Abuse of process - Inherent powers - Witness presence - Right to life - personal Liberty - Quashing order – fresh order.

CASE ARISING FROM

Case Crime No. 03 of 2014, P.S. Daraganj, District Allahabad - **Session Trial No. 354 of 2016** (State vs. Faizan Hussain and Others) - Impugned order dated 13.01.2026 by ADJ-XVI/Special Judge (P.C.), Allahabad.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sudhir Mahrotra, Suyash Mehrotra.
Counsel for Respondent(s): A.G.A.

(Delivered by Hon'ble Padam Narain Mishra, J.)

1. Heard learned counsel for the applicants, learned AGA for the State and perused the material available on record.

2. This application under Section 528 BNSS has been filed by the applicants for quashing the impugned order dated 13.01.2026 passed by learned Additional Distict Judge - XVI/ Special Judge (P.C.), Allahabad in Session Trial No. 354 of 2016 (State vs Faizan Hussain and Others) arising out of Case Crime No. 03 of 2014 under sections 323, 325/34, 504 and 506 of IPC, P.S. - Daraganj, District - Allahabad whereby Non-Bailable Warrants (NBW) have been issued against the applicants on the very first date of listing.

3. Facts in Brief fact of the present case is that the particular incident took place on 01.01.2014 agaisnt which an FIR was lodged by the Opposite Party No.2 against the applicants which is registered as the Case Crime No. 2 of 2014. The applicants also registered a cross case which was registered as the Case crime No. 3 of 2014 of the aforesaid incident. Subsequently the case lodged at the instance of the applicants committed to the District Judge, Allahabad vide order dated 02.05.2016. Thereafter, District Judge, Allahabad transferred the Case Crime No. 3 of 2014 to the court of ADJ 16/ Special Judge (P.C.) Act, Allahabad. The Trial on the first date that the trial court upon receiving the file on being transferred vide order dated 13.01.2023 issued NBW against all the applicants.

4. Having considered the submission of the learned counsels of the parties and perused the material available on records, it appears that the Additional District Judge - XVI/ Special Judge (P.C.), Allahabad has passed the impugned order 13.01.2026 in Session Trial No. 354 of 2016 without the application of judicial mind in a very hasty manner in complete disregard of the settled principles of the law. The impugned order passed against the applicants who are the witnesses of the facts, does not reflect the objective satisfaction recorded by the trial court for issuing the NBW at the very first instance after the transfer of the case from the Court of District Judge, Aligarh to the court of ADJ 16/ Special Judge (P.C.) Act without recoursing other modes of securing the presence of the witnesses. At this juncture, it is inevitable to discuss about the Section 90 of the BNSS. Section 90 of the BNSS is as under:

Section 90 - Issue of warrant in lieu of, or in addition to, summons

A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest?

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

5. On bare perusal of the aforesaid section, it is clear that the general course of action for the appearance of any person before the court may be deviated only when the court has reason to believe that the he has absconded or will not obey the summons. The impugned order does not disclose the compliance of above noted requirement. The issuance of an NBW is a serious matter that impacts an individual's personal freedom as protected by Article 21 of the Indian Constitution. The authority to issue a warrant, whether it is bailable or not, must therefore be used carefully and not arbitrarily. Nonetheless, the courts have made it clear that their discretion is largely focused on ensuring the person's presence and preventing the criminal justice system from being impeded. An NBW is a very important legal action that is to be taken as a last resort when other means of ensuring a witness's presence have failed. Before issuing a warrant, a judge will consider factors like the witness's credibility, the importance of their testimony, how relevant their evidence is to your case, and if there are mitigating circumstances that could have caused the witness to miss the hearing.

6. The Apex Court in the case in **re: Inder Mohan Goswami and another vs. State of Uttaranchal and others reported in (2007) 12 SCC 1** has observed the mechanism as to how the liberty of any person may be curtailed inasmuch as every citizen has got fundamental right of his liberty under Article 21 of the Constitution of India. The relevant paragraphs of the aforesaid judgment is reproduced as under:-

"*When non-bailable warrants should be issued.*

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

it is reasonable to believe that the person will not voluntarily appear in court; or

the police authorities are unable to find the person to serve him with a summon; or

it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

7. The inherent powers under Section 528 BNSS are to be exercised to prevent abuse of process of court and to secure ends of justice (**State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335)**. The matter at hand is the fit case for the exercise of the inherent powers of the High Court vested under section 528 of BNSS.

8. The impugned order dated 13.01.2026 passed by learned Additional Distict Judge - XVI/ Special Judge (P.C.), Allahabad in Session Trial No. 354 of 2016 (State vs Faizan Hussain and Others) arising out of Case Crime No. 03 of 2014 is hereby quashed. The Concerned Trial Court is directed to pass a fresh order in the light of the observation made hereinabove.

(2026) 2 ILRA 813
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.02.2026

BEFORE

THE HON'BLE TEJ PRATAP TIWARI, J.

Application U/S 482. No. 8263 of 2025
Alongwith
Application U/S 482. No. 8685 of 2025

Mohd. Azeem Idrishi ....Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the arrest and prosecution of the applicants in connected criminal cases suffer from non-verification of true identity, leading to wrongful apprehension of innocent persons due to factual error by police.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section - 154, 161, 482, - Indian Penal Code, 1860 – Sections 328, 376D, 406, 420, 504, 506 - Prohibition of Unlawful Religious Conversion Act, 2021 – Section 5(1) - Constitution of India – Article 21 - Bharatiya Nagarik Suraksha Sanhita (BNSS) – Section 35: - Application u/s 482 CrPC – for quashing of entire criminal proceedings - FIRs - offences of cheating, intentional insult, and criminal intimidation (in year 2004 case) and causing hurt by poison, gang rape, criminal breach of trust, and unlawful religious conversion (in year 2024) – investigation - arrest – Mistaken Identity – Non-verification of particulars in NBW – Applicant wrongly apprehended – Violation of Article 21 - charge sheet - cognizance order – trial initiated – applicants pleaded mistaken identity, no evidence under Section 161 Cr.P.C., and mechanical cognizance – State admitted factual confusion due to identical names and incomplete particulars in NBW – Court finds that, arrest based on mistaken identity, violating Article 21 – held - arrest must be justified, not routine; deprivation of liberty impermissible without due verification – hence, impugned orders and proceedings quashed – applications allowed with direction to police to take lawful action against erring officers, compliance report to be filed - applicants at liberty to seek compensation under Article 226. (Para – 13, 14, 17, 19, 21, 22, 23)

Application Allowed. (E-11)

CASE LAW CITED

Joginder Kumar v. State of U.P., (1994) 4 SCC 260
Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273
Satendra Kumar Antil v. CBI, (2022) 10 SCC 51
Rudul Shah v. State of Bihar, (1983) 4 SCC 141

LIST OF ACTS

Code of Criminal Procedure, 1973 – Indian Penal Code, 1860 – Prohibition of Unlawful Religious Conversion Act, 2021 – Constitution of India – Bharatiya Nagarik Suraksha Sanhita (BNSS).

LIST OF KEYWORDS

Criminal Case – FIR – Quashing of proceedings - Mistaken identity - non-bailable warrant (NBW) - Personal liberty – Article 21 - Wrongful arrest - Compensation for unlawful detention - Police accountability.

CASE ARISING FROM

Criminal Case No. 312/2004 (State of U.P. v. Om Prakash) – arising from FIR No. 114/2004, P.S. Sidhauli, Sitapur - S.T. No. 300/2025 (State of U.P. v. Mohd. Azeem Idrishi) – arising from Case Crime No. 0041/2024, P.S. Gazipur, Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ratnesh Kant Agnihotri, Ranjana Agnihotri.
Counsel for Respondent(s): Shri Sandeep Tewari, GA.

(Delivered by Hon'ble Tej Pratap Tiwari, J.)

1. The present petitions have been filed under section 482 Cr.P.C. to quash the proceedings of S.T. No. 300/2025 arising out of supplementary charge sheet no. 2, dated 02.08.2024 relating to case crime no. 0041/2024 dated 28.01.2024, lodged under section 328, 376 D, 406 IPC and section 5(1) of the prohibition of Unlawful Religious Conversion Act, 2021 P.S. Gazipur, District Lucknow pending in the court of special judge POCSO Act- III, Lucknow titled as (State of U.P. versus Mohd. Azeem Idrishi) and in connected case also to quash the applicant's criminal prosecution in Criminal Case No. 312/2004, bearing FIR No. 114 of 2004 (State of U.P. versus Om Prakash) under Section 420, 504, 506 of Indian Penal Code, 1860 registered with Police Station Sidhauli, District Sitapur along with the Cognizance Order dated 17.11.2006 and the Impugned

Order dated 01.07.2025 and all the consequential proceedings as against the applicants connected with S.T. No. 300/2025 arising out of supplementary charge sheet no. 2, dated 02.08.2024 relating to case crime no. 0041/2024 dated 28.01.2024, lodged under section 328, 376 D, 406 IPC and section 5(1) of the prohibition of Unlawful Religious Conversion Act, 2021 P.S. Gazipur, District Lucknow pending in the court of special judge POCSO Act- III, Lucknow titled as (State of U.P. versus Mohd. Azeem Idrishi) and to stay the further proceedings.

Factual Matrix

2. Shorn of the details in Criminal case no. 312/2024, an FIR lodged on 25.09.2004 under section 154 of Cr.P.C. against Om Prakash, as per the version of FIR, the accused has dishonestly by fraudulent means obtained the sale deed dated: 06.02.1984 (Bainama) of the complainant Smt. Suhagwati who is an illiterate woman. Om Prakash used the sale deed as security/guarantee in a loan account amounting to Rs. 1,00,000/- (One Lakh Only) from Bhagirath Gramin Bank, Branch Sidhauli, District Sitapur.

3. As per the version of the F.I.R. in Case Crime No. 0041 of 2024, the informant alleged that she was raped by one Nihal, who also recorded a video of the incident. On the basis of the said video, he threatened and extorted a sum of ₹3,00,000/- and on one occasion he came along with one Azeem, whom the informant claims to have recognised by face, and that the said Azeem also committed rape upon her by blackmailing her.

Issue

4. Both the cases are dealt with the same issue that the police officer without ascertaining the true identity and verifying the identity of the real accused, arrested the innocent person due to factual mistake.

5. Whether the arrest in both the cases suffers from non-verification of the true identity of the accused, leading to the apprehension of an innocent person due to a factual error on the part of the police.

Submission on behalf of applicants

6. Learned Counsel for the applicants submits that the applicants doesn't know the complainant by any means. There was no interaction or contact between them. The bank at the request of the guarantor has granted or agreed to grant to the Om Beej Bhandar, Sidhauli District Sitapur (Borrower) banking facilities by way of overdraft and/or promote or loan account upto the aggregate limit of Rs. 1,00,000/-. Om Prakash was the real accused whereas the applicants is Om Prakash Vishwakarma, he is innocent and facing the malicious prosecution. Learned Counsel submits that the applicants is not the proprietor of the company nor has any bank account in his name, he is a clerk and falls under the category of indigent person(s).

7. Learned Counsel for the applicants submits that the investigating officer has failed to point out any specific act of commission or omission on the part of the applicants. During investigation,

there is no evidence and material in the shape of statement under Section 161 Cr.P.C. against applicants. The allegations are untrue, misconceived and concocted as against the applicants.

8. Learned Counsel for the applicants submits that the Learned Magistrate has passed order dated 17.11.2006 and taken the cognizance in the most mechanical manner, without any application of mind and in utter disregard to the settled principles of law. He further submits that the innocent applicants places his reliance on the statements of P.W.-1 (Suhagwati, complainant) recorded on 09.01.2006, the complainant states "My Bainama got exchanged with Bhagauti Devi who was my neighbour and Bhagauti Devi further gave my Bainama to his son namely Om Prakash who further took loan on the basis of my Bainama". This statement clearly indicates that the real-accused namely Om Prakash is the son of Sohan Lal & Bhagauti Devi, whereas the mother's name of the innocent applicants is Ramrati, which shows that the applicants is wrongly identified as the real accused.

Submission on Behalf of Opposite Party

9. Learned A.G.A. for the state submits that the investigating officer conducted a detailed inquiry regarding the named accused Om Prakash son of Sohanlal resident of Moh. Prem Nagar, police station Sidhauli, District Sitapur upon which it transpired that Om Prakash son of Sohanlal's mother's name is Bhagwati Devi, who is permanent resident of Moh. Prem Nagar, police station Sidhaulli, District Sitapur, who had died about 01 year and 06 months ago and at present his family is residing in Lucknow and due to this reason the investigating officer could not get the correct information regarding the actual accused Om Prakash.

10. Learned A.G.A. further submits that the factual mistake was caused, as the father's name of the named accused/deceased Om Prakash and Om Prakash produced before the learned court below was same and on the basis of the information given by the residents of the address mentioned on the N.B.W, Om Prakash son of Sohanlal resident of Shambhunath Colony, Police station Sairpur, District Lucknow, permanent resident of Village Kashipur, police station Sidhauli, District Sitapur was arrested on 01.07.2025 and was produced before the learned court below.

Observation

11. Heard learned counsel for the applicants, learned counsel for opposite party no. 2, learned A.G.A for the State and perused the record.

12. At the first instance, it would be appropriate to reproduce the relevant provisions of law under which the present criminal misc. application has been preferred and the law relating to arrest (Section 482 Cr.P.C.- Saving of inherent powers of High Court, Article 21 of the Constitution of India and Section 35 of BNSS.)

Section 528 BNS/482 Cr.P.C:-

"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."

Article 21. Protection of life and personal liberty.- 'No person shall be deprived of his life or personal liberty ***except according to procedure established by law****'.*

"Section 35. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(ba) ***against whom credible information has been received*** *that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence* ***and the police officer has reason to believe on the basis of that information that such person has committed the said offence"***

13. The submissions advanced by the learned counsel for the parties emphasises though the name of the applicants are identical to that of the accused person, the applicants are not the real accused in the present case. The non-bailable warrant in question does not contain complete identifying particulars, such as the name of the mother. Owing to such deficiency in the warrant and lack of due verification, the police officials committed a factual mistake and apprehended the applicants, who are an innocent persons.

14. The record does not disclose any material establishing the identity of the applicants as the persons against whom the criminal proceedings were initiated. The deprivation of liberty of a person on account of mistaken identity is impermissible in law and strikes at the very root of the guarantee of personal liberty under Article 21 of the Constitution of India.

"*45 In* ***Rabindra Nath Ghosal vs. University of Calcutta reported in (2002) 7 SCC 478*** *the Supreme Court held:*

The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under

Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

15. The Supreme Court in **Joginder Kumar vs. State of U.P. reported in (1994) 4 SCC 260, (paragraph 20)**. Extracted and reproduced below are the suggestions appearing in the paragraph.

"20. In India, Third Report of the National Police Commission at p. 32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terrorstricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines..."

16. In the case of ***Satendra Kumar Antil vs. Central Bureau of Investigation reported in (2022) 10 SCC 51***, the Supreme Court also declared on section 41 by paragraph 23 therein, reproduced below:-

"23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured."

On this aspect, the judgment in **Arnesh Kumar vs. State of Bihar reported in (2014) 8 SCC 273** was relied upon.

17. With reference to the suggestions in Third Report of the National Police Commission the Supreme Court in **Joginder Kumar vs. State of U.P. (supra)** said, the guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. An existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer, in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief, both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified.

18. Looking to the cases cited above, and taking reference of related legal provision as well facts and circumstances of the case, it is seen, that the Supreme Court has said that the constitutional Courts can grant compensation. Reliance to be placed on the judgment of the case **Rudul Shah vs. State of Bihar reported in (1983) 4 SCC 141,** paragraphs 1 and 11, reproduced below.

" CHANDRACHUD, C.J.- This Writ Petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Session, Muzaffarpur, Bihar, on June 3. 1968 he was released from the jail on October 16. 1982, that is to say, more than 14 years after he was acquitted. By this habeas corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He has also asked for certain ancillary reliefs like rehabilitation, reimbursement of expenses which he may incur for medical treatment and compensation for the illegal incarceration.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty- thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent."

19. In view of the discussion made hereinabove and having taken the references of the case laws and the legal provisions aforementioned, this court is of the considered view, that the impugned Order dated 01.07.2025, Cognizance Order dated 17.11.2006, and all the consequential

proceedings as against the applicant in Criminal Case No. 312/2004 (State of U.P. versus Om Prakash) and the proceedings against the applicant in S.T No. 300 of 2025, relating to case crime no. 0041/2024 (State of U.P. versus Mohd. Azeem Idrishi) is liable to be set aside and the instant applications deserves to be allowed.

20. Accordingly, the impugned orders mentioned above are set aside and the applications stand allowed.

21. So far as the unlawful arrest of the applicants by the police is concerned, Police Commissioner, Lucknow and Superintendent of Police, Sitapur are directed to take appropriate and lawful action for such negligent act of the erring Police Officer/Officials and submit a compliance report before this Court within two months from today.

22. As regards the nature of harm suffered by the applicants, the applicants are at liberty to seek appropriate relief by way of invoking the writ jurisdiction under Article 226 of the Constitution of India, in the light of the legal aspects discussed above.

23. Let a copy of this order be send to the Police Commissioner, Lucknow and Superintendent of Police, Sitapur through Registrar (Compliance) of this Court.

(2026) 2 ILRA 820
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 05.02.2026

BEFORE

THE HON'BLE TEJ PRATAP TIWARI, J.

Application U/S 482. No. 9472 of 2025

Nitesh Rastogi **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the Chief Judicial Magistrate (CJM), has jurisdiction to transfer a criminal case from one Magistrate to another under the BNSS/CrPC.
Whether the impugned transfer order dated 10.10.2025 is sustainable in law.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 15, 192, 194, 407, 408, 409, 410, 482 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 13, 13(2), 212, 447, 448, 450, 528 - Indian Penal Code - Sections 170, 406, 411, 419, 420, 467, 468, 471, 506 : - Application u/s 482 CrPC - against the impugned transfer order, passed by the Chief Judicial Magistrate, whereby trial of Criminal Case arising from FIR for offences under Sections 406, 419, 420, 506, 170, 467, 468, 471, 411 IPC, involving recovery of 5.743 kg gold jewellery and forged IPS ID card, was transferred from Judicial Magistrate to Additional Chief Judicial Magistrate – FIR – Recovery - Charge sheet - cognizance taken - trial initiated - Applicant pleaded that CJM has no jurisdiction to transfer cases, power lies only with Sessions Judge, and

transfer application was defective being unsupported by affidavit – opponent argued that CJM has supervisory powers and affidavit defect is curable - Court finds that statutory scheme confers transfer powers only on Supreme Court, High Court, and Sessions Judge, not CJM - administrative redistribution requires District Judge's approval - judicial transfer by CJM is without jurisdiction – held - impugned order contrary to law and circulars, ignoring Sessions Judge's prior rejection - transfer order is set aside – hence, petition is allowed - impugned order quashed – direction issued to Registrar General to issue circular clarifying CJM's lack of transfer powers. (Para – 12, 14, 19, 20, 21, 23)

Application Allowed. (E-11)

CASE LAW CITED

Radhey Shyam v. State of U.P., 1984 SCC OnLine All 365
Sudesh Chhikara v. State (NCT of Delhi), 2025 SCC OnLine Del 1641
Chhandrkantbhai Sharma v. State of Gujarat, 2015 SCC OnLine Guj 2891
A.K. Singh v. Virendra Kumar Jain, 1999 SCC OnLine MP 357
M/S Radical Works Pvt. Ltd. v. Sri Padmanabh T.G., CRL.P. No. 1291/2023
Dipak Babaria v. State of Gujarat, (2014) 3 SCC 502
Prem Narayan Singh v. Ramraj Singh, 1990 (27) ACC 430

LIST OF ACTS

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 - Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Criminal Case – FIR – Transfer of cases – jurisdiction - Chief Judicial Magistrate - Sessions Judge - supervisory powers - affidavit requirement - administrative vs judicial order - excess of jurisdiction - inherent powers.

CASE ARISING FROM

Criminal Case No. 6148/2022 (*State vs. Bijendra Pal Singh & Anr.*) - FIR dated 02.09.2021, Case Crime No. 219/2021, offences under Sections 406, 419, 420, 506, 170, 467, 468, 471, 411 IPC - Recovery of 5.743 kg gold jewellery and forged IPS ID card - Charge sheet filed 22.01.2022; cognizance taken 08.02.2022 - Transfer application rejected earlier by Sessions Judge; later entertained by CJM.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amit Jaiswal, Sri Ambrish Singh Yadav.
Counsel for Respondent(s): Shri Pt. S. Chandra, Sri Durgesh Kumar Shukla, Sri Ravi Kant Mishra, AGA.

(Delivered by Hon'ble Tej Pratap Tiwari, J.)

1. The present petition has been filed under section 528 BNSS to quash/set aside impugned Transfer Order dated 10.10.2025 passed by learned court of Chief Judicial Magistrate, Lucknow whereby, trial of the Criminal case no. 6148/2022 "State vs. Bijendra Pal Singh and other" has been transferred from the court of Judicial Magistrate 1st (A.T.S.), Lucknow to the court of Additional Chief Judicial Magistrate 1st, Lucknow.

Factual Matrix

2. Shorn of the details, an FIR lodged against opposite party no.2 Bijendra Pal Singh and opposite party no.3 Rajiv Singh alleging fraudulent misappropriation of gold jewellery worth approximately 3,20,00,000/- on 02.09.2021, registered as Case Crime No. 219 of 2021 under

Sections 406, 419, 420, 506 IPC, with Sections 170, 467, 468, 471 and 411 IPC added during investigation. On 03.09.2021, the police arrested opposite party no.3 Rajiv Singh and recovered 5 kg 743 gm 90 mg of gold jewellery belonging to the informant firm M/s Mohan Shyam Kalyan Das Jewellers (MJK), along with a forged identity card purporting to be that of an IPS officer. The seized jewellery was released in favour of the informant on 05.10.2021. Subsequent applications moved by opposite party no.3 for recall of the release order were rejected on 29.01.2022, against which he filed Application U/s 482 Cr.P.C. No. 1667 of 2022 before this Court challenging the orders dated 05.10.2021 and 29.01.2022. Meanwhile, the police filed charge sheet on 22.01.2022 and cognizance was taken by the trial court on 08.02.2022.

3. During the pendency of the aforesaid proceedings, opposite party no.2 and 3 moved an application for transfer of the case from the court of Judicial Magistrate First class (ATS) Lucknow to any other court before the Chief Judicial Magistrate Lucknow, which was rejected by the learned court of Session Judge Lucknow. The opposite party no. 3 preferred an application thereupon the learned trial court which was partially allowed in favour of the accused person and directed to take back the jewellery from the applicant and deposit the same in Malkhana Police Station. Another transfer application was submitted by opposite party no. 2 and 3 before CJM. The learned CJM Lucknow sought a report from the learned Judicial Magistrate First Class (ATS) Lucknow where, the trial of the criminal case no. 6148/2022 was pending. On 09.10.2025, learned Judicial Magistrate First Class (ATS) Lucknow had submitted the report. After considering the report, the learned CJM Lucknow passed the order dated 10.10.2025 by which the trial of the criminal case was transferred.

Submission on Behalf of the Applicant

4. At the very outset, Learned Counsel for the applicant submitted that the power of transfer of cases from one Judicial Magistrate to another Judicial Magistrate vest with Sessions Judge only. Section 408 of the Code of Criminal Procedure, 1973 (corresponding Section 448 of the Bharatiya Nagarik Suraksha Sanhita, 2023) exclusively deals with the transfer of criminal cases on the request of an interested party. The said provision confers such power only upon the Sessions Judge, and no equivalent power of transfer is vested in the Chief Judicial Magistrate under the law.

5. Learned Counsel for the applicant submitted that the learned Chief Judicial Magistrate, Lucknow, acted beyond the scope of jurisdiction in entertaining and allowing the transfer application, rendering the impugned order wholly illegal and unsustainable. The applicant relied upon the judgement of case **Radhey Shyam and Another versus State of U.P. 1984 SCC OnLine All 365, Sudesh Chhikara versus State (Govt. Of NCT of Delhi) and Another**, 2025 SCC OnLine Del 1641, **Chhandrkantbhai Bhaichandhari Sharma versus State of Gujarat** 2015 SCC OnLine Guj 2891, **A. K. Singh, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, Advocate,** 1999 SCC OnLine MP 357, **M/S Radical Works Pvt. Ltd. Versus Sri Padmanabh T.G. CRL.P. No. 1291/2023.**

6. Learned Counsel for the applicant further submitted that the application preferred by opposite party nos. 2 and 3 was not supported by any affidavit. It is a statutory mandate that every application seeking transfer of a case from one court to another must be supported by a duly sworn

affidavit. On this ground alone, the said application was liable to be dismissed at the very inception. However, the learned Chief Judicial Magistrate, Lucknow, failed to appreciate this mandatory requirement and proceeded to pass the impugned transfer order dated 10.10.2025, despite the application being unsupported by an affidavit. The impugned order is, therefore, without jurisdiction, bad in law, and has no legs to stand in the eyes of law. The applicant relied upon the judgment of case **Dipak Babaria and Another versus State of Gujarat and Others** (2014) 3 SCC 502.

Submission on Behalf of the Opposite party.

7. Learned A.G.A. and learned counsel for opposite party nos. 2 & 3 submitted that a plain and harmonious reading of the relevant provisions of the Code clearly shows that the Chief Judicial Magistrate is empowered to withdraw any case from any Magistrate subordinate to him, and such power cannot be narrowly construed as being limited only to cases earlier made over by him. The scheme of the Code, particularly Section 15 Cr.P.C., makes it evident that all Judicial Magistrates are subordinate to the Chief Judicial Magistrate, subject to the general control of the Sessions Judge, and the Chief Judicial Magistrate is vested with administrative and supervisory authority to regulate and distribute judicial business among subordinate Magistrates. Therefore, the power to withdraw and reassign cases flows from such statutory control and supervision, and the exercise of such power cannot be termed without jurisdiction or illegal. Learned A.G.A. relied upon the judgment of the case Prem **Narayan Singh versus Ramraj Singh and Others, 1990 (27) ACC 430,** Para 6 and 13.

8. Learned A.G.A. and learned counsel for opposite party no. 2 & 3 also submitted that the impugned order dated 10.10.2025 has been passed in the interest of justice to ensure fair and proper adjudication of the proceedings. It is contended that non-filing of an affidavit along with the transfer application is a curable irregularity and does not vitiate the proceedings, particularly when no prejudice has been caused to the applicant. It is further submitted that the learned Chief Judicial Magistrate, Lucknow, exercised supervisory and administrative control to facilitate proper conduct of the case and the impugned order cannot be termed as without jurisdiction merely on technical grounds.

9. Learned A.G.A. and learned counsel for opposite party further argued that the power exercised by the learned Chief Judicial Magistrate was incidental and ancillary in nature and was invoked to prevent abuse of process of court. Therefore, the impugned transfer order does not suffer from any illegality or perversity and does not call for interference by this Hon'ble Court.

Observation

10. Heard Sri Amit Jaiswal along with Sri Ambrish Singh Yadav, learned counsel for the appellant, Pt. S. Chandra, Sri Durgesh Kumar Shukla as well as Sri Ravi Kant Mishra, learned counsel for the opposite party nos. 2 and 3, learned AGA for the State of U.P. and perused the record.

11. At the first instance, it would be appropriate to reproduce the provisions of law under which the present criminal misc. application has been preferred i.e Section 528 B.N.S.S.- 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."

12. In the light of legal provision mentioned above, upon careful consideration of the submissions advanced by learned counsel for the parties and perusal of the record, this Court finds that the question involved in present petition is relating to the power of Chief Judicial Magistrate to transfer the case by passing an order from one court to another.

13. Before proceeding further it is necessary to examine the relevant provision of Bharatiya Nagarik Suraksha Sanhita, 2023 (herein after referred as BNSS, 2023) or Criminal Procedure Code, 1973 (herein after referred as CrPC, 1973), which relates to the issue in contention.

Relevant provisions of CrPC, 1973 read as under:-

"Section 15. Subordination of Judicial Magistrates."*(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.*

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him."

Section 410. Withdrawal of cases by Judicial Magistrate."(*1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.*

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may inquire into or try such cases himself.

192. Making over of cases to Magistrates*."(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.*

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

407. Power of High Court to transfer cases and appeals*."(1) Whenever it is made to appear to the High Court" (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or (b) that some question of law of unusual difficulty is likely to arise, or (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order"*

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the applications unless at least twenty- our hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of Justice, order that, pending the disposal of the application the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the Subordinate Court"s power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred. (9) Nothing in this section shall be deemed to affect any order of Government under section 197.

408. Power of Sessions Judge to transfer cases and appeals." *1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division*

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted."

It is relevant to note that Section 15, 192, 410 of the Code of Criminal Procedure, 1973 corresponds to Section 13, 212, 450 of the Bharatiya Nagarik Suraksha Sanhita, 2023, respectively. Further, Sections 407 and 408 of the CrPC correspond respectively to Sections 447 and 448 of the BNSS, 2023 with some changes, there is no mean to quote the same provisions twice".

14. The scheme of powers relating to transfer of criminal cases demonstrates the legislative intent with sufficient clarity. Under these provisions, the authority to transfer criminal cases has been expressly conferred upon the Supreme Court, the High Court, and the Court of Session. A careful reading of the statutory framework makes it evident that the Chief Judicial Magistrate (CJM) has not been vested with any power to transfer criminal cases. The hierarchy and subordination prescribed under the Code clearly establish that the CJM is subordinate to the Sessions Judge. Had the Legislature intended to empower the CJM with the authority to transfer cases, such power would have been explicitly provided for in the statute.

15. This court choose to rely on the judgment of S**udesh Chhikara v. State (NCT of Delhi), 2025 SCC OnLine Del 1641**

"The Court referred to Radical Works (P) Ltd. v. Padmanabh T.G., in Crl.P. No. 1291 of 2023, decided on 18-04-2023, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, 1999 SCC OnLine MP 357 and Chandrkantbhai Bhaichandbhai Sharma v. State of Gujarat, 2015 SCC

OnLine Guj 2891 and stated that the Court was of firm view that since the legislature in its own wisdom had conferred the power of the transfer only to Supreme Court, High Courts and the Sessions Court, it could not be given by way of inference to the Court of Chief Judicial Magistrate. The law of interpretation did not provide interpretation of any provision which in any manner contravened the intention of the legislature. The legislature could have specifically given the power of transfer to the Chief Judicial Magistrate if it would have considered it proper to do so."

16. Likewise, in the case of **A. K. Singh, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, Advocate, 1999 SCC OnLine MP 357,** it has been held :-

10. "..The Chief Judicial Magistrate appears to have committed severe illegalities; firstly, the transfer petition moved before him was under section 410, Criminal Procedure Code, Under that provision the jurisdiction of the Chief Judicial Magistrate is administrative in nature. It is to keep equilibrium of cases amongst the various Magistrates working under him in the district. He can withdraw cases from one Magistrate and send them to another. This provision does not empower a Chief Judicial Magistrate to exercise power of transfer on complaint by one of the parties. For that, the remedy to the aggrieved party is under section 408, Criminal Procedure Code. That power is exercised by the Sessions Judge. He can transfer cases from one criminal Court to another in his Session Division "when he considers it expedient to do so for the ends of Justice". He can transfer a particular case from one court to another. He may act either on the report of the lower court or on the application of the party interested or on his own initiative. So, this is the provision which provides remedy to an aggrieved person, who feels to have lost faith in a particular criminal court for one or other reason. His remedy is not under section 410, Criminal Procedure Code.

1*1. In view of this scope of provisions of sections 408 and 410, Criminal Procedure Code the Chief Judicial Magistrate should not have acted on a transfer petition based on grievances against the trying Magistrate. The best course was to leave the complainant to move the Sessions Court under section 408, Criminal Procedure Code.*

17. In **Chandrkantbhai Bhaichandbhai Sharma v. State of Gujarat in Special Criminal Application (Quashing) No. 4884/2015**, it has been held :-

"16. ".The clear contrast in the language employed by the Legislature in the two sets of section is indicative of the difference in the nature of the power conferred thereunder. I note below the differences:

(i) Sections 406, 407 and 408 use the words "whenever it is made to appear" while referring to the power of the Supreme Court, High Court or the Sessions Judge to transfer cases. Sections 409, 410 and 411 significantly do not use these words.

(ii)The captions of Sections 406, 407 and 408 speak of exercise of "power" to transfer, Sections 409, 410 and 411 do not speak of "power" but merely refer to "withdrawal" or "recalling".

(iii) Sections 406, 407 and 408 contemplate the "power to transfer" being exercised on an application by a "party interested" (Sections 407 and 408 also contemplate the "power to transfer" being used on a report of the Lower Court or suo motu; and Section 406 contemplate the power of transfer being used on an application by the Attorney General). These Sections clearly imply a need for hearing before transfer. On the other hand, Sections 409, 410 and 411 contemplate exercise of the power of withdrawal/recalling cases in a routine manner in the day to day administration. They do not contemplate any hearing to the parties interested.

26. It is clear from the above that the power to be exercised under Sections 406, 407 and 408 is a judicial power to be invoked and exercised in the manner stated therein. On the other hand, the power of withdrawing or recalling of cases under Sections 409, 410 and 411 is an administrative power, complementary to the administrative power of making over cases vested in the Chief Judicial Magistrate/Magistrate and the Sessions Judge under Sections 192 and 194 of the Code."

18. In this context the Circular Orders of the High court of judicature at Allahabad Volume-II (Covering Circular Letters Issued Up to 31.03.2011) may also be looked upon :-

"DISTRIBUTION OF WORK BY C.J.Ms.

(i) Amongst Judicial Magistrates

C.L. No. 3/Admn.(B) dated 18th March, 1971

Under section 190 Criminal Procedure Code distribution of work among the Judicial Magistrates should be done by the Chief Judicial Magistrate who may, in his turn, consult the Sessions Judge in this behalf.

C.L. No. 124/Admn. (B) dated 30th September, 1975

The Chief Judicial Magistrates are required to act under the general supervision of the District and Sessions Judges even for the purposes of sub-section (2) of section 15 of Criminal Procedure Code.

C.L. No. 73/Admn. (A) dated 19th May, 1976

The Chief Judicial Magistrates should take necessary steps for transferring cases under special and local Acts to the Executive Magistrates, if not already done.

C.L. No. 4/Admn. (A) dated 21" January, 1987

The District Judges are requested to issue suitable directions to the Chief Judicial Magistrates with regard to distribution of work under local and special Acts amongst Executive Magistrates conferred with powers of Special Judicial Magistrates Ist Class, by the Court.

(ii) Distribution between C.J.M. and A.C.J.M.

C.L. No. 198/Admn. (A) dated 10th December, 1976

The Chief Judicial Magistrates will as far as possible, assign half the officers to be inspected by him and the rest by the Additional Chief Judicial Magistrates. The inspection notes of the District Judges/Chief Judicial Magistrates/Additional Chief Judicial Magistrates will be sent to the successor inspecting officer. Henceforth all the District Judges will also inspect the criminal work of the Judicial Magistrates and Munsif-Magistrates in addition to civil work.

Jail inspections will be made by the Additional Chief Judicial Magistrates only.

Correspondence work, compliance of High Court orders etc. and collection of statements will remain with the Chief Judicial Magistrates.

Any distribution of work among the Judicial Magistrates and the Additional Chief Judicial Magistrates or any change made therein by the Chief Judicial Magistrates will have the prior approval of the District Judge."

19. Although Section 13(2) of the BNSS authorises the CJM to make rules or give special orders, such powers must be exercised strictly in conformity with the Sanhita. These administrative powers cannot override or supplement the explicit statutory framework governing transfer of cases. Any attempt by the CJM to order a transfer, in the absence of statutory authorization, would amount to an excess of jurisdiction.

20. In the instant case, the legality of the impugned order dated 10.10.2025 needs to be tested in the light of the legal provisions and circulars discussed above. If the said order is taken to be an administrative in nature, as it distributes the work among the Judicial Magistrate and Additional Chief Judicial Magistrate then learned C.J.M., Lucknow should have taken prior approval of the District Judge as it is mentioned in the Circular No. 198/Admn. (A) dated 10th December, 1976 of the High Court of Judicature at Allahabad (mentioned above) but as per the instructions sought from the learned C.J.M. Lucknow, it is clear that neither prior approval has been taken nor information was given to the learned Session Judge. On the other hand, if the impugned order is said to be passed on judicial side (as said by learned C.J.M. in his report dated 14.11.2025), on the transfer application in Criminal Case No. 6148/2022, then this would be clearly in the absence of statutory authorization and thus, would amount to be passed without having jurisdiction, which does not stands. It is further pertinent to take note that prior to the passing of the impugned order, the transfer application had earlier been filed, considered and rejected by the learned Session Judge, ignoring which the impugned order has been passed.

21. In view of the discussions made herein above and the references of the case laws as well as the statutory provisions / circulars referred above, this Court is of the considered view, that the impugned Transfer Order dated 10.10.2025 passed by the learned Chief Judicial Magistrate Lucknow under Section 406, 419, 420, 506, 467, 468, 471, 411, 170 IPC, is not in conformity with

law, therefore, the said impugned Transfer Order is liable to be set aside and the instant petition deserves to be allowed.

22. Accordingly, the impugned order dated 10.10.2025 is hereby set aside and the instant petition is **allowed**.

23. Delving into the importance of the issue raised in the instant matter and taking note of the grave fact that such practice is being followed by most of the District Courts across the State of Uttar Pradesh, the learned Registrar General of this Court is directed to issue an appropriate circular in this regard.

(2026) 2 ILRA 830
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE SUBHASH CHANDRA SHARMA, J.

Application U/S 482. No. 10810 of 2018

Devinder Mohan Singh & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Matter pertains to whether, in the facts and circumstances of the case, the continuation of criminal proceedings against the applicants being relatives of husband on the basis of general and omnibus allegations of dowry demand and harassment, in absence of specific, cogent, and prima facie material, amounts to an abuse of process of law warranting exercise of inherent jurisdiction u/s 482 Cr.P.C. for quashing of proceedings, including the charge-sheet and cognizance order.

Headnotes

Indian Penal Code, 1860 - ss. 498A, 323, 504, 506, 306, 511, 108 - D.P Act, 1961 - s. 3/4 - Code of Criminal Procedure, 1973 - s. 173(8) - Quashing of criminal proceedings - The instant application u/s 482 Cr.P.C. has been instituted by the applicants, who are the parents-in-law of victim, seeking quashing of entire criminal proceedings arising out of Case Crime No. 344 of 2014, registered u/ss. 498A, 323, 504, 506, 306, 511, 108 I.P.C. and s. 3/4 of Dowry Prohibition Act - The First Information Report was lodged by father of victim alleging dowry demand and harassment by husband and his family members, including the present applicants, both in Varanasi and during their stay in Australia - Upon initial investigation, no prima facie material was found against the applicants and they were exonerated; however, pursuant to oral directions of superior police authorities, further investigation was conducted and a supplementary charge-sheet filed implicating them - It has further been brought on record that matrimonial discord existed between the husband and wife, culminating in dissolution of marriage by a decree of divorce granted by a competent court in Australia - The allegations against the applicants are general and omnibus in nature, without attribution of any specific overt act.

Held: Taking in view the allegations as made in the first information report, the statement of informant and other witnesses as recorded by the previous investigating officer and non establishment of prima facie case against them, Mazeed statements of witnesses by the subsequent investigating officer, it appears that there are general and omnibus allegations against all the members of the family of the husband, those are vague and frivolous leading to a situation where it is hard to specify the role of each accused in furtherance of the offence - Where there is absence of clear allegation against the relatives of the husband, it simply amounts to an abuse of process of law - **Thus, application allowed, entire criminal proceedings quashed.** [Paras 14, 16] (E-13)

Case Law Cited

Preeti Gupta and Anr. v. State of Jharkhand and Anr; **(2010) 7 SCC 667;** *Geeta Mehrotra & Anr. v. State of UP & Anr.* **(2012) 10 SCC 741;** *Kahkashan Kausar @ Sonam & others v. State of Bihar and other* **2022 LiveLaw (SC) 141 - referred to**

List of Acts

Indian Penal Code, 1860; D.P Act, 1961; Code of Criminal Procedure, 1973

List of Keywords

s. 482 Cr.P.C.; Quashing of criminal proceedings; Charge-sheet; Cognizance order; Summoning order; First Information Report; Indian Penal Code; D.P. Act; Applicants (parents-in-law); Matrimonial dispute; Dowry demand; Harassment; General and omnibus allegations; Absence of specific allegations; Lack of prima facie case; Initial investigation; Further investigation u/s 173(8) Cr.P.C.; Supplementary charge-sheet; Exoneration; Oral instructions of Superintendent of Police; Statements of witnesses; Mazeed statements; Lack of cogent evidence; Divorce decree by foreign court (Australia); Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application U/s No. - 10810 of 2018

From the Judgment and Order dated 02.01.2018 passed by the Chief Judicial Magistrate, Varanasi in Case Crime No. 344 of 2014.

Appearances for Parties

Adv. for the Applicant:
Mukhtar Alam
Advs. for the Opposite Party:
Ashish Kumar Gupta, G.A., Rupak Chaubey

(Delivered by Hon'ble Subhash Chandra Sharma, J.)

1. List revised.

2. Heard Sri Mukhtar Alam, Senior Advocate assisted by Sri Yawar Mukhtar, learned counsel for the applicants.

previous date, none was present on behalf of the opposite party no.2. Several time, the opposite party no.2 was granted time to file counter affidavit, if any, but no counter affidavit

4 Present application under Section 482 Cr. P.C. has been filed by the applicants with the prayer to quash the entire proceeding of criminal case No. 7243 of 2015 (State Versus Indrajeet

Singh and others), under Section 498A, 323, 504, 506, 306, 511, 108 I.P.C. and Section 3/4 D.P. Act, Police Station Sigra, District Varanasi arising out of Case Crime No. 344 of 2014, pending in the Court of Chief Judicial Magistrate, Varanasi, Charge sheet No. 513 of 2017 dated 20.11.2027 as well as order of cognizance dated 02.01.2018 passed by the Chief Judicial Magistrate, Varanasi

5. Facts in brief are that first information report under Sections 498A, 323, 504, 506, 306, 511, 108 I.P.C. and Section 3/4 D.P. Act, was lodged by the informant against the applicants at the police station Sigra, District Varanasi as Case Crime No. 344 of 2014 on 23.08.2014 at about 7.10 A.M. with the allegation that the applicants and the husband of daughter of the informant, namely, Aman Jot Singh Vasoor and other family members subjected her to harassment in relation to demand of dowry. The applicants also subjected her to harassment and when the victim was in Australia with her husband, the applicants were also living there in Australia. After investigation, no any material was found against the applicants to establish prima facie case, as a result, the first investigating officer closed the investigation, but on the oral instructions given by the Superintendent of Police, Varanasi, investigation was handed over to some other investigating officer, who filed the charge sheet against the present applicants also and on the basis of which cognizance was taken by the learned trial court on 20.06.2015 and summoning order was passed by the learned court.

6. It is submitted that applicants are Saas and Sasur of the victim who were named in the first information report by the father of the victim with false allegation of demand of dowry and harassment at Varanasi and in Australia, though there was no any such incident committed by the applicants with the daughter of the informant. The daughter-in-law was living in Australia with her husband. There was matrimonial dispute between both of them that was the reason, a divorce petition was filed in Civil Court at Australia in which decree of divorce was also granted by the family Court vide order dated 27.11.2015 and relation between the husband and wife (victim) came to an end. No any injury was caused to the victim by these applicants. There are general allegations of demand of dowry and harassment with her regarding which there is no any material to support. The first investigating officer did also not find any reliable material against the applicants to establish the commission of the offence as stated in the first information report, but as per oral direction given by the Superintendent of Police, Varanasi, investigation was handed over to some other investigating officer and charge sheet was filed. He also submitted that Hon'ble Apex Court has held in the cases of **Geeta Mehrotra and Kahkashan Kausar @ Sonam** and others that where there are general allegations made against the relatives and there is no any other cogent evidence regarding demand of dowry and harassment, it will become misuse of the process of law and such practice be checked to prevent the abuse of the process of law, therefore request to quash the entire proceedings of the case against the applicants.

7. It is also submitted by the learned counsel for the applicants that in the present case, the applicants are father-in-law and mother-in-law of the daughter of the informant. In the first information report, the allegation regarding demand of dowry and harassment of daughter of informant was made against seven persons including the present applicants. Other accused persons, namely Aman Jeet Singh (husband), Gurmeet (Jeth), Sumit Saluja (Jethani), Indrajeet Man (Mama) and Romi Sahani (Mami). The charge sheet against other co-accused persons was filed separately by the investigating officer S.I. Abhai Raj Mishra and implication of the present applicants was

found to be false. This fact gets mention in the charge sheet No. 51-A/17 dated 07.05.2017. Consequently at the instance of oral instructions given by the Senior Superintendent Police, Varanasi investigation was taken over by other S.I. ,namely, Gopal Ji Gupta on 01.06.2017 as mentioned by him in SCD No. 28. He after completing the investigation, filed the charge sheet against the present applicants also after writing Mazeed statements of same witnesses, which shows that when the statement of the informant and other witnesses were recorded by the previous investigating officer S. I. Ahhay Raj Mishra, no prima facie case was found to be made out against the present applicants, as a result, their implication being false, they were exonerated and charge sheet was filed on 07.05.2017 against other accused persons.

8. Learned A.G.A opposed the prayer as aforesaid but could not dispute the fact regrading general allegation of demand of dowry and harassment to the victim by the applicants and decree as passed by the Civil Court, Australia as aforesaid and the law as laid down by the Hon'ble Apex Court in the aforesaid cases.

9. It is to note that once final report is filed by the investigating officer after investigation being completed, further investigation can be done by the police under Section 173(8) Cr. P.C. and supplementary police report may be filed if the investigation officer gets sufficient material in this regard.

10. In the present case the subsequent investigating officer acted upon oral direction given by the Superintendent of Police, Varanasi and thereafter, he recorded Mazeed statements of witnesses whose statements were already recorded by 1st I.O. and then supplementary charge sheet was filed. The contents of the first information report did not disclose any specific allegation against the present applicants regarding harassment of the victim and in relation to the demand of dowry, but there are general allegations against all the members of the family including Jeth, Jethani Mama and Mami, who may have no any interest in the demand. The decree of divorce between the husband and wife as granted by the Civil Court, Australia by order dated 27.11.2015 also shows that there was matrimonial dispute between the husband and wife that was the reason they moved divorce petition in Australia, as a result, marriage was dissolved and now they are living separately.

11. In the case of ***Preeti Gupta and Anr. Versus State of Jharkhand and Anr; (2010) 7 SCC 667,*** it was observed:-

"32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern".

12. In the case of ***Geeta Mehrotra & Anr. Vs. State of UP & Anr.(2012) 10 SCC 741,*** it was observed:-

"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693

wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside.

Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, 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 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 reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the 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." The view taken by the judges in this matter was that the courts would not encourage such disputes."

13. Likewise Apex Court has made similar observations in ***Kahkashan Kausar @ Sonam & others Versus State of Bihar and other 2022 LiveLaw (SC) 141.***

14.Taking in view the allegations as made in the first information report, the statement of the informant and other witnesses as recorded by the previous investigating officer and non establishment of the prima facie case against them, Mazeed statements of the witnesses by the subsequent investigating officer, it appears that there are general and omnibus allegations against all the members of the family of the husband, those are vague and frivolous leading to a situation where it is hard to specify the role of each accused in furtherance of the offence. Where there is absence of clear allegation against the relatives of the husband, it simply amounts to an abuse of process of law.

15. In view of law as laid down by Apex Court in the aforesaid cases, if the allegation made against them are general and omnibus, they do not warrant prosecution and therefore, it would be unjust, if the applicants are forced to go through the process of the learned trial court, since the criminal trial leading to an eventual acquittal also inflict severe scar upon the accused and such an exercise must therefore, be discouraged.

16. Accordingly, the present criminal misc. application under Section 482 Cr. P.C. is ***allowed*** and entire proceeding against the applicants in criminal case No. 7243 of 2015 (State Versus Indrajeet Singh and others), under Section 498A, 323, 504, 506, 306, 511, 108 I.P.C. and Section 3/4 D.P. Act, Police Station Sigra, District Varanasi arising out of Case Crime No. 344 of 2014, pending in the Court of Chief Judicial Magistrate, Varanasi, Charge sheet No. 513 of 2017 dated 20.11.2027 as well as order of cognizance dated 02.01.2018 passed by the Chief Judicial Magistrate, Varanasi are ***quashed.***

(2026) 2 ILRA 835
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.02.2026

BEFORE

THE HON'BLE RAJIV LOCHAN SHUKLA, J.

Application U/S 528 BNSS. No. 18266 of 2025

Pradeep Kumar ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the Chief Judicial Magistrate rightly treated the application moved under Section 175(3) BNSS as a complaint instead of directing police investigation?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 175(3), 175(4), 210, 528, 529, - Code of Criminal Procedure, 1973 - Sections 154(3), 156(3), 202(1), 173(2), 190 - Indian Evidence Act, 1872 – Section - 27: - **Application under Section 528 BNSS – for quashing the** impugned order – whereby the learned CJM in an arbitrary, manner treated the application moved under section 175(3) BNSS as a complaint, while the matter required police investigation - allegations of grievous assault leading to amputation – applicant pleaded that custodial interrogation, recovery of motorcycle, weapon, and spot inspection required – Magistrate found no such evidence recoverable after lapse of time and held complainant had full knowledge of facts – reliance placed on *Sukhwasi*, *Ram Babu Gupta*, *Lala Ram* – Court finds that, principles governing Section 156(3) Cr.P.C. still apply under Section 175(3) BNSS, though procedure now requires affidavit and inquiry – Magistrate has discretion, not bound to order FIR in every case – held, order treating application as complaint is valid – hence, application is dismissed. (Para – 13, 18, 19, 20)

Application Dismissed. (E-11)

CASE LAW CITED

Sukhwasi v. State of U.P., 2007 (59) ACC 739 / (2007) 6 ALJ 424 (DB).
Ram Babu Gupta v. State of U.P., (2001) ACC 201 (Full Bench).
Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287.
Lala Ram v. State of U.P., 2021 (1) ADJ 145.
Suresh Chand Jain (SC).
Mohan Shukla v. State of U.P. (Allahabad HC).
Ram Sabad v. Sessions Judge, Bahraich (Allahabad HC).
Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1.

LIST OF ACTS

Bhartiya Nagarik Suraksha Sanhita, 2023 - Code of Criminal Procedure, 1973 - Indian Evidence Act, 1872.

LIST OF KEYWORDS

BNSS - Cr.P.C. - Magistrate's discretion – complaint – investigation – affidavit - frivolous applications - police apathy - cognizable offence - judicial review – delay - collection of evidence - physical evidence - recovery of blood-stained soil - legal or factual infirmity - jurisdictional error - perversity in the order.

CASE ARISING FROM

Complaint Case No. 1583 of 2024 (Pradeep Kumar v. Mohit Kumar & others), arising out of proceedings under Section 175(3) BNSS, Police Station Sheoli, District Kanpur Dehat.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ejaz Ahmad Khan, Mohd. Monis.
Counsel for Respondent(s): Shri Shashi Dhar Pandey and A.G.A.

(Delivered by Hon'ble Rajiv Lochan Shukla, J.)

1. Heard Sri Mohd. Monis, Learned counsel for the applicant, Sri Hari Nath Chaubey, Learned counsel for the opposite party Nos.2 & 3, Sri Shashi Dhar Pandey, Learned A.G.A. for the State and perused the material brought on the record.

2. Challenge in this application is to the impugned order dated 18.9.2024 passed by the Learned Chief Judicial Magistrate, Kanpur Dehat in Criminal Complaint Case No. 1583 of 2024 *(Pradeep Kumar Vs. Mohit Kumar and others)* arising out of proceeding under section 175(3) of B.N.S.S. Police Station Sheoli, District Kanpur Dehat.

3. The allegations made in the application under Section 175(3) of the B.N.S.S. are that the opposite parties on 29.7.2024 at about 08:30 P.M. at night, when the injured of the case Sandeep had gone to attend the call of nature, was caught hold by the opposite party Nos.2 & 3 due to previous enmity and then his right leg was tied up with barbed wire and then tied to a motorcycle through which he was dragged for quite a distance. It has further been alleged in the application that the entire leg of the injured Sandeep was amputated after which the accused left Sandeep and run away. The applicant coming to know of the incident is said to have rush to the spot along with other family members and saw that Sandeep was lying bleeding, who was then taken to Police Station Sheoli, District- Kanpur Dehat, where no action was taken, thereafter he was taken to Hallett Hospital then to Rawat Pur Catology Hospital, where the Doctors gave up on the injured, post which he was taken to the S.G.P.G.I. Lucknow, where at the time of moving of the application he was still being treated. The applicant supposedly went to the house of the opposite party Nos.2 & 3 complaining as to why they had cut off the leg of his brother on which the opposite party Nos.2 & 3 allegedly abused him and threatened him that the applicant and his brother would both be killed. The information regarding this incident is said to have been given to the Superintendent of Police, District- Kanpur Dehat through post, however, when no action was taken, the application under Section 175(3) B.N.S.S. was moved.

4. The Learned counsel for the applicant states that his application under Section 175(3) B.N.S.S. has been treated as a complaint and notices have been issued to the opposite party Nos.2 & 3 in accordance with the provisions of Section 223 B.N.S.S. and the date has been fixed for recording of the statement of the applicant under Section 223 B.N.S.S. Learned counsel for the applicant states that the Learned Chief Judicial Magistrate, Kanpur Dehat has, in an arbitrary, manner treated the application as a complaint, while the matter required police investigation as the same would entail a spot inspection, recovery of the weapon of assault, the motorcycle used in the commission of offence and arrest of the accused and recovery of the material above-mentioned on their pointing out. This also requires custodial interrogation. The Learned counsel for the applicant further states that the Learned Chief Judicial Magistrate Kanpur Dehat has wrongly relied upon the

decision of this Court in the case of **Sukhwasi Vs. State of Uttar Pradesh** reported in **2007 (59) ACC 739**, which was with respect to Section 156(3) Cr.P.C. and wrongly treated the application of the applicant as a complaint. He contends that the same considerations are not applicable to orders passed under Section 175(3) B.N.S.S.

5. Rebutting the said submissions, Learned Counsel for the opposite party Nos.2 & 3 contends that the Learned Magistrate has passed a reasoned order, the entire material on record has been duly considered and the discretion exercised by the Learned Magistrate to treat the application as a complaint, is in accordance with the law laid down by this Court in the case of **Sukhwasi (Supra)**, which has also been followed in various recent decisions. He relies upon the judgement of this Court in the case of **Lalaram Vs. State of U.P. and Ors.** reported in **2021 (1) ADJ 145**, where this Court after considering the impact of various decisions of this Court as well as the Supreme Court has summarized the propositions of law governing exercise of registration of First Information Report under Section 154(3) Cr.P.C. and 156(3) Cr.P.C. including the powers of Learned Magistrate to direct for registration of a case and investigation or to treat the application as a complaint.

6. Learned Counsel for the opposite party Nos.2 & 3 further submits that the provisions of Section 175(3) B.N.S.S. are in pari materia to the provisions of Section 156(3) Cr.P.C. and the propositions of law governing the exercise of powers under Section 156(3) Cr.P.C, as summarized by this Court in the judgement of **Lala Ram (Supra)**, are squarely applicable to this case. He submits that tested on the anvil of the law summarized by this Court in **Lala Ram (Supra),** the impugned order does not suffer from any legal or factual error, which may require interference by this Court in exercise of its extraordinary jurisdiction under Section 528 B.N.S.S.

7. The Learned Additional Government Advocate, Shri Shashi Dhar Pandey has also supported the impugned order and stated that specific reasons for treating the application as a complaint have been given and this Court may not substitute its own reasoning to that of the Learned Magistrate and satisfaction of the Learned Magistrate cannot be substituted in exercise of powers of judicial review/superintendence, as saved under Section 528 B.N.S.S. and the duty cast upon the High Court under Section 529 B.N.S.S.

8. I have heard the Learned Counsels for the parties and perused the material brought on the record.

9. To support the contentions made in the application under Section 175(3) B.N.S.S., the applicant appears to have filed certain medical reports, which have been annexed as Annexure No.3 to this application and also a letter dated 9.8.2024 addressed to the Superintendent of Police, District Kanpur Dehat to justify not invoking the powers of the Learned Magistrate for directing registration of a case and a police investigation. This Court is not considering the merits of the contentions raised in the application under section 175(3) B.N.S.S. The only legal issue that has been raised before this Court is whether the Chief Judicial Magistrate Kanpur Dehat in the present case, rightly passed an order treating the application under Section 175(3) B.N.S.S. as a complaint. A perusal of the impugned order would indicate that the Learned Magistrate has given a few

reasons for treating the application as a complaint. The reasons mentioned in the impugned order are being reproduced here in below:-

"प्रा थर्ना पत्र के कथनो के पिरशीलन से िविदत है िक प्र ा थीर् को घटना के
तथ्यों एवं पिरिस्थ ितयों की पूणर् जानकारी है। प्र ा थर्ना पत्र में ऐसाकोई कथन विणत नहीं िकया या है िजससे िक कोई ऐसा साक्ष्य संकिलत िकया जाना हो, जो िक िववेचना कराए जाने के उपरान् त हीसंकिलत िकया जा सकता हो। प्र ा थर्ना पत्र में कोई तकनीकी तथ्य िनिहत नहीं है। प्र ा थीर् अपना समस्त साध्य न् या यालय में प्रस् तु त करसकता है। उल्ले खनीय है िक माननीय इलाहाबाद उच्च न् या यालय द्व ा रा सुखवासी बनाम उ०प्र ०राज् य [2007 (6) ALJ 424 (DB)] केमामले में अवधाि रत िकया गया है िक धारा 156 (3) दं०प्र ०सं० के प्र ा थर्ना पत्र का िनस्ता रण करते समय न् या यालय को िववेक शिक्त प्राप् त है और मिजस्ट्रे ट प्रत् ये क प्र ा थर्ना पत्र पर प्र थम सूचना िरपोटर् दजर् कराने के िलए बाध्य नहीं ही है। "

10. The Learned Magistrate has relied upon the decisions of a Division Bench of this Court in the case of Sukhwasi (Supra). The judgement of Sukhwasi (Supra) was on a reference made to the larger Bench of this Court for deciding the following question:-

"Whether the Magistrate is bound to pass an order on each and every application under Section 156 (3) Cr.P.C. containing allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police even if those allegations, prima-facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as 'complaint' or to reject it in suitable cases"?

11. This Court in the case of **Sukhwasi (Supra)** taking into account the various decisions of the Supreme Court and also an earlier Full Bench of this Court in the case of **Ram Babu Gupta Vs. State of U.P**. reported in **(2001) ACC 201** held as under:-

"20. The Full bench decision of Ram Babu Gupta's case ' Supra' also lays down that the Magistrate can treat an application under Section 156 (3) Cr.P.C. as a complaint. This will appear from the following observations :-

" Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to Act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While sections 154, 155 sub-section (1) and (2) of 156, Cr.P.C. confer right on an aggrieved person to reach the police, 156 (3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156 (3) Cr.P.C., it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156 (3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all

practical purposes even such an application would be a complaint. This court can do no better than refer to the following observations in Suresh Chand Jain (Supra):-

" The position is thus clear. Any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code .....could take further steps contemplated in Chapter XII of the Code only thereafter.

21. Hon'ble Mr. Justice Amar Saran in Criminal Misc Application No. 7484 of 2004 Mohan Shukla and others Vs. State of U.P., Hon'ble Mr. Justice Alok Singh in Criminal Misc Application No. 671 of 2007 Ram Sabad Vs. Sessions Jude, Bahraich and others have also held that the Magistrate is empowered under Section 156(3) Cr.P.C. to treat an application as a 'Complaint'.

22. Applications under Section 156(3) Cr. P.C. are now coming in torrents. Provisions under Section 156(3) Cr.P.C. should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice , which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156(3) Cr.P.C.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate has a discretion to treat an application under Section 156 (3) Cr.P.C. as a complaint."

12. It is to be taken note of that provisions of Section 175(3) & 175(4) B.N.S.S. are not exactly the same as those under Section 156(3) Cr.P.C. For the sake of convenience, the provisions of Section 175(3) & 175(4) B.N.S.S. and 156(3) Cr.P.C. are being reproduced hereinbelow:-

"Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023

(3)Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

Section 175(4) of Bharatiya Nagarik Suraksha Sanhita, 2023

Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged

Section 156 (3) of The Code of Criminal Procedure, 1973

156. Police officer's power to investigate cognizable case.

(1)...

(2)...

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

13. A comparison of both the provisions referred to above, would indicate that provisions of Section 175(3) B.N.S.S. have expanded the scope of the exercise of powers by the Learned Magistrate and has given the Learned Magistrate the discretion of making such inquiry as he thinks necessary and also take into account the submissions made by the police officer, order for such an investigation. Section 175(4) of the B.N.S.S. introduces a new provision that did not exist under the Cr.P.C. It mandates that, where a complaint is made against a public servant in respect of acts purportedly arising out of or in the course of the discharge of official duties, the Learned Magistrate may order a police investigation only after obtaining a report from the superior authority of the public servant detailing the relevant facts and circumstances, and after affording the public servant an opportunity to present his assertions explaining the circumstances that led to the alleged incident. These changes that have been brought forth in the B.N.S.S. are, in the opinion of the Court, to provide the Learned Magistrates with a more robust mechanism in dealing with applications moved by people complaining apathy by the police in lodging First Information Report, but at the same time, giving ample discretion to the Magistrate to make such inquiry as they may deem fit while also giving an opportunity to the police to represent before the Learned Magistrate. Such power being granted by the statute is intended to curb false and frivolous applications, which may be made to harass an individual, especially a public servant, who is acting in discharge of his official duties. The statutory mandate of filing an affidavit in support of an application under section 175(3) B.N.S.S. also indicates the intent of the Legislature in providing the Learned Magistrate with the tools to punish a person making a false or frivolous claim before the Learned Magistrate.

14. The Supreme Court in the case of **Priyanka Srivastava and Ors. Vs. State of U.P. and Ors.** reported in **2015 (6) SCC 287**, made it mandatory for all applications under section 156(3) Cr.P.C. to be supported by an affidavit sworn by the applicant, who sought the invocation of the jurisdiction of the Learned Magistrate. The Supreme Court while taking into account the misuse of the provision under section 156(3) Cr.P.C., observed that applications were being filed in a routine manner without taking any responsibility whatsoever, only to harass certain persons. The Supreme Court in Paragraph Nos.26 and 27 of the above-mentioned judgement has observed as under:-

"26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

15. The requirement of filing an affidavit in support of an application under Section 175(3) B.N.S.S., which has now been mandated by the statute, appears to be in consonance with the observations of the Supreme Court regarding misuse of the provisions under section 156(3) Cr.P.C. by unscrupulous litigants. These changes, however, have been incorporated in the B.N.S.S. only to regulate the procedure in applications, where an aggrieved person approaches a Magistrate seeking a direction for investigation or registration of a case. The principles, however, governing the exercise of powers by a Magistrate when it comes to deciding whether to order for an investigation or treating that application as a complaint, are still the same as those under Section 156(3) Cr.P.C. This Court as well as the Supreme Court have in various decisions guided the Learned Magistrates in exercising judicial discretion in such matters and have made all attempts to prevent arbitrary exercise of powers by the Magistrates.

16. Quite recently this Court in **Lala Ram (Supra)** framed four questions, the first three going directly to the heart of the Magistrate's exercise of jurisdiction under Section 156(3) Cr.P.C. The questions framed by this Court are being reproduced hereinunder:-

"i) Whether in each and every case, where an application under Section 156(3) Cr.P.C. is made to the Magistrate disclosing commission of a cognizable offence, the Magistrate is legally bound to direct registration of the FIR and investigation by police or the Magistrate has also the power and jurisdiction to pass order for registration of the application as a complaint case.?

ii) On what considerations the Magistrate should take decision for investigation by police or to proceed with as a complaint case?

iii) What is the nature of an investigation by the police in pursuance of the direction of the Magistrate issued under Section 156(3) Cr.P.C. and the investigation by the police in pursuance of the direction of the Magistrate issued under Section 202(1) Cr.P.C. ?

iv) Whether the order passed by the Magistrate in the present case deserves to be maintained or not?"

17. After considering the entire gamut of the law laid down in various decisions of the Supreme Court and this Court, this Court in **Lala Ram (Supra)** summarized the propositions of law, as follows:-

"(40.06). In either case, i.e. issuing direction for investigation by the police officer under Section 156(3) Cr.P.C. or taking cognizance and registering it as a complaint case, the Magistrate has to apply judicial mind. There cannot be mechanical exercise of jurisdiction or exercise in a routine manner. Mere statement in the order that he has gone through the complaint, documents and heard the complainant will not be sufficient. What weighed with the Magistrate to order investigation or to take cognizance should be reflected in the order, although a detailed expression of his view is neither required nor warranted.

(40.07). The exercise of discretion by the Magistrate is basically guided by interest of justice, from case to case.

(40.08). However, where some investigation is required which is of a nature that is not possible for the private complainant and which can only be done by the police officer upon whom statute has conferred the powers essential for investigation, the option to direct the registration of the FIR and its investigation by the police officer should be exercised, for example:-

(i) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(ii) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(iii) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved, and to illustrate this, by few example cases may be visualised where for production before Court at the trial

(a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or

(b) recovery of case property is to be made and kept sealed; or

(c) recovery under Section 27 of the Evidence Act; or

(d) preparation of inquest report; or

(e) witnesses are not known and have to be found out or discovered through the process of investigation.

(40.09). Where the complainant is in possession of the complete details of all the accused and the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted.

(40.10). Category of cases falling under para 120.6 in Lalita Kumari (Supra) i.e.

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases,

(d) Corruption cases

(e) Cases where there is abnormal delay in filling criminal complaint etc. may fall under Section 202 Cr.P.C .

(40.11). The Magistrate should also keep in view that primarily, it is the duty of the State/police to investigate the cases involving cognizable offence. Generally, the burden of proof to bring the guilt of the accused is on the State and this burden is a heavy burden to prove the guilt beyond all reasonable doubts. This burden should not unreasonably be shifted on an individual/complainant from the State by treating the application under Section 156(3) Cr.P.C. as a complaint case.

(40.12). The investigation which the police officer or such other person makes in pursuance of the direction of the Magistrate under Section 202(1) Cr.P.C. is the same kind of investigation as is required to be conducted by police officer, under Chapter XII Cr.P.C. which ends with submission of the report as per Section 173(2) Cr.P.C.

(40.13). The distinction between the investigation by the police officer under Section 156(3) and under Section 202(1) Cr.P.C. is that the former is at the pre-cognizance stage and the latter is at post cognizance stage, when the Magistrate is seisin of the case. The investigation under Section 202(1) Cr.P.C. is for the purpose of ascertaining the truth or false hood of the complaint for helping the Magistrate to decide, whether or not there is sufficient ground, for him to proceed further against the accused by issuing process, whereas, the inquiry report under Section 173(2) Cr.P.C. of the investigation made by the police of its own or under the directions of the Magistrate under Section 156(3) Cr.P.C. is for the purpose of enabling the Magistrate to take cognizance of an offence under Section 190(1)(a) Cr.P.C.

(40.14). Once cognizance is taken on the application under Section 156(3) Cr.P.C. by the Magistrate and he embarks upon the procedure embodied in Chapter XV, he would not be competent to revert to the pre-cognizance stage under Section 156(3) Cr.P.C.

(40.15). If the Magistrate did not order for police investigation under Section 156(3) Cr.P.C. and took cognizance of the case, that would not be bar to the exercise of the power of the Magistrate for directing the police investigation under Section 202(1) Cr.P.C.

41. Point nos. 1, 2 and 3 as framed in para 12 of this judgment stands answered as per para no.40 above."

18. In the opinion of this Court, the consideration by the Learned Magistrate of factors weighing upon his decision to either treat the application moved before him seeking registration of a case and an investigation to be treated as a complaint or to direct registration of a First Information Report, are still the same when it comes to exercise of powers under Section 175(3) B.N.S.S. Thus, the propositions of law summarized in the case of **Lala Ram (Supra)**, as quoted above, still apply to proceedings under Section 175(3) B.N.S.S. The considerations of the Learned Magistrate extracted above on the facts and circumstances of the case, in the opinion of this Court, are in consonance with Paragraph Nos.40.06 and 40.07 of the case of **Lala Ram (Supra)** extracted above. The Learned Magistrate has given his reasons why a police investigation is not required. He has recorded his satisfaction that nothing has been mentioned in the application, which would require the collection of such evidence which can only be done by a police investigation. One more factor that weighs with this Court while considering the impugned order passed by the Chief Judicial Magistrate, District Kanpur Dehat, is that the alleged attack on the brother of the applicant is stated to have occurred on 19.07.2024. After the lapse of more than one and a half years from the date of the incident, no physical evidence would reasonably remain at an open place, and therefore, recovery of blood-stained soil at this stage would not be possible.

19. These considerations are without prejudice to the claims of the applicant in the application under Section 175(3) B.N.S.S. The Learned Magistrate has rightly treated the application under Section 175(3) B.N.S.S, as a complaint by applying the same principles, as were applicable to the exercise of powers under section 156(3) Cr.P.C.

20. As a result of the discussions made above, I find no legal or factual infirmity or jurisdictional error or any perversity in the order passed by the Learned Magistrate and as a result of the same, this application fails and is **dismissed.**

21. There shall be no order as to costs.

(2026) 2 ILRA 845
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS. No. 32942 of 2025

Shyam Bahadur Yadav ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether a long-term sexual relationship between two educated adults, entered into on the basis of a promise of marriage that was later withdrawn, amount to 'rape under a misconception of fact,' or should it be treated as a consensual relationship where initiating criminal proceedings would constitute an abuse of process under Section 528 BNSS?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 180, 183, 528 - Code of Criminal Procedure, 1973 – Section 482 - Indian Penal Code - Sections 90, 313, 375, 376(2)(n), 420, 504, 506. - Indian Evidence Act - Section 114-A : - Application under Section 528 BNSS – against charge sheet and summoning order as well as the entire criminal proceedings - FIR – allegation of sexual intercourse on false promise of marriage and cheating – investigation - charge sheet – summoning order – trial – Applicant pleaded that the relationship was consensual for six years between educated adults and that the victim suppressed her status as a divorcee – opposite party no. 2 (victim) argued the consent was obtained via deceitful misconception of fact under Section 90 IPC – Court finds that (i) victim's claim of two pregnancies in 2020 contradicts her statement that the first sexual encounter occurred in October 2020 – (ii) victim's divorce is not mentioned ever in the FIR or in her statement, - (iii) relation between them started from 2019 on the promise of marriage, which continued till 2025, - (iv) both are educated, in a job and had frequent sexual intercourse and she continued to meet the applicant in jail even after the FIR via RTI evidence – point of consideration is about the consent or not consent – held that, a long-term physical relationship between two able-minded adults if maintain, then a subsequently broken of promise of marriage would not attract any offense – hence, continuation of proceedings will tantamount to miscarriage of justice – consequently, Application is allowed and entire proceedings are quashed. (Para – 10, 17, 18, 19)
Application Allowed. (E-11)

CASE LAW CITED

Pramod Kumar Navratna vs. State of Chhattisgarh (2026 INSC 124)
Prashant vs. State NCT of Delhi (2024 INSC 879)
Anurag Soni vs. State of Chhattisgarh (2019 LawSuit SC 1053)
Pramod Suryabhan Pawar vs. State of Maharashtra (2019 LawSuit SC 1504)

State of Haryana vs. Bhajan Lal (1992 Supp(1) SCC 335)
Ravi Pal vs. State of UP (2025 LawSuit All 1063)

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita (BNSS) - Indian Penal Code (IPC) - Indian Evidence Act - Right to Information Act, 2005 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

FIR – Rape – Cheating – chargesheet – summoning order – criminal proceedings - Misconception of Fact - False Promise of Marriage - Consensual relationship – Quashing – Deceit - Long-term Relationship – victim – inherent jurisdiction – consent or not consent – presumption – miscarriage of justice – non-fulfilment of promise – allowed.

CASE ARISING FROM

Case Crime No: 53 of 2025 - Police Station: Kotwali, District Basti - Criminal Case No: 2944 of 2025 (State of U.P. vs. Shyam Bahadur Yadav)

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri G.S. Chaturvedi (Senior Advocate), Sri Aditya Gupta.
Counsel for Respondent(s): Shri Prakash Veer Tripathi, Sri Munna Tiwari, Chandra Badan A.G.A.

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

1. Heard Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Aditya Gupta, learned counsel for the applicant, Sri Prakash Veer Tripathi, learned counsel for opposite party No.2 and Sri Chandra Badan, learned AGA for the State.

2. The present application under Section 528 BNSS is moved by the accused applicant with the prayer to quash the charge sheet dated 9.4.2023, summoning order dated 18.8.2025 and the proceedings of Criminal Case No. 2944 of 2025(State of U.P. vs. Shyam Bahadur Yadav), arose out of Case Crime No.53 of 2025 for offence under Section 376(2)(n) and 420 IPC, Police Station Kotwali, District Basti.

3. For the sake of brevity, the accused-applicant is referred as 'applicant' and opposite party no.2 is referred as 'victim' in this judgment.

4. The victim has lodged the FIR on 12.2.2025 at Police Station Kotwali district Basti at 17:10 hour for offence under section 420, 376, 504, 506 and 313 of IPC against the applicant and his brother, mother, father, and sisters, whose names have not been disclosed in the FIR. The allegation in the FIR is such that the victim was serving on contract basis as Data Executive from 2019 at District Hospital, where the victim came in contact with the applicant for the first time. The applicant has proposed the victim for marriage, on which the victim has replied that she will ask from parents. On his assurance, the applicant started visiting the house of the victim. The parents of victim were ready for marriage but the applicant has postponed the marriage after getting a job and submits that he will certainly marry. On 5.10.2020, the applicant was celebrating his birthday and pressurized the victim to come to his room. At about 7 PM, the victim reached there and the applicant has entered into sexual intercourse on the promise that he will marry. The applicant has also taken certain indecent photographs of the victim. The victim has intimated the incident to her

parents and the applicant has admitted his fault but assured that he will certainly marry the victim, due to which the victim has not submitted any police report. Thereafter, the victim was consistently subjected to rape on false promise of marriage. In the year 2020, the victim became pregnant twice. The victim was given the pills for abortion. She has also sought advice of a gynecologist and undertook abortion. The applicant then gave assurance that within 4 to 6 months, he will marry, but later on, he kept on extending time. Then, in the month of May 2023, the applicant got service as a junior clerk at Ambedkar Nagar Medical College. But thereafter, his behavior got changed and his parents were trying to get him married somewhere else. On 9.2.2025, at about 5 p.m., the victim with her brother, sister, and brother-in-law went to the house of applicant to meet his parents, on which the sister of applicant has put a lock from outside the house and got away at the park outside their house with lathi-danda in their hands. The family members of the victim were roughed up by the family members of the applicant. The information of this act was given at 112 dial. Later on, parties have entered into a compromise owing to the pressure built up by the applicant and also offered money. But when nothing has happened, the FIR is lodged.

5. In the statement under section 180 BNSS, the victim has stated that she is 30 years of age. The rest of the allegations are the same as she has levelled against the applicant in the FIR. In the statement of 183 BNSS, the victim has stated that she is BMM(Block Mission Manager) and knew the applicant since 2016. But she has stated talking to him in the year 2018. She got a job at district hospital as data executive in the year 2019. She got the call of applicant that he wanted to meet the victim and he came to the hospital to meet her. The applicant often comes to the hospital as his father was not well. The applicant and victim started meeting and applicant has given victim the proposal to marry her. Rest of the statements given by the victim are the same as disclosed in the FIR. She has further submitted that she has met Dr. Pramila Singh for the purpose of abortion. She has also disclosed that her mother got apprehensive and asked the victim to lodge a police case. For five years, the applicant has continuously raped the victim on false promise of marriage. She further submits that the applicant has kept on extending dates for entering into marriage with the victim on one pretext or the other, but lastly, has refused to marry.

6. Learned Senior Counsel has submitted that the victim has leveled allegations of false promise of marriage against the applicant, whom she knew since the year 2016 and the friendship between them was started in the year 2019. He submits that there was a proposal of marriage given by the applicant to her, which was a true proposal, as it was not false for the purpose of deceiving. On contrary, the victim herself has deceived the applicant by not disclosing her previous marriage and divorce to the applicant. Learned counsel has drawn attention of this court towards the judgment of the Family Court dated 9.7.2019 passed in Petition No. 599 of 2018, Smt Rema vs. Ghanshyam, which was allowed by the Family Court, as the petition was for divorce by mutual consent between the victim and her husband with whom she has married on 29.6.2017. Learned counsel further submits that the bare perusal of the FIR and the statement of the victim on the face of it shows that it is the consensual relation between the two educated adults which continued from the year 2019 and subsists up to 2025. Between these years, the victim was continuously subjected to sexual intercourse on false promise of marriage. It is also revealed that twice the victim became pregnant and aborted.

7. Learned counsel has relied on a case of **Pramod Kumar Navratna versus State of Chhattisgarh & other**s reported in **2026 INSC 124 and the case of Prashant versus State NCT of Delhi** reported in **2024 INSC 879**. Learned senior counsel has also drawn attention of the court towards the information received under Right to Information from the office of Senior Superintendent, District Jail, Basti, dated 13.05.2025 annexed at page 300 with the application to show that the victim came to the District Jail, Basti on 03.03.2025 to meet the applicant. Learned counsel further submits that this information is entered in paragraph 66 and 67 of the application, which is not being replied by the victim in the counter affidavit. The purpose of receiving information under Right to Information is that relation between the applicant and the victim was consensual. Learned counsel has also drawn the attention of this court towards the money transaction between the applicant and victim.Hence, seeks interference to quash charge sheet, summoning order and the proceedings of the case started against the applicant.

8. Learned AGA and learned counsel for opposite party No. 2/victim, have stated that the intention of the applicant not to marry the victim was from the very start of their relationship, is reflected from the conduct of the applicant. Learned counsel submits that the applicant has given promise to marry the victim and proposal was initiated from the side of applicant. There was no occasion to the victim to disclose that she is a divorcee, as it was the proposal given by the applicant for marriage. Further submit that for more than five years, the victim was subjected to sexual intercourse on false promise of marriage given by the applicant. There is ample evidence on record to show that the victim is subjected to rape and the consent of the victim for sexual intercourse was obtained by the applicant by deceitful means. Referred the provision of section 90 of Indian Penal Code that consent of the victim was due to misconception of fact. Learned counsel for victim has relied on the case of **Anurag Soni versus State of Chhattisgarh** reported in **2019 LawSuit(SC) 1053** on the point that Hon'ble Supreme Court has clearly found evidence adduced before the trial court to convict the accused for offence of rape on false promise of marriage. He relied on paragraph 9 and 14 of the judgment and relied on the case of **Pramod Suryabhan Pawar versus State of Maharashtra**, reported in 2**019 LawSuit(SC) 1504**, wherein Hon'ble Supreme Court has clearly explained the Misconception of fact and the deceit played by a person for seeking consent. He has also relied on the judgment of **Ravi Pal versus State of UP & another** reported in **2025 LawSuit(All) 1063** decided by this court on 4.11.2025 considering the principles of law laid down in the case of P**ramod Suryabhan Pawar(supra).** Learned counsel submits that the application is devoid of merits and is liable to be dismissed.

9. The court has taken into consideration the rival submission made by the learned counsel and perused the record.

10. The fact which culled out from the material on record, particularly from the FIR, statement of victim, and other facts are reiterated below:-

(i) The victim has stated to know the applicant since 2016 though in the FIR, she knew him since 2019;

(ii) The victim was doing the job at District Hospital in the year 2019 when she received the call of applicant to meet, on which the applicant came to meet her in hospital;

(iii) The applicant has proposed the victim for marriage in the year 2019 and there were talks of marriage between the families and the victim's family was ready for the marriage;

iv) The applicant took time for marriage as he was in search of a job;

v) In the year 2020 the victim became pregnant twice. A date 5.10.2020 is reflected in the FIR as well as in the statement of victim, which shows that on that date the victim was subjected to sexual intercourse on false promise of marriage, for the first time. If this would be the date of sexual intercourse for the first time then how it could be stated that the victim was pregnant twice in the year 2020;

vi) From the year 2020 to year 2025, prior to lodging of FIR victim was continuously subject to sexual intercourse on false promise of marriage;

vii) It is the allegation that after getting a job in the year 2023, the behaviour of the accused has changed and he has refused to marry the victim.

11. The point of concern in the present case is whether the continuance of proceedings would tantamount to abuse of process of law or there is substantive material against the accused on the basis of which the trial would continue.

12. The facts culled out from the material on record is already discussed herein above. Now, the principles enunciated through judgments of Hon'ble the Supreme Court relied on by the parties are to be discussed.

13. In the case of **Pramod Kumar Navratna(supra)** relied on by learned Counsel for the applicant, two relevant paragraphs, which deals with the sexual intercourse on false promise of marriage are taken into consideration are reiterated underneath:-

"24. On a perusal of the allegations made in the present case, it is an admitted fact that the complainant-respondent No.3, within the first initial meetings told the accused-appellant that she was a married woman with divorce proceedings pending before the Family Court. Therefore, in the same breath, she cannot be allowed to claim and allege that she was also coaxed by the accused-appellant into having a physical relationship with him on the false pretext of marriage as the two facts cannot stand together on the same plane and simultaneously as both are antagonistic and antithetical to each other. In our opinion, the facts of the present case clearly indicate a consensual relationship gone sour whereas both the parties should have exercised restraint and should have refrained from involving the State into their personal relationship turning rancour. 25 At this juncture, it is important to place reliance upon the observations in Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764, wherein this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. Furthermore, this Court in Samadhan Vs. State of Maharashtra, 2025 SCC OnLine SC 2528 through one of us (Nagarathna, J.) observed that this Court has, on numerous occasions,

taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every soured relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern for the judiciary already facing a heavy load and calls for condemnation."

14. Learned Counsel for the applicant also relied on a case, **Prashant(supra**), this case is reported in the previous case in paragraph 25 on the point that mere breakup of relationship between the consenting couple cannot result in initiation of criminal proceedings.

15. Learned Counsel for opposite party No. 2 has relied on a case of **Anurag Soni(supra),** particularly in paragraph 9 and 14, wherein Hon'ble Supreme Court has dealt with evidences on record adduced during trial and it is on the basis of evidences that Hon'ble Supreme Court has found that trial court as well as High Court were rightly maintaining conviction of the applicant/appellant for the offence of rape on false promise of marriage considering consent obtained by the accused is deceptive from the very beginning, the relevant paragraphs are quoted herein below:-

"[9] In the present case, the accused has been convicted for the offence under Section 376 of the IPC. It is the case on behalf of the appellant-accused that as it is a case of a consensual sex, the Courts below have committed an error in convicting the accused for the offence under Section 376 of the IPC. Both the Courts below have accepted the case of the prosecution that the consent of the prosecutrix was given on the basis of misconception of fact and, therefore, considering Section 90 of the IPC, such a consent cannot be said to be a consent and, therefore, the accused has committed the rape as defined under Section 375 of the IPC and thereby has committed an offence under Section 376 of the IPC. Therefore, the question which has been posed before this Court is, whether in the facts and circumstances of the case and considering the evidence on record, the Courts below have committed any error in holding the accused guilty for the offence under Section 376 of the IPC?

xxxx

[14] Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 of the IPC. Though, in Section 313 statement, the accused came up with a case that the prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to

be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that that appellant's marriage is fixed with another lady - Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for physical relationship, however, on the appellant's promise that he would marry her and relying upon such promise, she consented for physical relationship with the appellant accused. Even considering Section 114-A of the Indian Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. As observed hereinabove, from the very inception, the promise given by the accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship. Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the Courts below have rightly held that the consent given by the prosecutrix was on misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 of the IPC. Both the Courts below have rightly convicted the accused for the offence under Section 376 of the IPC."

16. Learned Counsel for opposite party No.2 has relied upon the case of **Pramod Suryabhan Pawar(supra)**, which is earlier relied on by this court in Paragraph 11 of its judgment passed in **Ravi Pal(supra),** wherein paragraph 18 of judgment in **Pramod Suryabhan** is reiterated. The same is reiterated hereunder:-

"[18] To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

17. It is a settled principles of law that the facts of every case is different and therefore applying precedents requires careful judicial analysis. Moreover, while invoking the inherent jurisdiction for quashing a criminal case, the test is, the facts of the case, if taken to be true could end in conviction. The scope of ambit of the powers of the High Court invoking under Section 482 CrPC or 528 BNSS are very wide, but should be exercised with circumspection and in rarest of rare and appropriate cases. This power do not confer arbitrary jurisdiction to act according to whims and caprice and is used to prevent the abuse of process of law and for procuring the ends of justice. This preposition of law is enunciated in the cases of ***Kurukshetra University Vs. State of Haryana (1977) 4 SCC 451 and the State of Haryana Vs. Bhajan Lal,*** reported in ***1992 Supp(1) SCC 335.***

In the case of Som Mittal Vs. Government of Karnataka, reported in (***2008) 3 SCC 574,*** Hon'ble the Supreme Court has given an expression of 'rarest of rare case', while describing the scope of Section 482 CrPC. This view is consistently maintained by Hon'ble the Supreme Court till the present day, which is settled by 'en' number of judgments, latest are ***Naresh Potteries Vs. Aarti Industries,*** reported in ***2025 SCC OnLine SC 18 and Punit Beriwala Vs. State (NCT) of Delhi,*** reported in ***2025 SCC OnLine SC 983***.

18. In the present case, it is a fact situation that the victim was a divorced lady. The victim's divorce is not mentioned ever in the FIR or in the statement of the victim, though it is an admitted fact. It is also a fact that the relation between the applicant and the victim started from the year 2019 on the promise of marriage, which continued for a long period upto the year 2025. It is also an admitted fact that the applicant and victim are educated, in a job and had frequent sexual intercourse. Now, the point of concern is only about the consent or not consent. The Hon'ble Supreme Court, in catena of judgments, has observed that two able minded adults, if maintain a long term physical relationship, then a presumption would be drawn that they have voluntarily chosen their consensual relations and subsequent non-fulfillment of promise of marriage would not attract any offense. This analogy has been drawn from the case of **Ravish Singh Rana v. State of Uttarakhand,** reported in **2025 SCC OnLine SC 1055 (Paragraph 14,15)** and in the cited case of **Prashant (supra)** in paragraph 20.

19. In view of the discussions made herein above, this Court is of the view that continuance of proceedings will tantamount to miscarriage of justice. The perusal of material available on record does not justify continuance of trial.

20. The application under section 528 BNSS is **allowed.**

21. Consequently, the proceeding of Criminal Case No. 2944 of 2025(State of U.P. vs. Shyam Bahadur Yadav), arose out of Case Crime No.53 of 2025 for offence under Section 376(2)(n) and 420 IPC, Police Station Kotwali, District Basti including charge sheet dated 9.4.2023, summoning order dated 18.8.2025 are quashed.

(2026) 2 ILRA 852
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE TEJ PRATAP TIWARI, J.

Application U/S 528 BNSS. No. 33773 of 2025

Mahendra Singh & Ors. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the cases in which the parties have settled their grievances can be quashed?

HEADNOTES

Criminal Law – Bhartiya Nagarik Suraksha Sanhita, 2023 - Sections – 528, - Indian Penal Code, 1860 - Section 498-A, 323, 504, 506, - The Dowry Prohibition Act, 1961 - Sections 3, 4:- Application under Section 528 BNSS – for quashing of charge sheet, cognizance order, and the entire criminal proceedings arising out of a matrimonial dispute – FIR - charge sheet - cognizance order – plea taken that parties have amicably settled the dispute - Court observe that the law regarding quashing of criminal proceedings on the basis of settlement between parties is well settled - In light of the principles laid down by the Hon'ble Supreme Court, this case is a fit one for exercising the inherent powers of this Court to quash the proceedings, charge sheet, and cognizance order – held, the application is allowed - criminal proceedings, charge sheet, and cognizance order are quashed. (Para – 4, 5)
Application Allowed.(E-11)

CASE LAW CITED

B.S. Joshi and others Vs. State of Haryana and another - (2003)4 SCC 675,
Nikhil Merchant Vs. Central Bureau of Investigation - (2008) 9 SCC 677,
Manoj Sharma Vs. State and others: (2008) 16 SCC 1,
Gian Singh Vs. State of Punjab - (2012) 10 SCC 303,
Shaifullah and others Vs. State of U.P. And another - 2013 (83) ACC 278,
Parbatbhai Ahir@Parbatbhai @ Bhimsinbhai Karmur & others Vs. State of Gujarat & another - (2017) 9 SCC 641

LIST OF ACTS

Bhartiya Nagarik Suraksha Sanhita, 2023 - Indian Penal Code, 1860 - The Dowry Prohibition Act, 1961.

LIST OF KEYWORDS

Application under section 528 – settlement – law laid down – chargesheet – cognizance order – entire criminal proceedings – well settled – good case for exercising powers – quashed – allowed.

CASE ARISING FROM

Chargesheet dated 20.10.2019 and Cognizance Order dated 12.10.2020 passed in Criminal Case No. 1137/2020 (State Vs. Mahendra Singh and others) arising out of Case Crime No. 0091 of 2019 under section 498-A, 323, 504, 506 IPC, and 3 / 4 DP Act, Police Station Tehrauli, District Jhansi.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Dileep Kumar Shuukla, Shiv Kumar Singh.
Counsel for Respondent(s): G.A.

(Delivered by Hon'ble Tej Pratap Tiwari, J.)

1. Heard learned counsel for the applicants, learned counsel for the opposite party no.

2, learned A.G.A for the State and perused the records.2. The present application under Section 528 BNSS has been filed to quash the entire proceedings of Case No. 1137 of 2020 (State Vs. Mahendra Singh and others), arising out of Case Crime No. 0091 of 2019, under Sections 498A, 323, 504, 506 of I.P.C. and 3/4 DP Act, Police Station Tehrauli, District Jhansi, charge sheet dated 20.10.2019 as well as cognizance order dated 12.10.2020 passed in the aforesaid case, pending in the court of Judicial Magistrate, Garautha, Jhansi.

3. Learned counsel for the applicants states that an order was passed by a co-ordinate Bench of this Court on 04.09.2025 directing the applicants to file the said compromise deed before the court concerned which was to be verified by the court concerned. In pursuance of the said order, the court concerned on 17.09.2025 verified the said compromise. Copy of the same is on record. The same is not disputed by learned counsel for the opposite party no.2.

4. The law with regards to quashing of a case on the basis of settlement arrived between the parties, is well settled. The Apex Court in the cases of ***(1) B.S. Joshi and others Vs. State of Haryana and another: (2003)4 SCC 675; (2) Nikhil Merchant Vs. Central Bureau of Investigation : (2008) 9 SCC 677; (3) Manoj Sharma Vs. State and others: (2008) 16 SCC 1; (4) Gian Singh Vs. State of Punjab: (2012) 10 SCC 303; (5) Shaifullah and others Vs. State of U.P. And another: 2013 (83) ACC 278 and (6) Parbatbhai Ahir@Parbatbhai @ Bhimsinbhai Karmur and others Vs. State of Gujarat and another: (2017) 9 SCC 641*** has held that the cases in which the parties have settled their grievances can be quashed.

5. From perusal of the records and the law laid down by the Apex Court on the subject matter, the present case is a good case for exercising powers by this Court to quash the proceedings, charge sheet as well as cognizance order as prayed for by the applicant(s).

6. The present application is allowed.

7. The entire proceedings, charge sheet as well as cognizance order of the aforesaid case are hereby quashed.

(2026) 2 ILRA 854
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.02.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS No. 43062 of 2025

Smt. Jyoti Suri **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether proceedings under the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 and the gang chart prepared against the applicant were valid, particularly when based on a solitary case and alleged violations of the Gangster Rules, 2021?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 – Section - 528, - U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 - Sections 2, 2(b) (i) to (xxv), 3 - Code of Criminal Procedure, 1973 - Sections 482 – Bhartiya Nyaya Sanhita, 2023 – Section 126(2), 352, 351(2),

308(6) - U.P. Gangster and Anti-Social Activities (Prevention) Gangster Rules, 2021 – Rule - 5(3)9a), 5(3)(c), 6, 8, 8(2), 8(3), 10, 10(1), 16, 17, 17(2), 22, 60 - Indian Evidence Act, 1872 – Section – 76 : - Application under Section 528 BNSS – filed by applicant against proceedings under the U.P. Gangster Act – seeking quashing of chargesheet, cognizance order and the entire criminal proceedings of Special Sessions Trial - FIR registered under Gangster Act based on Case Crime No.406 of 2024 – investigation completed - chargesheet filed - gang chart prepared – applicant pleaded that Gangster Act cannot be invoked on solitary case, and Rules 2021 were violated i.e. no joint meeting, no certified copy, false information – State argued compliance with Rules, joint meeting held, chargesheet attached, no false information, and Gangster Act permissible even on single case – Court finds - satisfaction recorded in handwriting, chargesheet date mentioned, Rule 10 does not require certified copy from court, Rule 22 and Supreme Court precedent (*Shraddha Gupta*) allow invocation on solitary case – no violation of Rules 2021, precedents cited by applicant distinguishable – held, Gangster Act can be invoked even on basis of one case and therefore application is devoid of merit and is accordingly dismissed. (Para –21, 25, 26, 27, 29)

Application Dismissed. (E-11)

CASE LAW CITED

Mohd. Arif @ Guddu v. State of U.P.
Sanni Mishra @ Sanjayan Kumar Mishra v. State of U.P.
Vinod Bihari Lal v. State of U.P.
Asim @ Hasim v. State of U.P.
Master @ Ramzan v. State of U.P.
Prabhat Patel v. State of U.P.
Gulam Mustafa v. State of Karnataka
Shraddha Gupta v. State of U.P. (2022 SCC OnLine SC 514)
Ambuj Parag Dubey v. State of U.P. (2022 (4) ACR 3878)
Narendra Kumar v. State of U.P. (2023)
Anil Mishra v. State of U.P. (2025)
Manoj Maurya v. State of U.P. (2023)
Binni Lala @ Vinod Kumar Jain v. State of U.P. (2023)
Rahul Saxena @ Bhola v. State of U.P. (2023)

LIST OF ACTS

Bhartiya Nagarik Suraksha Sanhita, 2023 - Bhartiya Nyaya Sanhita, 2023 - Indian Evidence Act, 1872 - U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 - U.P. Gangster and Anti-Social Activities (Prevention) Gangster Rules, 2021 – Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Gang chart, solitary case, Rule 5(3)(a), Rule 5(3)(c), Rule 8(2), Rule 10(1), Rule 16, Rule 17, Rule 22, Rule 60, certified copy, chargesheet, joint meeting, satisfaction, false information, procedural compliance, Shraddha Gupta precedent.

CASE ARISING FROM

Special Sessions Trial No.2636 of 2025 - Case Crime No.502 of 2024 (Gangster Act, PS Sihani Gate, Ghaziabad) - Base case: Case Crime No.406 of 2024 (under BNS, PS Kotwali, Ghaziabad).

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Surendra Tiwari.
Counsel for Respondent(s): Prashant Kumar Singh, A.G.A.

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

1. Heard Shri Santosh Tripathi, learned counsel for the applicant, Shri Surendra Tiwari, learned counsel appearing for the victim of the base case and Shri Prashant Kumar Singh, learned AGA for the State.

2. Present application under Section 528 BNSS has been filed to quash the entire proceedings of the Special Sessions Trial No.2636 of 2025, arising out of Case Crime No.502 of 2024 (State of U.P. vs. Sanjay Suri and Others), under section 2/3 of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station Sihani Gate, District Ghaziabad, pending in the Court of Learned Special Judge (Gangster Act)/Additional District and Sessions Judge, Court no.12, Ghaziabad as well as Chargesheet dated 09.08.2025 and the cognizance/summoning order dated 28.08.2025 issued in the aforesaid proceedings.

3. The brief facts of the case are that the FIR was lodged against the applicant on 23.09.2024, as Case Crime No.502 of 2024, under section 2/3 of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as the 'Gangster Act'), Police Station Sihani Gate, District Ghaziabad. Prior to the registration of the said FIR, a gang chart was prepared on 21.09.2024, wherein, the applicant was shown to be involved in a solitary case i.e. Case Crime No.406 of 2024, under Sections 126(2), 352, 351(2), 308(6) BNS, Police Station Kotwali, District Ghaziabad and the chargesheet was submitted in the aforesaid Case Crime no.406 of 2024 on 20.09.2024 and the learned Magistrate took cognizance of offence vide order dated 23.09.2024. After submission of chargesheet on 20.09.2024 in the aforesaid Case Crime No.406 of 2024, the gang chart was prepared by the Authorities on 21.09.2024. Thereafter, the investigation was handed over to the Investigating Officer, who submitted chargesheet in the present Case Crime no.502 of 2024 on 09.08.2025 and the court concerned took cognizance vide order dated 28.08.2025.

4. The submission of the learned counsel for the applicant is that in the gang chart detail of only one case has been mentioned and the applicant has already obtained bail in the base case from the court concerned on 23.09.2024. It is also submitted by the learned counsel for the applicant that only on the basis of solitary case, as mentioned in the gang chart, provisions of Gangster Act cannot be initiated and there is clear violation of Rules framed under the U.P. Gangster and Anti Social Activities (Prevention) Gangster Rules, 2021 (hereinafter referred to as the Rules, 2021). It is also submitted by the learned counsel for the applicant that provisions of Rule 5(3)(a) of the Rules, 2021 has not been followed as no joint meeting had taken place. He further pointed out that as per Rule 5(3) (c) of the Rules 2021 the gang chart would not have been approved without the completion of the investigation of the base case.

5. Learned counsel for the applicant next submitted that the provisions of Rule 8(2) of the Rules, 2021 was not followed, wherein, it is mentioned that no unconfirmed or false information would be entered in the gang chart. It is also argued by the learned counsel for the applicant that the provisions of Rule 10 (1) of the Rule, 2021 have also not been followed inasmuch as the certified copy of the chargesheet was not attached alongwith the gang chart. It is also submitted that the authorities at the time of preparation of gang chart have violated Rules 16 and 17 of the Rules, 2021, therefore, the impugned chargesheet dated 09.08.2025 as well as cognizance/summoning order dated 28.08.2025 issued by the Learned Special Judge (Gangster Act)/Additional District and Sessions Judge, Court no.12, Ghaziabad are liable to be quashed.

6. In support of his contention, learned counsel for the applicant has relied upon several judgments of Hon'ble Apex Court as well as this Court, which are as follows:-

(i) Shri Gulam Mustafa vs. State of Karnataka and Another reported in 2023 (18) SCC 265.

(ii) Vinod Bihari Lal vs. State of Uttar Pradesh and Another reported in 2025 SCC OnLine SC 1216.

(iii) Master @ Ramzan and Another vs. State of U.P. through Principal Secretary Home and Others, reported in 2020 LawSuit (All) 826.

(iv) Asim @ Hasim vs. State of U.P. and Another, reported in 2023 0 Supreme (All) 1722.

(v) Mohd. Arif @ Guddu vs. State of UP and 3 Others, Neutral Citation No.2024:AHC:111744-DB.

(vi) Sanni Mishra @ Sanjayan Kumar Mishra vs. State of U.P. and 2 Others, reported in 2024 (1) ADJ 231 (DB). (vii) Prabhat Patel and Another vs. State of U.P. and 3 Others, Neutral Citation No.2024:AHC:25612 -DB.

7. Per contra, learned AGA for the State as well as learned counsel appearing for the victim of the base case opposed the prayer made by the applicant and submitted that the gang chart was prepared in a joint meeting and after due discussion by the authorities concerned, i.e. Forwarding Authority and the Approving Authority, the joint meeting was held on 21.09.2024. The gang chart was approved by the Commissioner of Police, Ghaziabad on the very same day i.e. on 21.09.2024, therefore, there is no illegality or irregularity in preparation of the gang chart and the same was prepared as per Rule 5(3) (a) of the Rules, 2021.

8. It is further submitted by the learned AGA as well as by the counsel appearing for the victim of the base case that the gang chart was approved after completion of investigation of the base case. The investigation of the base case i.e. Case Crime No.406 of 2024 was completed on 20.09.2024 and this fact has been mentioned in the gang chart. It is also submitted that the chargesheet of the base case has been appended at page 78 of the application, wherein, date of preparation of chargesheet has been mentioned as 20.09.2024. Thereafter, the gang chart was prepared on 21.09.2024, therefore, there is no violation of Rule 5(3) (c) of the Rules, 2021.

9. It is also submitted by the learned AGA as well as counsel appearing for the victim of the base case that Rule 8 of the Rules, 2021 was also followed. Inasmuch as no unconfirmed or false information was given by the Incharge of police station concerned. The status of the base case has been mentioned in the gang chart dated 21.09.2024, therefore, there is no illegality or irregularity or violation of Rule 8(2) of the Rules, 2021 in preparation of gang chart. It is also submitted that so far as the Rule 10 of the Rules 2021 is concerned, there is no requirement of filing the certified copy of the chargehseet issued by the court concerned and the only requirement is that the chargesheet in

the base case would be attached and the provisions of these Rules have been very well dealt with by the Division Bench of this Court in the judgment of **Anil Mishra vs. State of U.P. and 2 Others, decided on 18.10.2025 in Criminal Misc. Writ Petition No.15515 of 2023**, wherein, it has been held that chargesheet, prepared by the Investigating Officer under his signature should be attached and it is nowhere required that it has to be a certified copy having been issued by the court of law. Rule 10 of the Rules, 2021 nowhere says that copy of the chargesheet has to be a copy certified by the court or a certified copy of the chargesheet issued by the court. It is also submitted that compliance of Rules 16 and 17 of the Rules, 2021 has been done. The Commissioner of Police, Ghaziabad approved the gang chart after having considered the relevant papers and the evidence on the same day i.e. 21.09.2024. The competent authority used their independent mind while forwarding the gang chart.

10. It is further submitted that as per Rule 22 of the Rules 2021, provisions of Gangster Act can be imposed on the basis of a single case and the Hon'ble Supreme Court has also held in the case of **Shraddha Gupta vs The State Of Uttar Pradesh** reported in **2022 SCC OnLine SC 514, t**hat a person may be prosecuted under the Gangster Act only on the basis of a solitary case. In last, it is prayed that the present application is liable to be dismissed since there is no violation of any Rule of the Rules, 2021.

11. I have heard rival submission of the learned counsel for the parties and perused the records as well as several case laws which were relied on by both the sides.

12. In the case of **Mohd. Arif @ Guddu (supra)** it has been held by Division Bench of this Court that the authorities signed the pre-typed gang-chart and approved the same, which goes to show sheer negligence on the part of Authorities. The judgment of M**ohd. Arif @ Guddu (supra)** was passed in view of the judgment of **Sanni Mishra alias Sanjayan Kumar Mishra (supra) and Asim @ Hasim (supra).** In **Sanni Mishra alias Sanjayan Kumar Mishra (supra)** also the Division Bench of this Court has held that signing of pre-printed proforma is prohibited under Rule 17 (2) of the Gangster Rules, 2021 and the date of filing the chargesheet in the base case was not mentioned in the gang chart though the same is required as per Rule 8(3) of the Rules, 2021. In Paragraph 22 of **Sanni Mishra alias Sanjayan Kumar Mishra (supra)** a direction for preparation of gang chart before lodging of the FIR under the Gangster Act, 1986 was issued by this Court. The Relevant paragraph 22 of the said judgment is reproduced here-under:-

"22. In view of the above, this court lays down following directions for preparation of gang-chart before lodging FIR under the Gangster Act, 1986 :

(i) Date of filing of chargesheet under base case must be mentioned in Column-6 of the gang-chart except in cases under Rule 22(2) of the Gangster Rules, 2021.

(ii) While forwarding or approving the gang-chart, competent authorities must record their required satisfaction by writing in clear words, not by signing the printed/typed satisfaction.

(iii) There must be material available for the perusal of the court which shows that the District Magistrate before approving the gang-chart had conducted a joint meeting with the District Police Chief and held a due discussion for invocation of the Gangster Act, 1986."

13. On perusal of gang-chart of the present case, it is clear that date of filing the chargesheet in the base case has been written in the gang-chart (appended at page 40) and all the authorities recorded their satisfaction in their own hand writing in a joint meeting after due discussion, therefore, the facts of the present case are entirely different from the case of **Sanni Mishra alias Sanjayan Kumar Mishra (supra), Mohd. Arif @ Guddu (supra) and Vinod Bihari Lal (supra),** wherein it was held that the authorities will record their satisfaction in a joint meeting after due discussion. The language/satisfaction of the authorities is as per Rule 16 of the Rules, 2021 in the present case.

14. In another judgement **Asim @ Hasim (supra)**, it has been held that at the time of preparation of the chargesheet, the corresponding section 2(b) (i) to (xxv) of the Act, 1986 should be mentioned. The relevant paragraph 9 of the said judgment is reproduced hereunder:-

"9. In the present case, the impugned FIR was registered u/s 3(1) Gangster Act, without mentioning the corresponding provision, mentioning the anti social activities, in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster. "

15. In the present case chargesheet was submitted by the police under Section 2/3 Gangster Act, 1986 and in the body of the chargesheet it has also been mentioned that the offence of the applicant falls under the definition of Gangster Act, being part of the gang which is indulged in anti social activities as mentioned in Section 2(b) (i) to (xxv) of the Act, therefore, the facts of **Asim @ Hasim (supra)** is entirely different from the facts of the present case.

16. In another judgment of **Master @ Ramzan (supra)**, the first information report was quashed since wrong information was mentioned in the gang-chart but in the present case, the counsel for the applicant could not show any false/wrong information in the gang-chart.

17. The judgement of Hon'ble Supreme Court in the case of **Gulam Mustafa (supra)** is not related to Gangster Act rather the power of High Court under Section 482 Cr.P.C. has been discussed.

18. The judgment of **Prabhat Patel (supra)** is also not applicable to the facts of the present case since it was held in the aforesaid case that gang-chart was prepared without joint meeting and Rules 8(3), 16 and 17 of Rules, 2021 were not followed. In the present case, all the competent authorities recorded their satisfaction in their own handwriting in a joint meeting after due discussion. Therefore, there is no violation of any aforesaid Rule of the Rules, 2021.

19. In the case of **Ambuj Parag Dubey**, reported in **2022 (4) ACR 3878** the Division Bench of this Court has considered the entire scheme of the Gangster Act and held that in a case, on the

materials, the competent authority is convinced and prima facie satisfied that a case for prosecution is made out, he may approve the gang chart bypassing discussion with the police officials. But in a case where the competent authority is not convinced or in two mind, on the material placed by the police authorities, the competent authority may necessarily decide to call for a discussion to prima facie satisfy himself that prosecution is warranted.. Relevant paragraphs no.27 to 38 and 41 of the said judgement are reproduced as under:-

"27. Chapter-III of Gangster Rules lays down the principles related to Gang Chart. Rule-5 mandates that Incharge of a Police Station/Station House Officer/ Inspector shall prepare a Gang Chart (Form No. 1) mentioning the details of criminal activities of the gang. The Gang Chart will be presented to the district head of the Police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation of all the persons of the said gang. Sub-rule (2) of Rule 5 provides that the provisions contained therein shall be complied in respect of gang charts. The provision reads thus:

5. (1) To initiate proceedings under this Act, the concerned Incharge of Police General Rules 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 case 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 (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

28. Rule 6 provides that while preparing the Gang Chart it shall be clearly mentioned, if the alleged act of the gang falls within the purview of clause (b) of Section 2 of the Act along with relevant provisions, further, sub-rule (2) mandates that the Investigating Officer makes an endorsement to the effect that the accused is causing panic, alarm or terror in public, then evidence shall be collected in this regard. In addition to the above, a list of criminal history may be attached separately in the prescribed format. (Form No. 4)

29. Rule 10 mandates that records of base cases, would accompany the gang chart and Rule 11 mandates that the present status of all the accused, whether they are in jail or on bail or absconding, shall be clearly mentioned. Rule 13 mandates that while writing abstract below the gang chart and particulars of those officials shall be specifically mentioned. Rule 13 is extracted:

13. While writing the abstract below the gang-chart and particulars separately with the gang-chart, the particulars of those offences shall be specifically mentioned:-

i. which have been committed for pecuniary, materialistic and temporal or similar benefits; or

ii. which disturb the public order; or

iii. Which are a ground for detention under the National Security Act, 1980 (Act no. 65 of 1980)

30. Sub-rule 3 of Rule 15 provides that final decision as to whether to include or not to include the name of member of a gang in the gang and gang-chart shall be at the discretion of the Commissioner of Police/District Magistrate, as the case may be.

31. Rule 16 provides the manner and the recommendations to be made while forwarding the gang chart Rule 16 reads thus:

"16. The following manner shall be followed in the forwarding of Gang-Chart:

(1) Forwarding of the gang-chart by the Additional Superintendent of Police: The Additional Superintendent of Police will not only take a quick forwarding action in the case but he will duly peruse the gang-chart and all the attached forms; and when it is satisfied that there is a just and satisfactory basis to pursue the case, only then will he forward the letter along with the recommendation given below on the gang-chart to the Superintendent of Police/Senior Superintendent of Police.

"Throughly studies the gang-chart and attached evidence. The basis of action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 exists. Accordingly, forwarded with recommendation."

(2) Forwarding of the gang-chart by the district police in-charge: When the gang-chart along with all the Forms is received by the Senior Superintendent of Police/Superintendent of Police with the clear recommendation of the Additional Superintendent of Police, he will also thoroughly analyze all the facts and when it is confirmed that all the formalities of the Act have been fulfilled and there is a legal basis for taking action in the case, then he should forward the gang-chart to the Commissioner of Police/District Magistrate stating that: "I have duly perused the gang-chart and attached forms and I am fully satisfied that all the particulars mentioned in the case are correct and there is a satisfactory basis for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act 1986. Accordingly, approved"

(3) Resolution of the Commissioner of Police/District Magistrate: When the gang-chart is sent to be the Commissioner of Police/District Magistrate along with all the Forms, all the facts will also be thoroughly perused by the Commissioner of Police/Districts Magistrate and when he is satisfied that the basis of action exists in the case, then he will approve the gang-chart stating therein that: "I duly perused the gang-chart and attached Forms in the light of the evidence attached with the gang-chart, satisfactory grounds exist for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. The gang-chart is approved accordingly."

It is noteworthy that the words written above are only illustrative. There is no compulsion to write the same verbatim but it is necessary that the meaning of approval should be the same as the recommendations written above, and it should also be clear from the note of approval marked."

32. Satisfaction of the competent authority only means that the competent authority must be in fact satisfy and not a dishonest satisfaction, which will be no satisfaction at all. The satisfaction contemplated by the Gangster Rule is satisfaction in point of fact on the materials placed before the competent authority. The satisfaction of the competent authority referred to under the Rule is not with respect to the allegations levelled against the gangster but the satisfaction is confined to those allegations that the accused can be prosecuted under the Gangster Act. Whatever may be the nature of charge against the accused, the satisfaction of the competent authority should be with regard to that the materials placed before him and the nature of the accused indulging in community antisocial activities. It is expedient to sanction prosecution under the Gangster Act.

33. The expression satisfied is much narrower than "application of mind'. The competent authority is not to apply his mind and satisfy himself as to whether the material placed before him would be sufficient for convicting the accused under the Gangster Act. The satisfaction is confined within a narrow domain based on the materials placed before the competent authority, the authorities forwarding the gang chart is satisfied that the accused should be prosecuted under the Gangster Act. The expression satisfaction is not satisfaction on evidence but a prima facie

satisfaction based on the representations of the nodal authority and the district police that the accused should be prosecuted under the Gangster Act.

34. Rule 17 mandates that the competent authority is bound to exercise its own independent mind while forwarding the gang chart and should not be on a pre-printed rubber seal gang chart. Rule 17 reads thus:

"17 (1) the Competent Authority shall be bound to exercise its own independent mind while forwarding the gang-chart.

(2) A pre-printed rubber seal gang-chart should not be signed by the Competent Authority; otherwise the same shall tantamount to the fact that the Competent Authority has not exercised its free mind."

35. Rule 18 provides that gang chart shall be sent only in the manner as given in Form No. 1 of these rules.

36. Rule 17 and 18 would have to be read together. Gang chart has to be sent in the prescribed Form No. 1. The endorsement to be made by each of the authorities have also been specified in Rule 16. The rule itself prescribes and mandates a printed Form. Rule 17 merely mandates that the competent authority while approving the gang chart should not be swayed by the recommendation of the police authorities mechanically but should satisfy himself independently that the grounds for prosecution is made out. The satisfaction at that stage is subjective and does not rest upon any evidence. The competent authority has to satisfy that the materials placed with the gang chart calls for prosecution. The stage of collecting evidence follows thereafter. The scope of judicial review is miniscule, the accused cannot challenge the FIR without challenging the gang chart. The question as to whether the antisocial activities of the proposed accused is that of a gang or gangster is a matter of investigation.

37. Rule 22 clarifies and specifies that a single act/omission will also constitute an offence under the Act and a first information report must be registered on the basis of a single case. Rule 22(1) reads thus:

"22(1) A single act/omission wi*ll also constitute an offence under the Act, and First Information Report may be registered on the basis of a single case i.e., it is not mandatory that any criminal history must be recorded and alleged before registering an offence under the Act."*

38. Further, sub-rule (2) of Rule 22 necessarily provides prosecution on certain class of cases, on a single offence which includes Section 302, 376D, 395, 396 or 397 of Indian Penal Code out of the offences mentioned in sub-clause (i) or clause (b) of Section 2 of the Act.

41. The submission of the learned counsel for the petitioners that there was no "discussion' by the competent authority with the police officers before approving the gang chart would not be fatal to the prosecution of the petitioners. The expression "discussion' has to be followed mandatorily by the competent authority in every case does not follow from reading of the

Rule, though the rule employs the word "shall'. The Gangster Rule no where mandates the consequence of not following "discussion' by the competent authority. In our opinion the rule mandating discussion is directory. It is left to the discretion of the competent authority, having regard to the material placed before him for approval of the gang chart. In a case, on the materials, the competent authority is convinced and prima facie satisfied that a case for prosecution is made out he may approve the gang chart bypassing discussion with the police officials. But in a case where the competent authority is not convinced or in two mind, on the material placed by the police authorities, the competent authority may necessarily decide to call for a discussion to prima facie satisfy himself that prosecution is warranted. The FIR that follows the approval of the gang chart cannot be faulted or quashed merely for want of discussion."

20. Another Division Bench of this Court in the case of **Narendra Kumar vs. State of U.P. and 3 Others, passed in Criminal Misc. Writ Petition No.15487 of 2023,** decided on 04.10.2023 has followed the judgment of **Ambuj Parag Dubey (supra)**. The relevant paragraphs no.11 to 17 are reproduced as under:-

"11. Applying the aforesaid principles there can be no two opinions that the words "the gang chart shall not be approved within the completion of investigation of the base case" are hardly open for any other interpretation as the words are plain and unambiguous and admits only one meaning and should be read as it is. Once this statutory mandate is taken as such the requirement of 'certified copy' of gang chart (or recovery memo) can safely be held or interpreted to be only 'procedural' in nature and only mandate of Rule 10 of the Rules would be that a copy certified by any competent person (which is being discussed in subsequent paragraphs) shall be attached with the gang chart. Any other interpretation of Rule 5(3)(c) read with Rule 10 of the Rules would frustrate the purpose and object of enactment of the Act and the Rules framed thereunder.

12. We, therefore, find that as the only requirement of law as per the above quoted Rule 5(3)(c) is that there should be a completion of the investigation of the base case before approval of the gang-chart, and the same had clearly been done in the present case. Therefore, filing or non-filing of the charge-sheet in the court concerned before preparation of the gang chart is immaterial and that the only requirement is that the charge-sheet should be available with the concerned authority before approval of the gang-chart.

13. In the present case of the petitioner herein Narender Kumar, at the cost of repetition, it is highlighted that date of completion of investigation is 6.2.2023; the process of approval of the gang chart started on 17.3.2023 and the approval of the gang-chart was given by the Commissioner of Police, Gautam Budh Nagar on 20.3.2023, hence there is no violation of Rule 5(3)(c) of the Rules.

14. Insofar as violation of Rule 10 of the Gangster Rules is concerned, submission is that there should exist a certified copy of the charge-sheet at the time of making draft gang chart. We find that the charge-sheet has been prepared by the Investigating Officer under his signatures and the investigation had already been concluded before preparation of the gang chart. We are of the opinion that there should be a copy duly certified by the Officer only, who is having control over

the document and it is no where required that it has to be a certified copy having been issued by the court of law. Rule 10 of the Rules, 2021 nowhere says that copy of the charge-sheet has to be a copy certified by the Court or a certified copy of the charge-sheet issued by the Court. Submission of charge-sheet in the Court is not a prerequisite of Rule 10 of the Rules.

15. As the intention of the legislature is that the provision of Gangster Act can be imposed after completion of the investigation, therefore, it can be safely concluded that the copy of the charge-sheet or the recovery memo duly certified by the competent authority or the authority having control over such document i.e. Investigating Officer are sufficient for the said purpose. In this regard, a reference may be made to Rule 22 of the Rules, 2021, also heading whereof itself provides that criminal history is not mandatory and sections of the Gangster Act can be imposed in the course of investigation of any base case, falls under category of certain offence mentioned in Rule 22 (2) of the Rules, 2021.

16. The controversy has already been decided by Hon'ble Apex Court in the case of Shraddha Gupta vs The State Of Uttar Pradesh decided on 26 April, 2022 in Criminal Appeal No. 569-570 of 2022 that the provisions of Gangster Act can be imposed on the basis of a solitary case.

17. In addition, the object of enacting the Gangster Act and the Rules framed thereunder may also be taken note of, which are noted as under:

Of the Act:

"An act to make special provision for the prevention of, and for coping with, gangsters and anti-social activities and for matters connected therewith or incidental thereto."

Of the Rules:

In exercise of the powers conferred by Section 23 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No. 7 of 1986) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904) and in suppression of all Government Orders and Notifications made under the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No. 7 of 1986), except as respect things done or omitted to be done before such suppression, the Governor is pleased to make the following rules with a view to provide for a speedy and transparent procedure to punish gangsters, to establish an efficient recovery system in respect of property of gangsters and incidental benefits acquired by them through crimes and acts related therewith."

21. Even, in the judgment of Division Bench of this Court in **Anil Mishra (supra),** the provisions of the Gangster Act have been again discussed and it was noted that there was no violation of any provisions of the Gangster Act and the Gangster Rules. So far as the violation of Rule 10 of the Rules, 2021 is concerned, submission is that there should exist a certified copy of the chargesheet at the time of making draft of gang chart. I find that the chargesheet has been prepared by the Investigating Officer under his signature in the base case on 20.09.2024 and the investigation had already been completed before preparation of the gang chart on 21.09.2024. Therefore, the gang-chart was prepared as per Rule 5(3) (c) of the Rules, 2021.

22. Therefore, there should have been a copy duly certified by the officer only who is having control over the document and it is nowhere required that it has to be a certified copy having been issued by the court of law. Rule 10 of Rules, 2021 nowhere says that copy of the chargesheet has to be a copy certified by the court.Therefore, there is no violation of Rules 10(1) of the Rules, 2021. Submission of charge-sheet in the court is not a prerequisite of Rule 10(1) of the Rules, 2021.

23. At this stage, the Court deems it appropriate to explain the requirement of attaching certified copy of the charge-sheet as per Rule 10. To appreciate this, Rule 60 of the Rules of 2021 needs thoughtful consideration and is quoted hereinbelow:-

"60.Certified copies shall be primary evidence- Notwithstanding anything to the contrary contained in any other Act, in the trial of cases under this Act the criminal cases included in the gang-chart and the FIRs mentioned in the list can be proved by the Officer certifying the certified copy of the charge-sheet. No original form shall be required for the same and the facts contained in the Forms so proved shall be deemed to be proved unless it is rebutted by any evidence to the contrary."

24. Significantly, Rule 60 finds place in Chapter-8 of the Rules with a heading-General Rules of Trial. The Rule clearly reflects that certification of a charge-sheet is associated with the police officer, however, it clearly and unambiguously relates to trial of cases under the Act and the role of the officer has been assigned only to prove the certified copy of the charge sheet during the course of trial itself. Therefore, proving certified copy of the charge-sheet has nothing to do with preparation or approval of the gang-chart at the initial stage of proceedings, rather Rule 60 would come into application during the course of trial and that would certainly begin when the charge-sheet is submitted before the court concerned and cognizance is taken thereon, otherwise, trial cannot begin. The language used in Rule 60 is clear and unambiguous, i.e., certifying the certified copy of the chargesheet and not certifying the cahrgesheet itself. Therefore, Rule 60 would come into play at that stage when gang-chart alongwith certified copy issued by the competent Court is already filed before the Trial Court and the police officer is called upon during the course of trial to certify that certified copy of the charge-sheet. Hence, it cannot be said that Rule 60 would empower the police officer to certify the charge-sheet itself during the course of investigation so as to satisfy the requirement of Rule 10 which casts mandatory duty upon police officer to compulsorily attach the certified copy of the charge-sheet alongwith gang-chart.

25. The Court has got the occasion to go through certain judgements pronounced by esteemed co-ordinate benches of our Court where necessity of attaching certified copy of the charge-sheet has been discussed. In the judgements dated **31.05.2023, 02.05.2023 and 28.08.2023 passed in Criminal Misc. Writ Petition Nos.5202 of 2023 (Manoj Maurya vs. State of U.P. and another), 19638 of 2022 (Binni Lala @ Vinod Kumar Jain vs. State of U.P. and 3 others) and 12808 of 2023 (Rahul Saxena @ Bhola/Bholu vs. State of U.P. and 3 others)** respectively, the Co-ordinate Benches of this Court have dealt with Section 76 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act of 1872') and have observed that it is not the requirement of law, particularly, Rule 10 of the Rules of 2021, to attach certified copy of the charge-sheet obtained from the court concerned, rather the certification made by the public officer in whose custody of public document remains, would suffice, provided requirements of Section 76 are satisfied.

26. It was also argued by the learned counsel for the applicant that the provisions of Rule 8(2) of the Rules, 2021 were not followed and false information was entered in the gang-chart. On being confronted, the counsel for the applicant could not point out as to what false information was

mentioned in the gang-chart. Therefore, in the opinion of this Court, no false information is mentioned in the gang chart.

27. Rule 22 of the Rules, 2021 also makes it clear that criminal history is not mandatory and sections of the Gangster Act can be imposed in the course of investigation of any base case, falls under category of certain offences mentioned in Rule 22 of the Rules, 2021. The controversy has already been decided by the Hon'ble Apex Court in the case of Shraddha Gupta (supra) that the provisions of the Gangster Act can be imposed on the basis of a solitary case.

28. In para 37 of **Shraddha Gupta (supra)** it has been held by the Hon'ble Apex Court that even on the basis of a single case Gangster Act can be imposed, which is quoted as under:-

"Now so far as the main submission on behalf of the accused that for a single offence/FIR/charge sheet with respect to any of the anti- social activities, such an accused cannot be prosecuted under the Gangsters Act, 1986 is concerned, on a fair reading of the definitions of 'Gang' and 'Gangster' under the Gangsters Act, 1986, it can be seen that a 'Gang' is a group of one or more persons who commit/s the crimes mentioned in the definition clause for the motive of earning undue advantage, whether pecuniary, material or otherwise. Even a single crime committed by a 'Gang' is sufficient to implant Gangsters Act on such members of the 'Gang'. The definition clause does not engulf plurality of offence before the Gangsters Act is invoked."

29. Needless to say that Gangster Rules, 2021 have been considered in great detail in **Ambuj Parag Dubey (supra**) and the manner in which satisfaction is to be recorded has been laid down, therefore, in view of the judgment of **Ambuj Parag Dubey (supra)**, I find that in the present case satisfaction has been recorded as per Rules, 2021 and Form-I of the Gangster Act, which provides the format of the gang chart. I, therefore, find that the satisfaction was recorded by the authorities in the manner as per the provisions of the Rules, 2021 and it cannot be said that satisfaction was not recorded in accordance with the Rules, 2021.

30. From the discussion made hereinabove. I, therefore, find that the present application is devoid of merit and is accordingly **dismissed.**

31. No order as to costs.

(2026) 2 ILRA 867
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.02.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS. No. 45399 of 2025

Vipin Kumar & Ors. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the allegations of sexual intercourse on false promise of marriage by a married man, along with intimidation by co-accused, are sufficient to proceed with trial, or whether continuance of trial would amount to abuse of process of law?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 528, 180, 183 - Bharatiya Nyaya Sanhita, 2023 - Sections 69, 115(2), 351(3), 352 - Indian Evidence Act, 1872 - Section 114A - Code of Criminal Procedure, 1973 - Section 482: - Application under Section 528 BNSS – against charge sheet and summoning order as well as the entire criminal proceedings - FIR – allegation of sexual intercourse on false promise of marriage, blackmail, intimidation, repeated pregnancies and abortions – victim's statements under Sections 180 & 183 BNSS consistent – medical certificate records accused as father of child – chargesheet – summoning order - applicants pleaded consensual relationship, prior knowledge of marriage, delay in FIR, reliance on precedents – Court finds, victim unaware of marital status initially, promise deceitful from inception, prima facie case made out – further, observed that, Section 69 BNSS specifically criminalizes sexual intercourse by deceitful means including false promise of marriage – scope of quashing of proceedings limited to rarest of rare cases – held, Scope of High Court's powers under Section 482 CrPC / Section 528 BNSS are very wide, but should be exercised with circumspection and in rarest of rare and appropriate case – relying on the law laid down by the Hon'ble Supreme Court and considering the facts i.e. Victim's consistent statements, medical evidence, and admitted paternity establish prima facie case – application is devoid of its merit and is dismissed. (Para – 11, 17, 18)

Application Dismissed. (E-11)

CASE LAW CITED

Amol Bhagwan Nehul v. State of Maharashtra (2025 SC)
Mahesh Damu Khare v. State of Maharashtra (2024 SC)
Uday v. State of Karnataka (2003 SC)
Yedla Srinivasa Rao v. State of Andhra Pradesh (2006 SC)
Pramod Suryabhan Pawar v. State of Maharashtra (2019 SC)
Kuldeep Verma v. State of U.P. (2026 AHC)
Kurukshetra University v. State of Haryana (1977 SC)
State of Haryana v. Bhajan Lal (1992 SC)
Som Mittal v. Government of Karnataka (2008 SC)
Naresh Potteries v. Aarti Industries (2025 SC)
Punit Beriwala v. State (NCT of Delhi) (2025 SC)

LIST OF ACTS

Bharatiya Nyaya Sanhita, 2023 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Indian Evidence Act, 1872 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Application under section 528 – chargesheet – summoning order – aggravated criminal intimidation – voluntary causing hurt – intentional insult – consensual in nature - False promise of marriage - Deceitful means - Consent under misconception - Quashing of proceedings - Prima facie case – blackmail – social media – victim – recorded videos and photos – prima facie – compromise - - Abuse of process - Rarest of rare case - Section 69 BNSS - application dismissed.

CASE ARISING FROM

Case Crime No. 312 of 2025, P.S. Deoband, Saharanpur - Case No. 554 of 2025 (State vs. Vipin Kumar & Others) - FIR dated 22.05.2025 - Charge sheet dated 22.07.2025 - Summoning order dated 26.08.2025.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Syed Safdar Ali Kazmi.
Counsel for Respondent(s): Shri Sheshadri Trivedi and Ms. Seema Shukla, A.G.A.

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

1. Heard, Shri Syed Safdar Ali Kazmi, learned counsel for the accused-applicant; Shri Sheshadri Trivedi, learned counsel for the opposite party no. 2; and Ms. Seema Shukla, learned A.G.A. for State.

2. The present application under Section 528 BNSS has been moved by four accused-applicants with a prayer to quash the charge sheet dated 22.07.2025, the summoning order dated 26.08.2025 and the proceeding of Case No. 554 of 2025 (State Vs. Vipin Kumar and others) before the court of Additional Chief Judicial Magistrate, Deoband, Saharanpur arose out of Case Crime No. 312 of 2025, under Sections 69, 115(2), 352, 351(3) of BNS. The main allegations of sexual intercourse on false promise of marriage is leveled against the accused applicant no. 1, the other accused who are wife, sister and brother-in-law of applicant no. 1 have been charge sheeted for the offence of voluntary causing hurt, intentional insult and aggravated criminal intimidation along with applicant no. 1

3. The FIR is lodged by opposite party no. 2 on 22.05.2025 against the above four accused applicants with the allegation that the victim (opposite party no. 2) came in contact with accused applicant no. 1 through facebook and since May 2018 was continuously entering into sexual intercourse on false promise of marriage. Four times the victim became pregnant and all the time she was aborted, she was again pregnant for the fifth time. Whenever she asked for marriage, the applicant no. 1 managed to escape the reply. Hearing the pregnancy of the victim, the accused applicant no. 1 has started putting pressure on her to abort the child but she refused. The accused applicant has refused to marry her and threatens her to kill, voluntary hurt and hurl abuses. The first applicant's wife, sister and brother-in-law, then started threatening to kill her, offered her money and pressurised her family for compromise on a heavy amount. It is further revealed from the FIR that applicant no. 1 is also having her indecent photographs and videos and he used to blackmail her. On 24.12.2024, the applicant no. 1 has called the victim in a hotel and entered into sexual intercourse, on which she became pregnant fifth time. It is also disclosed that the accused applicant no. 1 did the same act with other girls. On 11.05.2025 the applicant no. 1 has taken the victim to a Doctor for abortion.

4. The victim in her statement under Section 180 BNSS has reiterated the same incident as narrated in the FIR. She further stated that she is 26 years of age, did her graduation (Bachelor of Arts), the course of GNM (General Nursing and Midwifery) and was six months pregnant at the time of recording her statement.

5. The victim thereafter gave her statement under Section 183 BNSS wherein she has again reiterated the averments made in the FIR and further stated that the applicant no. 1 and she were friends through facebook, she was called by applicant no. 1, after 56 months of their friendship in a hotel at Saharanpur, where the accused applicant no. 1 has entered into sexual intercourse against her consent by alluring that they belong to the same caste, knew each other for quite sometime and assured her that he will not do any wrong to her. The victim was not having any idea when the accused applicant no. 1 had shot her video and photos while entering into sexual intercourse and therefore started blackmailing her for subsequent sex and abortion. He has also sent video to her

mobile phone. Only sometime back she came to know that the applicant no. 1 is married having two children. When his wife had called her for entering into compromise, then she came to know that applicant no. 2 belong to her village.

6. Victim's father has stated in his statement under Section 180 BNSS that the victim was not knowing that the accused applicant is the husband of applicant no. 2 Priti, who belong to the same village. He further stated that the accused are pressurizing the victim and family to enter into compromise.

7. On these allegations the accused applicants have come up with the application to quash the entire proceedings on the ground that the relation between the two was consensual in nature. It is the contention of learned counsel for applicants that there is no deceitful means applied by the accused applicant no. 1 to enter into sexual intercourse with the opposite party no. 2. He further submits that there is no false promise of marriage given by the accused applicant no. 1 to the victim, who has attended the marriage of accused applicant no. 1 and applicant no. 2 in the year 2016 along with her family and knew that the accused applicant is married, despite that she has entered into sexual intercourse with applicant no. 1 just to fetch the financial support from the accused applicant no. 1. The FIR was registered, when this financial support was refused by the applicant no. 1. He submits that during her medical examination, the victim has specifically stated before the Doctor that she knew three years back that the accused applicant no. 1 is a married man. He further admits that the child born out of the illegitimate relation between the accused applicant no. 1 and victim shall be taken care of and the right of child will be safeguarded. Further submits that the FIR is highly delayed the victim is educated lady, she knew the pros and cons of her conduct of entering into sexual relations with the applicant no. 1. In support of his contention, learned counsel has relied on the judgment passed in ***Amol Bhagwan Nehul Vs. State of Maharashtra and another1; Mahesh Damu Khare Vs. State of Maharashtra2; and Uday Vs. State of Karnataka3.***

8. Learned A.G.A. for State and learned counsel for opposite party no. 2 submit that there is ample material on record to show that the accused applicant no. 1, who is already married, but has given a promise to the victim to enter into marriage, who has been in contact with the victim since long through facebook. The accused applicant no. 1 is married and he knew that his promise to marry is deceitful from the beginning. The accused applicant has called the victim to a hotel where he has assured her of marriage, procured her consent and entered into sexual intercourse with her. The accused applicant himself is in hotel business and therefore, he has shot the video and photos of the victim while in intimate acts and blackmailed her, because he knew that he is a married man and he cannot fulfill the promise of marriage. Therefore, in order to blackmail the victim, he has recorded the videos and photos surreptitiously fixing the camera in the hotel room. Further submits that it is an excuse projected by the accused applicant that the victim knew prior to entering into relation with applicant no. 1 that he is married. Further submits that the allegations levelled by the applicants that they have given financial assistance to the victim and when that financial assistance was demanded back, the FIR is lodged. This allegation is not a part of case diary. Further submits that the accused applicant no. 1 is absconding and did not appear to the court with clean hands, as he is not appearing before the trial court. Further submits that Section 114A of the Indian Evidence Act 1872, a presumption as to absence of consent in certain prosecution for rape, as the accused

applicant no. 1 has repeatedly raped the victim. Hence submits that the application is devoid of merit and is liable to be dismissed. In substantiation of his arguments learned counsel for opposite party no. 2 has relied on the judgment in ***Yedla Srinivasa Rao Vs. State of Andhra Pradesh4 (Paragraph No. 15 to 17).***

'[15] In this connection reference may be made to the amendment made in the Indian Evidence Act. Section 114 A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114-A reads as under:

Section 114 A- Presumption as to the absence of consent in certain prosecutions for rape.- In a prosecution for rape under Cl. (a) or Cl.(b) or Cl.(c) or Cl. (d) or Cl. (e) or Cl. (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent."

[16] If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her.

[17] In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law. This is more evident from the testimony of PW1 as well as PW6 who was functioning as Panchayat where the accused admitted that he had committed sexual intercourse and promised to marry her but he absconded despite the promise made before the Panchayat. That shows that the accused had no intention to marry her right from the beginning and committed sexual intercourse totally under the misconception of fact by prosecutrix that he would marry her. Therefore, we are satisfied that the conviction and sentence awarded to the appellant is correct and no case is made out for our interference. The appeals are dismissed.'

9. This Court has taken into consideration the rival submissions made by the parties and perused the record.

10. **Point of concern in the present application is whether prima facie the allegations levelled by the victim on the applicant accused is sufficient to proceed with the trial or continuance of the trial would amount to gross abuse of process of law?**

11. Following facts culled out from the bare reading of FIR, statement of victim recorded under Sections 180 and 183 BNSS and the record of the case;

11.1 The victim came in contact with the accused through a social media app;

11.2 The accused applicant is already married;

11.3 The victim was called in a hotel in the year 2018 and entered into sexual intercourse with her on false promise of marriage.

11.4 The victim was pregnant at the time of lodging of the FIR and gave birth to a baby girl on 01.10.2025, in the medical certificate, the name of father is record as the name of applicant no. 1.

11.5 It is admitted by the accused applicant that the child is born of the victim from accused applicant no. 1;

11.6 The victim was repeatedly subjected to sexual intercourse on false promise of marriage;

11.7 There is continuous pressure on victim and her family for entering into compromise.

12. The charge sheet is submitted against the accused applicant no. 1 for the offence of sexual intercourse on false promise of marriage and for criminal intimidation, voluntary causing hurt on other applicants.

13. This Court while deciding the case of ***Kuldeep Verma Vs. State of U.P. and another5*** (authored by Avnish Saxena, J.) has dealt with the new Section 69 of Bhartiya Nyaya Sanhita, 2023. The relevant paragraph nos. 15, 16 and 21 are reiterated underneath:

'15. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that 'Whoever, ***by deceitful means*** *or* ***by making promise to marry*** *a woman* ***without any intention of fulfilling the same, has sexual intercourse with her,*** *such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.'*

16. The provision contained in Section 69 of B.N.S. is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage is not 'Rape', but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section 69 B.N.S. of 'Deceitful means' 'shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity.

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21. Even otherwise Section 69 B.N.S. provides for sexual intercourse by employing deceitful means and false promise of marriage as one of the deceitful means. In the case of ***Pramod***

Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608, *Hon'ble the Supreme Court has drawn a clear distinction between 'false promise of marriage, which is given on understanding by the maker that it will be broken' and 'a breach of promise which is made in good faith but subsequently not fulfilled'. It is former which out rightly attracts penal provision.'*

14. Learned counsel for applicants has relied on three judgments of Hon'ble the Supreme Court. The case of ***Amol Bhagwan Nehul (supra)*** is not applicable in the present case because the fact of the case is that the allegation of rape on false promise of marriage continued for more than one year leveled by a woman having a child, obtained Khulanama, not a formal divorce, from her erstwhile husband and the allegation is levelled on a student, who was residing next door with three other men. It is in this backdrop that Hon'ble the Supreme Court in paragraph 11 has quashed the proceedings of the criminal case. The relevant paragraph no. 11 is reiterated underneath:-

11. Taking into consideration that the Appellant is just 25 years of age, and has a lifetime ahead of him, it would be in the interest of justice that he does not suffer an impending trial and, therefore, the proceedings emanating from C.R. No. 490/2023 dt. 31.07.2023 are quashed at this stage itself.

15. The case of ***Mahesh Damu Khare (supra***) is also not applicable in the present set of facts because in that case the victim knew that accused was having two wives, while she was working in his house. Hence, Hon'ble the Supreme Court has observed that the sexual intercourse on false promise of marriage cannot be considered as rape on deceitful means. Paragraph No. 26 and 27 of the judgment relied by learned counsel for applicant is reiterated underneath:-

'*26. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:*

(i) The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been in physical relationship since then till 2017 without protest in spite of alleging that the appellant had done so without her consent.

(ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by giving false promise of marriage.

(iii) The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.

(iv) The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.

(v) The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.

27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.'

16. In the same way the case of ***Uday (surpa)*** is also not applicable in the present case, as in that case the accused and victim were neighbours and used to meet each other regularly. Once the accused has proposed her for marriage, on which the victim has refused, as she belongs to different caste. It is thereafter that the allegation of rape on false promise of marriage has been levelled by the victim. The relevant paragraph 21 relied by learned counsel for applicant is reiterated underneath:-

'21. It, therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.'

17. In the present case the accused applicant is a married man and came in contact with the victim through social media app. Called the victim to a hotel where the accused applicant no. 1 had entered in sexual intercourse with the victim. It is the case of victim that she was not knowing that the accused applicant no. 1 was married. She also did not know whether the accused applicant no. 1 is the husband of a girl of her village. The prior knowledge of victim that applicant no. 1 was married at the time when she entered into sexual intercourse with him is the matter of trial, because the record is clear and explicit on the point that the victim was not knowing about the marital status of applicant no. 1. Moreover, the accused applicant no. 1 while entering into sexual intercourse with the victim knew that he is a married man and his false promise of marriage to the victim will be broken, therefore, the allegation of deceit is from the very beginning of entering into sexual intercourse. The point of consent of sexual intercourse, knowing the marriage of applicant no. 1, is the matter of trial and the allegation of criminal intimidation levelled on other co-accused, applicant nos. 2 to 4 is also apparent and explicit on record and subject matter of trial.

18. The scope of ambit of the powers of the High Court invoking under Section 482 CrPC or 528 BNSS are very wide, but should be exercised with circumspection and in rarest of rare and appropriate cases. This power do not confer arbitrary jurisdiction to act according to whims and caprice and is used to prevent the abuse of process of law and for procuring the ends of justice. This preposition of law is enunciated in the cases of ***Kurukshetra University Vs. State of Haryana6 and the State of Haryana Vs. Bhajan Lal7.*** In the case of Som Mittal Vs. Government of Karnataka8, Hon'ble the Supreme Court has given an expression of 'rarest of rare case', while describing the scope of Section 482 CrPC. This view is consistently maintained by Hon'ble the Supreme Court till the present day, which is settled by 'en' number of judgments, latest are ***Naresh Potteries Vs. Aarti Industries9 and Punit Beriwala Vs. State (NCT) of Delhi10.***

19. Therefore, the application under Section 528 BNSS is devoid of merit and is **dismissed.**

(2026) 2 ILRA 875
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.02.2026

BEFORE

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

Appeal U/S 37 Of Arbitration & Conciliation Act 1996 No.- 5 of 2024

Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow ...Applicant
Versus
M/S Trishul Enterprises ...Respondent

Issue for Consideration

Issue pertains to whether the arbitral award dated 20.08.2020, as affirmed by the Commercial Court u/s 34 of Arbitration and Conciliation Act, 1996, suffers from patent illegality or jurisdictional error warranting interference u/s 37 of the Act, particularly on the ground that the Sole Arbitrator exceeded the scope of reference by adjudicating claims beyond the terms of contract and the arbitration agreement.

Headnotes

Arbitration and Conciliation Act, 1996 - ss. 11, 34, 37 - Code of Civil Procedure, 1908 - O. 2 R. 2 - Arbitral Award - Modification - Severability - Jurisdiction of Arbitrator - Appeal - Scope of - Arbitration clause - Interpretation of - The instant dispute emanates from an agreement dated 16.04.2008 executed between the appellant, and respondent contractor for carrying out landscaping and maintenance works for a stipulated period, which agreement incorporated an arbitration clause - Upon the expiry of contract and emergence of disputes, particularly concerning alleged non-payment of dues including security deposit and other claims, the respondent initially approached the High Court by way of writ petition seeking, inter alia, appointment of an arbitrator, pursuant to which a Sole Arbitrator came to be appointed - Owing to certain procedural delays and change of arbitrator, fresh arbitral proceedings were commenced, culminating in an award dated 20.08.2020 whereby the Arbitrator partly allowed the respondent's claims, including refund of security deposit, reimbursement towards provident fund contributions, and other monetary reliefs - The appellant, assailing the said award as being contrary to the terms of contract and beyond the scope of reference, instituted proceedings u/s

34 of Arbitration and Conciliation Act, 1996 before the Commercial Court, which, by judgment dated 29.11.2023, dismissed the challenge and upheld the award - Aggrieved thereby, the appellant has preferred the instant appeal u/s 37 of the Act before the High Court, calling into question the legality and jurisdictional validity of arbitral award as affirmed by Commercial Court.

Held: Considering the findings given by Sole Arbitrator while considering issue nos. 5 and 12, it would reveal that the Arbitrator has entirely misconstrued the agreement and has gone beyond the terms of contract rendering the award susceptible to judicial interference - The Commercial Court No.1 also fell in the same error and it failed to consider the terms of contract and the manner in which it was construed by Sole Arbitrator - The manner in which the Commercial Court No.1 decided the petition u/s 34 of Act of 1996 by merely considering the respective contention, noticing certain decisions of Apex Court and without appreciating its applicability to the given set of facts and circumstances of case at hand and it dismissed the petition, cannot be appreciated in law - Thus, the claim relating to Employee Provident Fund Contribution granted by Sole Arbitrator and upheld by Commercial Court No.1 is unsustainable in law and is liable to be set aside - It is a fit case where certain claims which could not have been granted can be severed from the award and preserve the remaining part rather than setting aside the entire award - Accordingly, the claims under the head of Employee Provident Fund Contribution reimbursement of Rs.6,17,629/- alongwith interest at the rate of 18% per annum and the claim relating to refund of security money of Rs.6,12,000/- and bill of Rs.9456/- with 18% interest per annum are disallowed and rejected - The rest of claims as awarded shall remain intact and preserved - Accordingly, the award dated 20.08.2020 shall stand modified - It will be open for the respondent to raise his claims relating to return of security money and any other outstanding bill of claims pertaining to contract No.107 of 2013 - 2014, if the law so permits, before the appropriate forum/court - **Appeal partly allowed**. [Paras 40, 46 to 48] (E-13)

Case Law Cited

State of Chhattisgarh v. SAL Udyog (P) Ltd., **(2022) 2 SCC 275;** *PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and others*, **AIR 2021 SC 4661;** *Group 4 Securities Guarding Ltd. v. Employees Provident Fund Appellate Tribunal and others,* **2011 Lawsuit (Del) 3837;** *B.R. Patil v. Tulsa Y. Sawkar,* **2022 SCC OnLine SC 240;** *UCM Coal Co. Ltd. v. Adani Enterprises Ltd.,* **2025 SCC OnLine All 7608;** *M/s. Regenvo Mobile Private Limited Lucknow v. M/s. Siyogi Enterprises and others,* **2026(1) ADJ 250 (DB)(LB);** *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, **(2025) 7 SCC 1 - referred to**

List of Acts

Arbitration and Conciliation Act, 1996; Code of Civil Procedure, 1908

List of Keywords

Arbitral award; Commercial Court; Sole Arbitrator; Maintenance of landscape; Arbitration Agreement; Mandamus; Arbitration clause; Reference to arbitration; Jurisdiction of Arbitrator; Excess of jurisdiction; Terms of contract; Contractual provisions; Interpretation of contract; Creature of contract; Adjudication of disputes; Non-arbitrable disputes; Separate contract; Subject matter of arbitration; Claim petition; Findings of Arbitrator; Reimbursement of provident fund contribution; Refund of security deposit; Imposition of penalty; Deduction from bills; Commercial Court; Severability of award; Modification of award; Setting aside of award; Preservation of award;; Principal employer; Labour law compliance; Arbitral proceedings; Arbitral tribunal; Jurisdictional error; Illegality going to the root of matter; Adjudicatory limits of Arbitrator; Appeal partly allowed.

Case Arising From

APPELLATE JURISDICTION: Appeal u/s 37 of Arbitration and Conciliation Act, 1996 No. - 5 of 2024

From the Judgment and Order dated 29.11.2023 passed by the Commercial Court No.1, Lucknow in Arbitration Case No.119 of 2020

Appearances for Parties

Advs. for the Appellant:
Pritish Kumar, Shubham Tripathi

Advs. for the respondent:
Ashish Gupta (in Person)

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

1. Under challenge is the judgment and order dated 29.11.2023 passed by the Commercial Court No.1, Lucknow in Arbitration Case No.119 of 2020 (Sanjay Gandhi Post Graduate Institute of Medical Sciences Lko. vs. M/s Trishul Enterprises) whereby a petition under Section 34 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the Act of 1996) was dismissed, as a consequence, the award passed by the Sole Arbitrator dated 20.08.2020 has been upheld.

2. In order to appreciate the controversy involved in the instant appeal, it will be appropriate to notice relevant facts leading upto this appeal.

3. An agreement was made between the appellant and the respondent bearing No.1 of 2008-2009, dated 16.04.2008 for the purposes of maintenance of the landscape in the campus of Sanjay Gandhi Post Graduate Institute of Medical Sciences (hereinafter referred to as the SGPGI). The agreement was for a period of three years and it could be extended till the finalization of a new tender process or three months which ever was earlier. The said agreement, inter alia, contained an arbitration clause.

4. The respondent initially filed Writ Petition No.10358 (M/B) of 2015 wherein the respondent sought a writ in the nature of mandamus directing the appellant to appoint an Arbitrator in terms of clause 27 of the agreement dated 16.04.2008. A further writ in the nature of mandamus was sought, seeking a direction for the appellant to release the security money amounting to Rs.6,12,000/- as well as payment of Rs.10,000/- which was allegedly withheld by the appellant. Before the Division Bench of this Court, it was informed by the appellant (who was the respondent in the writ court) that Dr. C.M. Pandey had already been appointed as a Sole Arbitrator. Taking note of the aforesaid statement, the writ petition was disposed of leaving it open for the respondent to get his claims adjudicated before the Sole Arbitrator.

5. In furtherance of the order passed by the High Court dated 06.11.2025 in Writ Petition No.10358 (M/B) of 2015 the respondent filed his statement of claim before the Sole Arbitrator, namely, Dr. C.M. Pandey. Despite the appointment of the Sole Arbitrator, he did not hold any proceedings, which led the respondent to file a contempt petition before the learned Single Judge of this Court bearing Contempt Petition No.427 (C) of 2016 and upon issuance of notice in the contempt proceedings, the Sole Arbitrator proceeded with the matter. However, the said Arbitrator could not conclude the proceedings as he retired.

6. Once again the respondent was compelled to approach the High Court and this time, it filed a petition under Section 11 of the Act of 1996 bearing number Arbitration Application No.29 of 2017 which was decided on 15.03.2019 and a fresh Arbitrator was appointed. This newly appointed

Sole Arbitrator started the proceedings afresh taking it forward from the stage of exchange of pleadings. In the said arbitral proceedings, the respondent filed his statement of claim on 11.12.2015. The appellant (who was the respondent before the Arbitrator) filed its statement of defence including a counter claim dated 26.07.2019. The parties led evidence, and thereafter the Sole Arbitrator allowed the claims in part and made its award on 20.08.2020.

7. The appellant challenged the said award dated 20.08.2020 before the Commercial Court No.1 at Lucknow by filing a petition under Section 34 of the Act of 1996 which was registered as Arbitration Case No.119 of 2020.

8. The Commercial Court No.1 at Lucknow after hearing the parties did not find that there was any error in the award, hence it affirmed the award by means of its judgment dated 29.11.2023 which is under challenge in the instant appeal preferred under Section 37 of the Act of 1996.

9. Shri Pritish Kumar, learned Senior Counsel assisted by Shri Shubham Tripathi for the appellant primarily raised three grounds to attack the award passed by the Sole Arbitrator as well as the judgment passed by the Commercial Court No.1 at Lucknow:

(i) It was urged by the learned Senior Counsel that the Arbitrator committed a manifest error in allowing the claim raised by the respondent relating to refund of security money which was the subject matter of the claim and was covered by issue no.15 as framed by the Sole Arbitrator. It was submitted that the respondent in its claim petition in paragraph 15 had pleaded that after the contract period was over and even defect liability period had come to an end, yet the appellant did not release the security money of Rs.6,12,000/- and further a sum of Rs.10,000/- was illegally retained.

(ii) Learned Senior Counsel pointed out that this claim was absolutely without any basis since in terms of the contract bearing No.1 of 2008-2009, the respondent had merely submitted money security of Rs,3,35,000/- and the same had already been returned to the respondent.

(iii) It was also pointed out that in the statement of defence while replying to para-15 of the statement of claim, it was specifically pleaded that under the Contract No.1 of 2007-2008 the respondent had only given the security money of Rs.3,35,000/- which had been returned. There was no way that any security money was paid amounting to Rs.6,12,000/-. Moreover, the respondent introduced a claim for seeking recovery of security money which related to another contract bearing No.107 of 2013-2014, which was a separate contract all together and the same was not the subject matter of the Arbitral proceedings. The respondent did not raise any claim in respect to the other contract yet by misguiding the Arbitrator the said claim relating to a different contract was introduced in the arbitration proceedings relating to contract no.1 of 2007-2008.

(iv) Learned Senior Counsel further submitted that the controversy before the Sole Arbitrator was only in respect of contract No.1 of 2007-2008 and not the later context which came into being i.e. Contract No.107 of 2013-2014. There was never any claim nor there was any request for referring any dispute emerging from the later contract for arbitration, thus, the said claim could not have been considered in the instant Arbitral proceedings. The Sole Arbitrator ,who is merely a

creature of the contract, could not have extended its jurisdiction to include such a claim which was never the subject matter of reference to arbitration.

(v) Learned Senior Counsel further submitted that the Sole Arbitrator grossly over stepped its jurisdiction to include a claim for refund of security money which did not relate to the contract in question or the reference which was made to the Arbitrator. The Sole Arbitrator purposefully went ahead to grant the claim on the Sole premise that since the claim was between the same parties and there is no clear denial of the said claim, hence in the interest of justice the amount was awarded. This was clearly a patent illegality. Accordingly, the award on the aforesaid ground suffered from excess of jurisdiction and a manifest error which vitiated the award.

10. Learned Senior Counsel for the appellant has further submitted that the Sole Arbitrator committed a grave error in allowing the claim of the respondent relating to the contribution towards provident fund of the employees, which was covered by issues No.5 and 12 as framed by the Sole Arbitrator.

(i) It was submitted that the instant contract was never a labour contract nor the appellant was required to reimburse any Employee Provident Fund Contribution and such liability was the Sole responsibility of the respondent. Neither the appellant was the principal employer nor there was any clause in the agreement between the parties by which the liability of the respondent under the Employee Provident Fund could have been extended to the appellant.

(ii) The Sole Arbitrator completely misread the terms of the contract and rather by granting the aforesaid claim relating to Employee Provident Fund contribution, it has re-written the contract which was neither in the domain of the Sole Arbitrator nor it could be countenanced in law.

11. Learned Senior Counsel has further urged that the Sole Arbitrator exceeded its jurisdiction in awarding a sum of Rs.57,521/- which was alleged to have been deducted by the appellant by imposing a penalty. It was urged that the agreement clearly vested power with the appellant to make any deduction and impose any penalty on the respondent in case of any loss occasioned to the appellant on account of any fault in the working of the respondent. In these circumstances, allowing the claim by treating imposing of penalty and deducting the penalty amount from the bills of the respondent, as being bad in law was not justified. Hence, the award on this count too was erroneous and deserved to be set aside.

12. Learned Senior Counsel also urged that the aforesaid illegality which went to the root of the matter and affected the jurisdiction of the Sole Arbitrator rendering the award patently illegal was demonstrated before the Commercial Court No.1 at Lucknow. However, the said Court took a dim view of the matter and in a cursory manner without considering the material brought to the notice of the Court dismissed the petition under Section 34 of the Act of 1996 which itself was an erroneous exercise of jurisdiction. Hence, the judgment passed by the Commercial Court No.1, Lucknow dismissing the petition under Section 34 of the Act of 1996 dated 29.11.2023 deserves to be set aside as also the award dated 20.08.2020 after allowing this appeal.

13. In support of his submissions, the learned Senior Counsel for the appellant has relied upon the decision of the Apex Court in **State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275 and PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and others, AIR 2021 SC 4661.** He has also relied on a decision of Delhi High Court in **Group 4 Securities Guarding Ltd. v. Employees Provident Fund Appellate Tribunal and others, 2011 Lawsuit (Del) 3837 .**

14. Shri Ashish Gupta, who is a partner of the respondent firm appeared in person and submitted that the award passed by the Sole Arbitrator does not suffer from any manifest error nor the judgment passed by the Commercial Court No.1, Lucknow can be said to be erroneous and does not require any interference of this Court.

(i). Shri Gupta submitted that right from the inception the respondent had made his claim regarding the security money and at no point of time it was ever denied by the appellant nor an objection was taken that it did not relate to the Contract No.1 of 2007-2008.

(ii). Shri Gupta pointed out that when he filed his first writ petition bearing No.10358 (M/B) of 2015 the respondent had clearly sought a relief relating to the refund of the security money of Rs.6,12,000/-. Even before the writ court, it was never alleged by the appellant that the said security money did not relate to the contract in question.

(iii) It has further been submitted by Shri Gupta that it was the appellant who informed the writ court that it had appointed Dr. C.M. Pandey as an Arbitrator. Since, as per the contract the appellant was required to appoint the Arbitrator if the appellant thought fit it could have appointed the said Arbitrator for both the contracts together. However, at this stage, it cannot be said that the Sole Arbitrator has exceeded his jurisdiction in granting the claim for refund of security money relating to the other contract No.107 of 2013-2014.

(iv) Shri Gupta has further urged that in terms of Order 2 Rule 2 CPC, it was open for the respondent to club all his claims together and therefore since the security money was outstanding even though relating to a later contract and had not been refunded, hence the respondent was justified in making his claim in this regard. On the contrary, if the respondent had failed to raise all his claims then he would have been prevented from making his claim in view of the bar contained in Order 2 Rule 2 CPC.

(v) He further submitted that there is no denial of the fact that the said amount was outstanding and was required to be refunded. In this view of the matter, the Sole Arbitrator was justified in allowing the claim, which cannot be said to be bad. Moreover, once on the basis of the 'no denial' an award has been made which is based on evidence on record then such a finding cannot be assailed before the Court under Section 34 of the Act of 1996 and it is for the said reason, the Court rejected the petition of the appellant under Section 34 of the Act of 1996. Apparently, the jurisdiction of this Court to interfere under Section 37 of the Act of 1996 is narrower than scope of interference under Section 34, thus it will not entitle this Court to interfere with the award.

15. Shri Gupta taking his submissions forward urged that while submitting his bid for the contract, he had enclosed two letters dated 01.10.2007 and 30.10.2007 which were part of his bid and it was made part of the contract in terms of clause 23 of the contract. On a meaningful reading of the two letters, which were part of the contract, it would be clear that the respondent quoted his rates for the contract inclusive only of income tax. Any other new tax or duty if imposed was to be paid by the appellant institute over and above the quoted rates.

(i) Relying upon the aforesaid clause 23 and the two letters dated 01.10.2007 and 30.10.2007, it was submitted that the respondent had made his contribution to the Employee Provident Fund and the appellant was required to contribute its share. Since, it was not done hence the respondent had raised his claim which has been allowed by the Arbitrator and upheld by the Court while rejecting the petition under Section 34 of the Act of 1996. A view taken by the Sole Arbitrator which is plausible cannot be interfered with in a petition under Section 34 of the Act of 1996 and certainly not in appeal under Section 37 of the Act of 1996. Thus, the said award does not suffer from any error which may require interference from this Court.

16. Shri Gupta also pointed out that the appellant institute was not justified in imposing a penalty and deducting the same from the bills of the respondent especially without putting the respondent to any notice. (i) In this regard, the respondent had raised his claim and the appellant could not bring any evidence on record which could justify the imposition of penalty and deduction from the bill of the respondent, hence, the claim raised by the respondent was allowed.

(ii) It was stated that there is no palpable error either in the award or in the order passed by the Commercial Court No.1, Lucknow, hence the submission of the learned Senior Counsel for the appellant deserves to be turned down. The award as upheld by the order passed by the Commercial Court No.1, Lucknow requires no interference and the appeal being devoid of merit deserves to be dismissed.

17. Shri Gupta has relied upon the decision of the Apex Court in **B.R. Patil v. Tulsa Y. Sawkar, 2022 SCC OnLine SC 240.**

18. This Court has heard the learned Senior Counsel for the appellant and Shri Ashish Gupta in person for the respondent and also meticulously perused the record.

19. This Court had the occasion to consider the scope of an appeal under Section 37 of the Act 1996 in **UCM Coal Co. Ltd. v. Adani Enterprises Ltd., 2025 SCC OnLine All 7608** and in **M/s. Regenvo Mobile Private Limited Lucknow v. M/s. Siyogi Enterprises and others; 2026(1) ADJ 250 (DB)(LB)**. Keeping the parameters as noticed in the aforesaid two decisions, this Court has proceeded to examine the contention of the respective parties.

20. At the outset, it may be noticed that it is not disputed that two separate contracts were entered between the parties. It is also not disputed that the first contract dated 16.04.2008 bearing Contract No.1 of 2007-2008 was for a period of three years which came to an end in the year 2011. It is also not disputed that the second Contract bearing No.107 of 2013-2014 was entered after the first contract had come to an end in the year 2011. It is also not disputed that under the first

contract, Contract No.1 of 2007-2008, the respondent had furnished the money security for a sum of Rs.3,35,000/-. It is also not disputed that the security money under the first contract was released by the appellant and received by the respondent . It is also not disputed that the sum of Rs.6,12,000/- was the security money given by the respondent in context with the second Contract No.107 of 2013-2014.

21. In this backdrop, it would be relevant to notice that in the first writ petition filed by the respondent bearing No.10358 (M/B) of 2015 the respondent had primarily sought a relief of mandamus commanding the appellant institute to appoint a Sole Arbitrator. This is evident from the copy of the writ petition, which is on record. A Co-ordinate Bench of this Court on 06.11.2015 disposed of the said writ petition with a direction to the respondent herein to submit his claims before the Arbitrator concerned who was required to take a look into the matter and take a decision accordingly. The relevant portion of the order dated 06.11.2025 is being reproduced hereinafter for ease of reference:-

"The petitioner entered into an agreement between himself and Sanjai Gandhi Post Graduate Institute of Medical Science, Lucknow on 16.4.2008 and wants to settle his dispute outside the Court by way of recourse as is provided under Clause-27 of the agreement.

Mr. Rajnish Kumar Advocate, holding brief of Sri I.P.Singh, learned Counsel for Sanjai Gandhi Post Graduate Institute of Medical Science, Lucknow, has submitted that for settlement of dispute Dr. C.M.Pandey, Head of Department, Biostatics and Health Informatics, Sanjai Gandhi Post Graduate Institute of Medical Science, Lucknow, has already been appointed as Arbitrator to settle the dispute.

In view of the aforesaid submission, we hereby direct the petitioner to address his claim before the Arbitrator concerned, who shall look into the matter and take decision accordingly.

Accordingly, this petition is disposed of."

22. From the perusal of the aforesaid order, it would indicate that it specifically referred to the agreement entered between the parties dated 16.04.2008. It will also be relevant to mention that even in the entire writ petition the respondent had not raised any reference relating to the subsequent Contract No.107 of 2013-2014. Thus, the only inference which can be drawn from the order passed by the Division Bench dated 06.11.2015 is that the liberty was granted to the respondent to get his claims adjudicated by the Sole Arbitrator.

23. In this regard, if the statement of claim filed by the respondent is perused, it would reveal that it also relates to Contract No.1 of 2007-2008 and it does not make any reference to the subsequent Contract No.107 of 2013-2014. At this stage, it will also be relevant to notice that in paragraph-15 of the statement of defence containing counter claim filed by the appellant herein a specific plea was taken denying the claim raised by the respondent herein for the security money. For the ease of reference, para-15 of the statement of defence is being reproduced hereinafter:-

"That Claim No.15 as raised in paragraph 15 of the statement of claim pertains to withholding of security deposit of the petitioner of Rs.6,12,000/-. A perusal of the contract in the instant case in Clause 24 would reveal that as far as the present contract is concerned, the security deposit made by the claimant (contractor) was of Rs.3,35,000/- and not Rs.6,12,000/-. Even the security deposit of Rs.3,35,000/- has been released to the claimant (contractor). However, the petitioner has mixed up another contract relating to development of horticulture in the present claim petition, which is not permissible and beyond the scope of instant Arbitrator. The said contract, which bears Contract No.107 of 2013, is not the subject matter of arbitration before this Hon'ble Arbitral Tribunal and, therefore, any claim relating to the said separate contract No.107 of 2013-14 cannot be sustained or maintained by the claimant (contractor) and as such the same deserves to be rejected by this Hon'ble Arbitral Tribunal."

24. From the perusal of the aforesaid paragraph, it would reveal that it was clearly stated that Contract No.107 of 2013-2014 was not the subject matter of the arbitration proceedings and the Arbitral Tribunal could not consider the claim of a different contract in the instant proceedings.

25. The respondent could not dispute the fact that while the evidence was led before the Arbitral Tribunal, no plea relating to the separate Contract No.107 of 2013-2014 was raised nor it was made the subject matter. Despite the clear plea taken by the appellant, no evidence was led by the respondent in this regard to substantiate that in the scope of reference relating to Contract No.1 of 2007-2008, the claim relating to Contract No.107 of 2013-2014 could be introduced in the very same Arbitral proceedings. It also could not be established that the respondent had raised the disputes in respect of both the contracts, rather the record reflects that the disputes which had been raised were particularly in respect of contract bearing No.1 of 2007-2008. There were no pleadings nor evidence brought on record which could give any indication that claims of the subsequent contract was also raised or included.

26. The respondent could not dispute the fact that the Sole Arbitrator which was appointed, whether it be Dr. C. M. Pandey or the Arbitrator appointed vide order dated 22.02.2019, both entered into reference relating to the disputes arising out of Contract No.1 of 2007-2008 and no dispute was referred to the Arbitral Tribunal relating to Contract No.107 of 2013-2014. In this view of the matter, the Arbitral Tribunal was constituted in terms of the Arbitration Clause No.27 emanating from Contract No.1 of 2007-2008 for adjudicating the disputes only in relation to the Contract No.1 of 2007-2008.

27. It is now too well settled to be disputed that the Arbitrator is a creature of the contract and it can only adjudicate such disputes which are referred to it by the parties. It is not open for the Sole Arbitrator to travel beyond the terms of the contract or terms of the reference.

28. This aspect of the matter was considered by this Court in M/s. Regenvo Mobile (supra) wherein in paragraph 38 and 40 it was noticed as under:-

"38. It will be relevant to examine how an arbitration clause is to be interpreted. Whether it requires strict or liberal interpretation so as to expand the scope of arbitral disputes, even though they may not have been explicitly provided in the clause/agreement, was considered by the Apex

Court in (i) **Harsha Constructions v. Union of India, (2014) 9 SCC 246, (ii) United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., (2018) 17 SCC 607, (iii) Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd., (2018) 6 SCC 534**. The aforesaid judgments were relied upon by the Apex Court in its later judgment in **Indian Oil Corpn. Ltd. v. NCC Ltd., (2023) 2 SCC 539 and Emaar (India) Ltd. v. Tarun Aggarwal Projects LLP, (2023) 13 SCC 661.** To avoid duplicacy, the relevant paragraphs of Emaar (supra) is being reproduced hereinafter :

"14. In **Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd. [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484]**, it is observed and held by this Court that the parties are bound by the clauses enumerated in the policy and the Court does not transplant any equity to the same by rewriting a clause. It is further observed and held that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. It is further observed that if a clause stipulates that under certain circumstances there can be no arbitration and they are demonstrably clear then the controversy pertaining to appointment of Arbitrator has to be put to rest (paras 10-23).

15. In **Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153],** it is observed and held by this Court that a party cannot claim anything more than what is covered by the terms of the contract, for the reason that the contract is a transaction between two parties and has been entered into with open eyes and by understanding the nature of contract. It is further observed that thus the contract being a creature of an agreement between two or more parties has to be interpreted giving literal meanings unless there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It is further observed that the terms of the contract have to be construed strictly without altering the nature of a contract as it may affect the interest of either of the parties adversely (para 23).

16. In **Harsha Constructions v. Union of India [Harsha Constructions v. Union of India, (2014) 9 SCC 246 : (2014) 4 SCC (Civ) 803]**, it is observed and held by this Court in paras 18 and 19 as under : (SCC p. 251)

"18. Arbitration arises from a contract and unless there is a specific written contract, a contract with regard to arbitration cannot be presumed. Section 7(3) of the Act clearly specifies that the contract with regard to arbitration must be in writing. Thus, so far as the disputes which have been referred to in Clause 39 of the contract are concerned, it was not open to the Arbitrator to arbitrate upon the said disputes as there was a specific clause whereby the said disputes had been "excepted". Moreover, when the law specifically makes a provision with regard to formation of a contract in a particular manner, there cannot be any presumption with regard to a contract if the contract is not entered into by the mode prescribed under the Act.

19. If a non-arbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the Arbitrator. In the instant case, the respondent authorities had raised an objection relating to the arbitrability of the aforestated issue before the Arbitrator and yet the Arbitrator had rendered his decision on the said "excepted" dispute. In our opinion, the Arbitrator could not have decided the said "excepted" dispute. We, therefore, hold that it was not open to the Arbitrator to decide the issues which were not arbitrable and the award, so far as it relates to disputes regarding non-arbitrable disputes is concerned, is bad in law and is hereby quashed."

* * * * *

19. On the question, who decides on non-arbitrability of the dispute, after referring to and considering the earlier decisions on the point, more particularly, the decisions in **Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd. [Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324], United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd. [United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., (2018) 17 SCC 607 : (2019) 2 SCC (Civ) 530] and Narbheram Power & Steel [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484], it is observed and held in Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549]** that the question of non-arbitrability relating to the inquiry, whether the dispute was governed by the arbitration clause, can be examined by the Courts at the reference stage itself and may not be left unanswered, to be examined and decided by the Arbitral Tribunal. Thereafter, in para 153, it is observed and held that the expression, "existence of arbitration agreement" in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the reference stage would apply the prima facie test. It is further observed that in cases of debatable and disputable facts and, good reasonably arguable case, etc. the Court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has the primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.'

* * *

40. The Apex Court in in **Pam Development Private Limited v. State of West Bengal, (2024) 10 SCC 715**, had the occasion to consider the effect of excepted/prohibitory clauses in an agreement and in this regard it held as under :

"12. This submission is persuasive, but the contract clauses speak for themselves. In fact, the High Court did what the Arbitrator should have done. Examine what the contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and Court alike and without exception, for contract is the foundation of the legal relationship. Having considered the abovereferred clauses in the contract the High Court came to the conclusion that awarding any amount towards idle, machinery, etc. is prohibited under the "Special Terms and Conditions" of the contract. The Arbitrator did not even refer to the contractual provisions and the District Court dismissed the objections under Section 34 with a standard phrase as extracted hereinabove. The

High Court exercising jurisdiction under Section 37 did its duty and we are of the opinion that the conclusions of the High Court are correct and cannot be interfered with."

29. In light of the aforesaid undisputed facts, it is clear that the Sole Arbitrator had no jurisdiction to enter into an unchartered territory which was occupied by the subsequent Contract No.107 of 2013-2014 which was never made the subject matter of reference. Hence, if any disputes which emerged from the subsequent contract it could not have been entertained or adjudicated upon by the Sole Arbitrator. Thus, the attempt of the Sole Arbitrator to take cognizance of such a claim was beyond its jurisdiction.

30. In this regard, the observations of the Apex Court in **Sal Udyog Private Limited (supra**) are relevant and in paragraph 26, it held as under:-

26. To sum up, existence of Clause 6(b) in the agreement governing the parties, has not been disputed, nor has the application of the Circular dated 27-7-1987 issued by the Government of Madhya Pradesh regarding imposition of 10% supervision charges and adding the same to cost of the Sal seeds, after deducting the actual expenditure been questioned by the respondent Company. We are, therefore, of the view that failure on the part of the learned Sole Arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said "patent illegality" is not only apparent on the face of the award, it goes to the very root of the matter and deserves interference. Accordingly, the present appeal is partly allowed and the impugned award, insofar as it has permitted deduction of "supervision charges" recovered from the respondent Company by the appellant State as a part of the expenditure incurred by it while calculating the price of the Sal seeds, is quashed and set aside, being in direct conflict with the terms of the contract governing the parties and the relevant circular. The impugned judgment dated 21-10-2009 is modified to the aforesaid extent."

Similar observations were made by the Apex Court in **PSA SICAL Terminals Pvt. Ltd. (supra).**

31. Thus, as far as the first contention of the learned Senior Counsel for the appellant relating to the grant of claim of refund of security money of Rs.6,12,000/- is concerned, has substance and it finds favour with this Court.

32. It would also be relevant to notice at this stage, that the Commercial Court No.1, Lucknow should have considered this aspect of the matter. However, it has abdicated its duties in exercising its powers under Section 34 of the Act of 1996. The Commercial Court No.1, Lucknow merely relying upon certain decisions of the Apex Court has refused to interfere with the award without even noticing whether the Arbitrator could have granted or allowed the claim in respect of a separate contract for which no reference was made. It appears that the Commercial Court No.1, Lucknow did not apply its judicial mind and dismissed the petition in a mechanical exercise of jurisdiction which cannot be appreciated, rather reflects poorly of it.

33. The second limb of the submission of the learned Senior Counsel for the appellant relating to the Employee Provident Fund Contribution, if examined, it would reveal that the agreement entered between the parties, a copy of which is on record would indicate that the contract was given by the appellant institute for the purpose of landscape maintenance of the institute. Clause 3 and 4 of the agreement reads as under:-

"3. The workers of the CONTRACTOR shall not be treated as employees of the Institute in any case of CONTRACTOR will be Solely responsible for their affairs and will be under obligation to comply with the statutory obligations. These workers will have no claim whatsoever, to be treated as employees of the Institute.

4. The CONTRACTOR will have to abide by the Minimum Wages Act and the other statutory labour laws, rules and regulations as applicable in the State of Uttar Pradesh. Any liability arising on the Institute as principal employer shall be deducted from the bills of the CONTRACTOR and the full amount shall be recovered from the security money and subsequent monthly bills of the CONTRACTOR."

34. The clauses clearly indicate that the workers of the contractor (referring to the respondent herein) shall not be treated as employees of the institute and in any case the contractor would be solely responsible for his own affairs. He was under an obligation to comply with the statutory compliances. The workers could not have any claim whatsoever to be treated as employees of the institute. Similarly, clause 4 of the agreement directed the contractor to abide by the Minimum Wages Act and others statutory Labour Laws as applicable in the State of U.P..

35. The contract further indicated that the appellant was only liable to make the payment to the respondent as per the rates mentioned in clause 42 of the agreement. For better appreciation, Clause 39 to 41 of the contract are being reproduced:-

"39. PAYMENT SCHEDULE;- MAINTENANCE WORK

Normally the payment will be on month basis of Horticulture maintenance works only on submission of the bill after verification and measurement of work by Nodal Officer in every month against work order issued by Horticulture Officer.

40. The CONTRACTOR must ensure that the payment of minimum wages shall be made to his labour in the presence of the Institute representative nominated by the Director of Institute.

41. Payment will be released by the Institute after submission of payment voucher alongwith EPF deposit receipt by the CONTRACTOR RATE."

36. The aforesaid clauses reproduced above, if read together, would indicate that they were incorporated to work as a deterrent for the respondent and was to ensure compliance of necessary labour welfare laws. It did not in any manner, create any relationship between the workers of the respondent and the appellant as an employer or principal employer.

37. In the same vein, the letters dated 01.10.2007 and 30.10.2007 which have been made part of the contract in terms of clause 23 would indicate that it relates only to taxes and duties and cannot be extended to any other labour law compliances. It is not disputed that the Employee Provident Fund Contribution cannot be treated as tax or any duty.

38. The appellant had not given any labour contract that is to say that the respondent was to act as an outsourcing agency to provide the workers to the appellant, rather the entire tenor and texture of the contract dated 16.04.2008 was to give landscaping maintenance agreement to the respondent who exclusively, was to execute the same by himself and through his own workers.

39. In such circumstances, if the respondent had made any Employee Provident Fund Contribution, it was a matter between the respondent and his workers. The agreement did not envisage creating any relationship of employer and employee between the workers of the respondent and the appellant. Thus, in such circumstances, any claim for Employee Provident Fund Contribution could not have been allowed by the Sole Arbitrator.

40. Considering the findings given by the Sole Arbitrator while considering issue nos.5 and 12, it would reveal that the Arbitrator has entirely misconstrued the agreement and has gone beyond the terms of the contract rendering the award susceptible to judicial interference. At the very same time the Commercial Court No.1, Lucknow also fell in the same error and it failed to consider the terms of the contract and the manner in which it was construed by the Sole Arbitrator. The manner in which the Commercial Court no.1, Lucknow decided the petition under Section 34 of the Act of 1996 by merely considering the respective contention, noticing certain decisions of the Apex Court and without appreciating its applicability to the given set of facts and circumstances of the case at hand and it dismissed the petition under Section 34 of the Act of 1996, cannot be appreciated in law. Thus the claim relating to Employee Provident Fund Contribution granted by the Sole Arbitrator and upheld by the Commercial Court no.1, Lucknow is unsustainable in law and is liable to be set aside.

41. The learned Senior Counsel for the appellant though had made submissions regarding the claim relating to the deduction made by the appellant referable to the penalty imposed but could not substantiate the same and candidly made a statement that he does not wish to press his third submission. Hence this Court does not propose to delve any further into it and suffice to state that the said ground shall stand rejected as not pressed.

42. This Court in light of the detailed discussions as noticed hereinabove finds that two of the claims awarded could not have been allowed. Now, as a concomitant whether the entire award is required to be set aside or the award dated 20.08.2020 can be modified, by severing the offending part of the award and preserving the remaining part.

43. In order to overcome the said dilemma, this Court first deems appropriate to examine what claims have been allowed and for the ease of reference, the concluding portion of the award is being reproduced hereinafter:-

"Claimant has claimed in his original claim Rs.31,04,533/- and security money with expenses.

It shows claimant is uncertain and confuse for the amount of claim.

(i) None supply of diesel lawn mover @ 48,0000/- per year and for three years Rs.1,44,000/- and 18% interest thereon.

(ii) Claimant is also entitled regarding EPF reimbursement Rs.6,17,629/- and also 18% interest thereon.

(iii) Claimant is also entitled Rs.57,521/- illegal fine which was imposed by opposite party and deducted from his bill with 18% interest thereon.

(iv) Claimant is also entitled refund of security money Rs.6,12,000/- and bill Rs.9,456/- with 18% interest thereon.

(v) Claimant is also entitled 5% increase in 3rd year of bill of Rs.1,74,996.- with 18% interest thereon.

(vi) Claimant is also entitled his advocate fees and other expenses Rs.5,15,000/-

So, total amount which claimant is entitled Rs.21,30,602/-."

44. Having considered the nature of the claim and the way they have been separately considered by the Sole Arbitrator and the claims have been awarded under distinct heads, this can permit this Court to examine whether the entire award needs to be set aside or only the offending part is capable of being severed and the award can be modified to the aforesaid extent.

45. From the bare reading of Section 34 of the Act 1996, it would indicate the language used in Section 34 of the Act of 1996 is "application for setting aside Arbitral awards". Whether the Courts in terms of Section 34 of the Act of 1996 has the power to modify the award. This specific question was referred to a Constitution Bench of the Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1.** The Apex Court after considering the provisions of the Act and the law held that the Courts do possess limited powers under the Act of 1996 to modify the award by applying the doctrine of severability in limited circumstances. What would be the limited scope and circumstances was explained in the majority judgment in **Gayatri Balasamy (supra).** The propositions and guidelines laid down by the Apex Court can be summarized as under:-

(i) Only severable awards are amenable to modification.

A composite or indivisible arbitral award cannot be modified. Modification is permissible only where the claims, or parts of the award, are legally and pragmatically severable from the valid portion. In such cases, the court may sever the invalid part while preserving the remainder of the

award. This constitutes one of the essential guardrails laid down by the Supreme Court for the exercise of the limited power to modify an arbitral award.

(ii) **The error sought to be corrected must be patent and apparent on the face of the record.**

The Supreme Court has clarified that modification is confined to the correction of obvious and self-evident errors, such as clerical, computational, or typographical mistakes. Modification is permissible only where the court has no uncertainty or doubt as to the correction; if the alleged error is debatable or not apparent on the face of the record, the court lacks jurisdiction to modify the award.

(iii) **Modification is permissible for correcting or adjusting post-award interest.**

Courts may modify an arbitral award where such modification is confined to the correction or adjustment of post-award interest, without disturbing the substantive findings of the Arbitral Tribunal.

(iv) **Where modification is impermissible, the matter must be remanded**.

In cases where the error cannot be corrected within the aforesaid guardrails and if it would require a review on merits or re-adjudication, the court must refrain from modifying the award and where permissible in law, remand the matter to the Arbitral Tribunal.

46. This Court applying the above mentioned principles finds that it is a fit case where certain claims which could not have been granted can be severed from the award and preserve the remaining part rather than setting aside the entire award. Accordingly, the claims under the head of Employee Provident Fund Contribution reimbursement of Rs.6,17,629/- alongwith interest at the rate of 18% per annum (which is at serial no.2 of paragraph 43 above) and the claim relating to the refund of security money of Rs.6,12,000/- and bill of Rs.9456/- with 18% interest per annum (which is at serial no.4 of paragraph 43 above) are disallowed and shall stand rejected. The rest of the claims as awarded and mentioned in paragraph 43 above shall remain intact and preserved. Accordingly, the award dated 20.08.2020 shall stand modified to the above extent.

47. It will be open for the respondent to raise his claims relating to the return of security money and any other outstanding bill of claims pertaining to contract no.107 of 2013-2014, if the law so permits, before the appropriate forum/court. It is made clear that this Court has not made any observation on merits relating to any claim of the respondent which may be relatable to Contract No.107 of 2013-2014 and if the respondent raises his claims in respect of the said contract, needless to say, it shall be considered on its own merits.

48. Subject to the modification made in the award dated 20.08.2020, as aforesaid, the appeal is **partly allowed**. In the facts and circumstances, there shall be no order as to costs.

(2026) 2 ILRA 891
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.02.2026

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Bail Application No. 1754 of 2026

Rohit **...Applicant**
Versus
State of U.P. & Ors. **....Opposite Parties**

विचारणीय प्रश्न

(i) क्या प्रकरण के तथ्यों एवं परिस्थितियों में आवेदक को जमानत पर मुक्त किया जाना उपयुक्त है;
(ii) क्या उपलब्ध साक्ष्यों एवं आरोपों की प्रकृति के आधार पर जमानत देने में कोई बाधा है।

हेडनोट्स

दाण्डिक विधि — जमानत — आरोपों का मूल्यांकन — भूमिका का अभाव:

निर्णीत: जहाँ प्रथम सूचना रिपोर्ट तथा पीड़िता के बयानों में आवेदक पर बलात्कार अथवा शारीरिक संबंध स्थापित करने का कोई आरोप नहीं लगाया गया, वहाँ अभिलेख पर उपलब्ध सामग्री से आवेदक की कथित घटना में भूमिका पर संदेह उत्पन्न होता है, जो जमानत प्रदान किए जाने के पक्ष में विचारणीय है। [Para 3]

दाण्डिक विधि — जमानत — विरोध — अभियोजन का प्रतिवाद:

निर्णीत: यद्यपि अभियोजन द्वारा यह तर्क प्रस्तुत किया गया कि अपराध संज्ञेय एवं गंभीर प्रकृति का है, तथापि केवल अपराध की गंभीरता, अन्य प्रासंगिक परिस्थितियों के अभाव में, जमानत अस्वीकार करने का एकमात्र आधार नहीं है। [Para 4–5]

दाण्डिक विधि — जमानत — साक्ष्य से छेड़छाड़ की संभावना — अभाव:

निर्णीत: जहाँ उपलब्ध सामग्री के आधार पर किसी ठोस विरोधात्मक सामग्री का अभाव हो तथा साक्ष्यों के साथ छेड़छाड़ की संभावना नहीं पाई जाती हो, वहाँ आवेदक को जमानत पर मुक्त किया जाना उपयुक्त है। [Para 5]

दाण्डिक विधि — जमानत — विचारण के गुण-दोष पर टिप्पणी — निषेध:

निर्णीत: जमानत प्रार्थना पत्र का निर्णय करते समय वाद के गुण-दोष पर कोई टिप्पणी किए बिना, परिस्थितियों के आधार पर जमानत प्रदान की जा सकती है। [Para 6]

दाण्डिक विधि — जमानत — शर्तें — अनुपालन:

निर्णीत: आवेदक को जमानत पर मुक्त करते समय यह शर्तें आरोपित की गईं कि वह साक्ष्यों से छेड़छाड़ नहीं करेगा, अभियोजन साक्षियों एवं पीड़िता को प्रभावित नहीं करेगा, न्यायालय के आदेशों का पालन करेगा, परीक्षण में सहयोग करेगा तथा जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा। [Para 6–7]

जमानत मंजूर। (E-14)

उद्धृत निर्णय (Case Law Cited)

— कोई नहीं —

अधिनियम / विधियाँ (List of Acts / Statutes)

भारतीय न्याय संहिता, 2023; लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012; भारतीय नागरिक सुरक्षा संहिता, 2023 ।

प्रमुख शब्द (List of Keywords)

जमानत; गंभीर अपराध; पीड़िता का बयान; भूमिका का अभाव; साक्ष्य से छेड़छाड़; जमानत की शर्तें।

उत्पत्ति (Case Arising From)

मु०अ०सं० 539/2025, धारा 137(2), 65(1) भारतीय न्याय संहिता एवं धारा 3/4(2) पॉक्सो एक्ट, थाना जलालाबाद, जिला शाहजहांपुर।

पक्षकारों के अधिवक्ता (Appearance for Parties)

आवेदक की ओर से: श्री अजय कुमार कश्यप

विपक्ष की ओर से: श्री शोभनाथ पाल, शासकीय अधिवक्ता (G.A.)

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. वतर्मान दाि◌ण्ड क प्र कीणर् जमानत प्र ◌ा थर्ना पत्र आवेदक की ओर से मु०अ०सं०539/2025, अन्त गर्त धारा 137(2), 65(1) भारतीय न् या य संि◌हता एवं धारा 3/4(2)पाक्सो एक्ट , थाना जलालाबाद, ि◌जला शाहजहांपुर में जमानत पर मुक्त करने हेतु प्रस् तु तिकया गया है।

2. आवेदक के ि◌वद्वा न अिधवक्ता , पिरवादी के ि◌वद्व ◌ा न अिधवक्ता एवं ि◌वद्व ◌ा न अपरशासकीय अिधवक्ता को सुना तथा पत्रा वली का पिरशीलन ि◌कया।

3. आवेदक के ि◌वद्वा न अिधवक्ता ने तकर् प्रस् तु त ि◌कया ि◌क आवेदक को इस प्र करण में गलत एवं फजीर् ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारि◌त नहीं ि◌कया है।इस मामलें में प्र ◌ा संि◌गक तथ्य यह है ि◌क प्र थम सूचना ि◌रपोटर् एवं कथित पीि◌ड़ ता द्व ◌ा राअपने धारा 180 के बयान में आवेदक पर बलात् का र करने का कोई आक्षे प

आरोिपतनहीं िकया गया है तथा कथित पीिड़ ता द्व ारा अपने धारा 183 भारतीय नागिरक सुरक्षासंिहता के बयान में आवेदक द्व ारा उसके साथ शारीिरक संबंध स् था िपत नहीं िकया गयाहै। इससे पिरलिक्ष त है िक आवेदक का कथित घटना में कोई भूिमका नहीं है। इसिलए,आवेदक जमानत पर मुक्त िकये जाने योग् य है। पुनः उनका कथन है िक आवेदक की ओरसे यह आश्वा सन िदया गया है िक वह कानून की प्र िक्र या में सहयोग करने के िलए तैयारहै और जब भी आवश्य कता होगी वह ईमानदारी से अदालत के समक्ष खुद को उपलब्धकराएगा और उन सभी शतोर्ं को स् वी कार करने के िलए भी तैयार है जो न् या यालय उसपर अिधरोिपत करेगी। आवेदक िनदोर् ष है तथा वह इस प्र करण में िद० 09.11.2025 सेकारागार में िनरुद्ध है। इसिलए आवेदक को जमानत पर छोड़ िदया जाय।

4. पिरवादी के िवद्वा न अिधवक्ता एवं िवद्व ान अपर शासकीय अिधवक्ता ने अिभयुक्त के जमानत का प्र बल िवरोध करते हु ए तकर् प्रस् तु त िकया िक अिभयुक्त द्व ारा काियत अपराध संज्ञे य एवं गंभीर प्र कृित का है, इसिलए अिभयुक्त को जमानत पर न छोड़ ा जाय।

5. उभय पक्ष के िवद्वा न अिधवक्ता के तकोर्ं के पिरप्रेक्ष् य एवं पत्रा वली पर उपलब्ध सारवान तथ्यों एवं पिरिस्थ ितयों का समग्र रू प से अवलोकन करने के बाद, सबूतों की प्रकृित और िकसी भी ठोस िवरोधात्म क सामग्री की अनुपिस्थ ित एवं उपलब्ध सामग्री से छेड़ छाड़ की संभावना न होने के तथ्य को देखते हु ए मेरी राय में आवेदक को जमानत परमुक्त करने का उपयुक्त आधार है।

6. अतः वाद के गुण-दोष पर िबना कोई िटप्प णी िकए हु ए आवेदक को उपरोक्त विणतअपराध में संबंिधत न् या यालय की संतुिष्ट पर व्य िक्त गत बंध-पत्र एवं अिधक धनरािश के दो स् था नीय प्र ितभू प्रस् तु त करने पर िनम् न िलिखत शतोर्ं के साथ **जमानत** पर छोड़ िदया जाय।

1. आवेदक िववेचना या परीक्ष ण के दौरान अिभयोजन साक्ष्यों के साथ छेड़ छाड़ नहीं करेगा।

2.आवेदक अिभयोजन साक्ष ियों व पीिड़ ता/ िशकायतकतार् को डरायेगा/धमकायेगा नहीं ।

3.आवेदक न् या यालय के आदेशों का पालन करेगा, वह परीक्ष ण के दौरान िबना कोईअनावश्य क स् थ गन िलए िनयत ितिथ पर न् या यालय में उपिस्थ त होगा तथा परीक्ष णमें ईमानदारी से सहयोग करेगा।

4.आवेदक जमानत पर िरहा होने के बाद जमानत की स् व तंत्र ता का दुरू पयोग नहीकरेगा और िकसी भी अपरािधक गितिविध में िलप् त नहीं होगा न कोई अपरािधककृत्य करेगा।

5.आवेदक प्रत् यक्ष या अप्रत् यक्ष रू प से मामले के तथ्यों से पिरचित िकसी भी व्य िक्तया पुिलस अिधकाियों को कोई प्र लोभन या धमकी नहीं देगा न ही उनसे कोईवायदा करेगा, िजसके कारण उन्हें न् या यालय में तथ्यों को उजागर करने से िवरतरहना पड़े।

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7. उपरोक्त शतोर्ं में से िकसी के उल्लं घन के मामले में, िवचारण न् या यालय आवेदक की जमानत िनयमानुसार रद्द करने को स् व तंत्र है।

(2026) 2 ILRA 894
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.02.2026

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Bail Application No. 5285 of 2026

Tahseen **...Applicant**
Versus
State of U.P. & Ors. **....Opposite Parties**

विचारणीय प्रश्न

(i) क्या प्रकरण के तथ्यों एवं परिस्थितियों में आवेदक को जमानत पर मुक्त किया जाना उपयुक्त है;
(ii) क्या उपलब्ध सामग्री के आधार पर जमानत देने में कोई बाधा विद्यमान है।

हेडनोट्स

दाण्डिक विधि — जमानत — सहमति — विरोध का अभाव:

निर्णीत: जहाँ सूचनाकर्ता द्वारा शपथपत्र के माध्यम से यह अवगत कराया गया कि वह आवेदक से विवाह कर चुकी है और अब उसके विरुद्ध कोई कार्यवाही नहीं करना चाहती, तथा अभियोजन की ओर से भी जमानत का विरोध नहीं किया गया, वहाँ जमानत प्रदान किए जाने का आधार विद्यमान था। [Para 3–4]

दाण्डिक विधि — जमानत — साक्ष्य से छेड़छाड़ की संभावना — अभाव:

निर्णीत: जहाँ उपलब्ध सामग्री के आधार पर साक्ष्यों के साथ छेड़छाड़ की कोई संभावना नहीं पाई गई और कोई ठोस विरोधात्मक सामग्री भी अभिलेख पर उपलब्ध नहीं थी, वहाँ आवेदक को जमानत पर मुक्त किया जाना उपयुक्त पाया गया। [Para 5]

दाण्डिक विधि — जमानत — विचारण के गुण-दोष पर टिप्पणी — निषेध:

निर्णीत: जमानत प्रार्थना पत्र पर निर्णय करते समय वाद के गुण-दोष पर कोई टिप्पणी किए बिना, उपलब्ध परिस्थितियों के आधार पर जमानत प्रदान की जा सकती है। [Para 6]

दाण्डिक विधि — जमानत — शर्तें — अनुपालन:

निर्णीत: आवेदक को जमानत पर मुक्त करते समय यह शर्तें आरोपित की गईं कि वह साक्ष्यों से छेड़छाड़ नहीं करेगा, अभियोजन साक्षियों को प्रभावित नहीं करेगा, न्यायालय के आदेशों का पालन करेगा, परीक्षण में सहयोग करेगा तथा जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा। [Para 6]

जमानत मंजूर। (E-14)

उद्धृत निर्णय (Case Law Cited)

— कोई नहीं —

अधिनियम / विधियाँ (List of Acts / Statutes)

भारतीय न्याय संहिता, 2023

प्रमुख शब्द (List of Keywords)

जमानत; सहमति; विरोध का अभाव; साक्ष्य से छेड़छाड़; जमानत की शर्तें; दाण्डिक कार्यवाही।

उत्पत्ति (Case Arising From)

मु०अ०सं० 298/2025, धारा 69/352/351(2)/351(3) बी.एन.एस., थाना कमलगंज, जिला फर्रूखाबाद।

पक्षकारों के अधिवक्ता (Appearance for Parties)

आवेदक की ओर से: श्री सुशांत मिश्रा

विपक्ष की ओर से: शासकीय अधिवक्ता (G.A.)

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. सूची पुनरीिक्ष त वतर्मान दाण्ड क प्र कीणर् जमानत प्र ा थर्ना पत्र , आवेदक तहसीन की ओर से मु.अ.सं० 298/2025 अन्त गर्त धारा 69/ 352/ 351(2)/ 351(3) बी.एन.एस., थाना कमलगंज, िजला फरूर् खाबाद में जमानत पर मुक्त करने हेतु प्रस् तु त िकया गया है।

2. आवेदक के िवद्वा न अिधवक्ता एवं िवद्वा न अपर शासकीय अिधवक्ता को सुना तथा पत्रा वली कापिरशीलन िकया।

3. आवेदक के िवद्वा न अिधवक्ता ने तकर् प्रस् तु त िकया िक आवेदक को इस प्र करण में गलत एवंफजीर् ढंग से झूठा फंसाया गया है, उन्होने आगे कथन िकया िक सूचनाकतार् द्व ा रा अपने शपथ पत्र के माध् य म से यह अवगत कराया िक वह आवेदक से शादी कर चुकी है और अब वह आवेदक केिखलाफ कोई भी कायर्वाही नहीं करना चाहती। पुनः उनका कथन है िक आवेदक की ओर से यह आश्वा सन िदया गया है िक वह कानून की प्र िक्र या में सहयोग करने के िलए तैयार है और जब भीआवश्य कता होगी वह ईमानदारी से अदालत के समक्ष खुद को उपलब्ध कराएगा और उन सभी शतों को स् वी कार करने के िलए भी तैयार है जो न् या यालय उस पर अिधरोिपत करेगी। आवेदक िनदोर् ष है तथा वह इस प्र करण में िद० 05.01.2026 से कारागार में िनरुद्ध है इसिलए आवेदक को जमानत पर छोड़ िदया जाय।

4. िवद्वा न अपर शासकीय अिधवक्ता द्व ा रा भी आवेदक के िवद्वा न अिधवक्ता के बताए गए तथ्यों की पुिष्ट की गयी, और कथन िकया उन् हें इस तथ् य पर आवेदक के जमानत पर कोई आपित्त नहीं है।

5. आवेदक के िवद्वा न अिधवक्ता के तकोर्ं के पिरप्रेक्ष् य प्रश् न गत प्र करण में पत्रा वली पर उपलब्धसारवान तथ्यों एवं पिरिस्थ ितयों का समग्र रू प से अवलोकन करने के बाद, सबूतों की प्र कृित औरिकसी भी ठोस िवरोधात् म क सामग्र ी की अनुपिस्थ ित एवं उपलब्ध सामग्र ी से छेड़ छाड़ की संभावनान होने के तथ्य को देखते हु ए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

6. अतः वाद के गुण दोष पर िबना कोई िटप्प णी िकए हु ए आवेदक को उपरोक्त विणत अपराध मेंसंबंिधत न् या यालय की सन् तु िष्ट पर व्य िक्त गत बंध-पत्र एवं अिधक धनरािश के दो स् था नीय प्र ितभू प्रस्तुत करने करने पर िनम् न िलिखत शतोर्ं के साथ जमानत पर छोड़ िदया जाय।

1.आवेदक िववेचना या परीक्ष ण के दौरान अिभयोजन साक्ष् यों के साथ छेड़ छाड़ नहीं करेगा।

2.आवेदक अिभयोजन साक्ष यों व पीिड़ ता/ िशकायतकतार् को डरायेगा/धमकायेगा नहीं ।

3.आवेदक न् या यालय के आदेशों का पालन करेगा, वह परीक्ष ण के दौरान िबना कोई अनावश्य क स् थ गन िलए िनयत ितिथ पर न् या यालय में उपिस्थ त होगा तथा परीक्ष ण में ईमानदारी से सहयोग करेगा।

4.आवेदक जमानत पर िरहा होने के बाद जमानत की स् व तंत्र ता का दुरू पयोग नही करेगा और िकसी भी अपराधिक गितिविध में िलप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।

5.आवेदक प्रत् यक्ष या अप्रत् यक्ष रू प से मामले के तथ्यों से पिरिचत िकसी भी व्य िक्त या पुिलसअिधकारियों को कोई प्र लोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, िजसकेकारण उन् हें न् या यालय में तथ्यों को उजागर करने से िवरत रहना पड़े।

उपरोक्त शतोर्ं में से िकसी के उल्लं घन के मामले में, परीक्ष ण न् या यालय आवेदक की जमानत िनयमानुसार रद्द करने को स् व तंत्र है।

(2026) 2 ILRA 896
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Misc. Writ Petition No. 3822 of 2026

Kirti Verma **...Petitioner**
Versus
State of U.P. **...Respondent**

Issue for Consideration

(i) Whether a writ of mandamus can be issued directing re-recording of statement of the victim under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023;
(ii) Whether alleged non-compliance of procedural safeguards, particularly non-reading over of statement, warrants exercise of extraordinary jurisdiction for directing a second statement under Section 183 B.N.S.S.;

(iii) Whether, in the facts of the case, any exceptional circumstance existed justifying interference by the High Court.

Headnotes

Criminal Procedure — Statement under Section 183 B.N.S.S. — Nature and object:
Held: Section 183 B.N.S.S. provides a judicially supervised mechanism for recording statements/confessions to ensure voluntariness and reliability — It incorporates safeguards including explanation of rights, voluntariness, and reading over of statement — Such statement carries higher evidentiary value than police statements. [Paras 9–11]

Criminal Procedure — Re-recording of statement — Not a rule:
Held: The statutory scheme does not contemplate repeated or second recording of statement under Section 183 B.N.S.S. as a matter of course — Such statements are ordinarily recorded only once and meant to preserve reliable evidence. [Para 12]

Criminal Procedure — Extraordinary jurisdiction — Scope for second statement:
Held: High Court, in exercise of powers under Articles 226/227 of the Constitution and inherent jurisdiction, may direct re-recording only in exceptional cases — such as coercion, lack of voluntariness, procedural illegality, or compromised integrity of the statement — Power is discretionary and not routine. [Paras 13, 16]

Criminal Procedure — Procedural safeguards — Allegation of violation:
Held: Non-reading over of statement, if established, may constitute a serious procedural lapse affecting voluntariness and authenticity — However, mere allegation without substantiation is insufficient to invoke extraordinary jurisdiction. [Paras 15–16]

Criminal Procedure — Judicial review — Scope of interference:
Held: Where record indicates that statement was voluntarily made, read over to the maker, and duly signed, and procedural requirements were complied with, no ground exists for directing re-recording — Absence of extraordinary circumstances disentitles relief. [Paras 18–20]

Petition dismissed. (E-14)

Case Law Cited

Yogendra Yadav and others v. State of Jharkhand and another, **(2014) 9 SCC 653 — distinguished.**

List of Acts / Statutes

Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023.

List of Keywords

Re-recording of statement; Voluntariness; Procedural safeguards; Habeas jurisdiction; Extraordinary jurisdiction; Judicial confession; Victim statement; Reading over requirement; Abuse of process.

Case Arising From

Order dated 13.01.2026 passed by Additional District & Sessions Judge, FTC Court No. 01, Azamgarh, rejecting application for re-recording of statement under Section 183 B.N.S.S.

Appearance for Parties

For the Petitioner: Kirti Verma (in person)
For the Respondents: Learned A.G.A.

(Delivered by Hon'ble Achal Sachdev, J.)

1. The petitioner has filed a certified copy of her statement in the present case recorded under Section 183 B.N.S.S. before the Magistrate concerned.

2. Heard the petitioner Kirti Verma, who appears in person, learned A.G.A. for the State and perused the record and the case law cited by the petitioner.

3. The Petitioner, Kirti Verma, is complainant/victim in case crime number 320 of 2024, under sections 70(1), 352, 351(1), 61(2) B.N.S., 2023, Police Station Rani Ki Sarai, Azamgarh.

4. The petitioner, who is victim herein, has filed the present writ petition seeking issue of writ, order or direction in the nature of mandamus commanding and directing the respondent to re-record the statement of the victim/petitioner again under section 183 of B.N.S.S. 2023, in pursuance of order dated 13.01.2026 passed by the learned Additional District & Session Jude, FTC Court No. 01, Azamgarh and issue any other suitable writ, order or direction which the Court may deem fit and proper under the facts and circumstances of the case.

5. The petitioner has submitted that the petition is being filed strictly in compliance with and pursuant to the liberty granted by the order dated 13.01.2026 and is confined only to be procedural aspect as indicated by the learned court below and the petitioner is not seeking adjudication on the merits of the case, nor raising any factual controversy. The petitioner further submits that her statement has not been correctly recorded by the Magistrate and there has been gross violation of the express provisions of Section 183 B.N.S.S., which necessitates directions of this Court for re-recording of her statement under Section 183 B.N.S.S.

6. The learned Additional District & Session Judge, FTC Court No.01, Azamgarh in it's order dated 13.01.2026, while disposing applications dated 08.12.2025 and 09.01.2026 for re-recording of her statement under Section 183 B.N.S.S., made the following observations:-

(a). the Statement under section 183 B.N.S.S. is ordinarily recorded only once.

(b). any direction for recording such statement again can be issued only by the Hon'ble High Court or Hon'ble Supreme Court.

(c). until the procedural statement is clarified, it would not be appropriate to proceed further in the matter.

7. At this juncture, it is pertinent to refer to the provisions of Section 183 of B.N.S.S.

"183. (1). Any Magistrate of the District in which the information about commission of any offence has been registered, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards but before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2). The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3). If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4). Any such confession shall be recorded in the manner provided in section 316 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:'

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Signed) A. B.

Magistrate."

(5). Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) (a) In cases punishable under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bhartiya Nayay Sanhita, 2023 the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman:

Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer:

Provided also that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided also that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably by mobile phone;

(b) a statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 142 of the Bhartiya Sakshya Adhiniyam, 2023 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

(7). The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried."

8. Moreover, Section 176 of B.N.S.S. relates to Procedure for Investigation and allows optional audio-video recording of statements during police investigation including any statement made to the police and for rape/sexual offence cases victim statements must preferably be recorded at their residence or place of choice by a woman officer and may use audio-video means.

9. Section 183 of B.N.S.S. corresponds to Section 164 Cr.P.C. and it mandates safeguards for voluntariness. The statements including confessions can be recorded in writing or through audio-video electronic means preferably by mobile phones. For certain vulnerable cases, example rape victims or disable persons audio-video recording is required or strongly preferred often by a woman Magistrate when applicable.

10. The primary purpose of Section 183 of B.N.S.S. is to provide a safe voluntary and judicially supervised mechanism for recording confessions (by the accused) and statements (witnesses or the victims) during a criminal investigation or even afterwards before inquiry or trial begins and this ensures that these statements or confession are made freely and without coercion and it carries higher reliability and evidentiary values as compared to ordinary police statements recorded under Section 180 B.N.S.S. The procedural safeguards directs constitutional rights under Article 20(3) and the Article 21 of the constitution against self incrimination and for fair procedure, the core objectives of section 183 B.N.S.S. is to prevent police coercion or torture and police officer cannot record confessions even though they may be adorned with magisterial powers. Only a Judicial Magistrate can record a statement under Section 183 B.N.S.S., thus reducing risk of forced or induced confessions but the Magistrate must ensure voluntariness on part of the person making the statement. Magistrate must explain to the person making a confession or a statement

that the person is not bound to confess or give the statement and he must warn him prior to the recording of the statement that it may be used as evidence against them.

11. In essence, Section 183 BNSS acts as a judicial filter between police investigation and trial evidence, thereby capturing important statements/confessions in a protected, verifiable manner to aid truth-finding while safeguarding against abuse of power. It balances effective prosecution with protection of individual rights, with BNSS adding digital and victim-focused enhancements over the old CrPC framework.

12. The provision does not contemplate or authorize "second" or repeated statements under this section as a standard procedure. The purpose is to record a reliable, voluntary statement/confession once, with evidentiary value (e.g., statements under this section can be used to corroborate or contradict trial testimony, and confessions if voluntary can be substantive evidence).There is no statutory mandate for multiple recordings of the same person's statement under Section 183 BNSS. Police statements under Section 180 BNSS (old Section 161 CrPC) can be recorded multiple times if needed during investigation, but magisterial statements under Section 183 BNSS are exceptional and meant to preserve evidence with higher reliability.

13. High Courts have supervisory powers under Article 226/227 of the Constitution and Section 528 BNSS (old Section 482 CrPC) to intervene in criminal proceedings to prevent abuse, secure ends of justice, or correct grave errors. In exceptional cases ' such as where a prior statement under Section 183 was allegedly coerced, not voluntary, improperly recorded, or where fairness demands re-recording (e.g., new material facts, witness hostility, or serious procedural lapses) and a High Court may direct a fresh recording before a Magistrate as part of its extraordinary jurisdiction but this is not a routine direction. The High Court may direct re-recording if the original statement's integrity is seriously compromised, especially in sensitive cases involving victims (e.g., sexual offences, POCSO), where the statement carries significant weight for corroboration/contradiction at trial. While not every allegation will succeed, a credible claim of non-reading over (a core procedural safeguard) provides strong grounds for High Court intervention to order a second statement under Section 183 BNSS, to uphold fairness and prevent misuse. Outcomes depend on case facts, evidence, and judicial discretion.

14. Learned Additional District Judge in its order dated 13.01.2026 has observed that any direction for re-recording of the statement under Section 183 B.N.S.S. can be issued only by Hon'ble High Court or Hon'ble Supreme Court but it is pertinent to mention here that High Court cannot directly order or direct the recording of the second or additional statement under Section 183 B.N.S.S. in the sense of compelling the Magistrate to record another statement from the same person as a routine or an investigative measure. The power to record a statement under Section 183 B.N.S.S. is discretionary and is typically initiated by- (i) the investigating officer to producing the person (witness/victim or accused) and (ii) the person voluntarily approaching the Magistrate.

15. Section 183 B.N.S.S. like old section 164 Cr.P.C. incorporates strong safeguards to ensure voluntariness and accuracy. The Magistrate must explain to the person that they are not bound to make a statement or confession and that the confession may be used against them and the Magistrate must have reason to believe about voluntariness after initial questioning and the

recorded statements must be read over and explain to the person making it moreover sign it or affix thumb impression. Where the person making the statement is unable to read it thereby confirming its correctness and especially in cases of sexual offenses, the Magistrate may resort to audio-video recording. If the victim claims that the statement was not read over to him or her, it raises serious questions about whether the procedural safeguards were followed as to its voluntariness and authenticity and potential coercion or misunderstanding or clerical error and such lapses, if prima-facie established by victims affidavit, may lead to interference. The direction for re-recording of statement under Section 183 B.N.S.S. may be issued if the original statements integrity is seriously compromised. While not every allegation is bound to succeed, a credible claim of non-reading of statement by the victim provides a strong ground for intervention to order a second statement under Section 183 B.N.S.S. to promote fairness and prevent misuse.

16. Ordinarily no routine direction for second statement under Section 183 B.N.S.S. can be given but under exceptional circumstances. High Court in exercise of it's extraordinary jurisdiction, if justified to rectify injustice, may issue directions for recording second statement under Section 183 B.N.S.S. but it cannot be exercised as a general rule where victim alleges that her statement recorded under Section 183 B.N.S.S. was not read over to her or that she was not given an opportunity to confirm its correctness. The High Court can in appropriate cases exercise its extraordinary jurisdiction to direct a fresh recording of statement before the Magistrate and the power is not a routine or an automatic power but is exercised by High Court or Supreme Court to prevent abuse of process, to secure ends of justice or rectify grave procedural irregularities that could lead to miscarriage of justice.

17. The case law ***Yogendra Yadav & Others vs. State of Jharkhand & Anr.(2014)9 SCC 653*** does not apply to the facts of the present writ petition.

18. The petitioner, in order to substantiate her argument in support of the petition, has filed certified copy of her statement recorded under Section 183 B.N.S.S. before the Court of Civil Judge (Senior Division), Azamgarh.

19. Perusal of statement shows that statement was recorded on the basis of oral statement of the victim and after recording of the statement the victim/petitioner had read the statement and it is also noted that the victim gave the statement without any duress. The statement of the victim/petitioner recorded by the Magistrate clearly shows that the petitioner had given the statement without any duress and had read the statement and thereafter had signed the statement and all the procedural aspects have been followed. Trial court vide its order dated 13.01.2026 has rightly observed that the statement under section 183 B.N.S.S. is ordinarily recorded only once and any direction for recording of such statement can be issued only by Hon'ble High Court or by Hon'ble Supreme Court only under exceptional circumstances. The conditions under which High Court or Hon'ble Supreme Court can issue directions for re-recording of his statement under Section 183 B.N.S.S. has already been discussed above.

20. In the light of analysis given, we are of the opinion that there are no extraordinary circumstances warranting the re-recording of the statement under Section 183 B.N.S.S. and hence

the instant writ petition lacks merit and is accordingly liable to be dismissed and is accordingly **dismissed.**

(2026) 2 ILRA 903
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.02.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Contempt Application (Criminal) No. 3 of 2025

In Re. ...Applicant
Versus
Shri Hari Narayan Pandey Adv. ...Opposite Party

Issue for consideration

Criminal Contempt against an Advocate

Headnotes

Criminal Contempt-Proceedings for criminal contempt commenced on a reference under Section 15 of the Act, 1971 made by Mr. Amit Mishra, the then Civil Judge (Sr. Div.), Basti- against the contemnor Advocate-contemnor's words certainly scandalize and lower the authority of the Court within the meaning of Section 2(c)(i) of the Act of 1971- words were entirely unrelated to the proceedings of the Court-contemnor expressed an early and unconditional apology in his affidavit-contemnor appeared before Mr. Amit Mishra at Raebareli and tendered an unconditional apology-put in long years of practice and there is nothing to show that he has indulged in contumacious conduct in the past- tendered unconditional apology at the earliest, which the learned Civil Judge accepted-accept the contemnor's apology and discharge the notice issued to him-**contempt matter is consigned to record.** (E-9)

Case Law Cited

Nil

List of Acts

1. The Contempt of Courts Act, 1971

List of Keywords

Scandalize and lower the authority of the Court; unconditional apology

Appearances of parties

Counsel for Applicant : Mr. Sudhir Mehrotra, Advocate Counsel for Opposite Party : Mr. Rakesh Pathak, Advocate

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

1. These are proceedings for criminal contempt commenced on a reference under Section 15 of the Contempt of Courts Act, 1971 (for short, 'the Act of 1971') made by Mr. Amit Mishra, the then Civil Judge (Sr. Div.), Basti, against the contemnor, Mr. Hari Narayan Pandey, Advocate,

seeking the said contemnor to be punished in accordance with law. The reference as aforesaid was made on 29.01.2025.

2. On the basis of the reference papers, the Registry drew up an office note, which was laid before the Hon'ble the Chief Justice by the Registrar General vide his note dated 24.03.2025. The Hon'ble the Chief Justice directed the papers to be laid before the Hon'ble the Administrative Judge for the Sessions Division of Basti vide his order dated 24.03.2025. The papers were laid before the Hon'ble Mr. Justice Karunesh Singh Pawar, the then Administrative Judge, Basti and his Lordship passed the following order on 28.03.2025:

"Let the matter be placed before appropriate court having criminal contempt jurisdiction."

3. The matter then came up again before his Lordship, the Hon’ble The Chief Justice, with a proposal in terms of the order of the Administrative Judge, which the Hon'ble The Chief Justice approved vide his order dated 11.04.2025. This contempt matter was registered on 18.04.2025 and came up before the Division Bench on 23.04.2025. The Division Bench, finding a prima facie case made out, issued notice to the contemnor, returnable on 09.07.2025. On the date of return, Mr. Hari Narayan Pandey, the contemnor, filed an affidavit, which was taken on record. The contempt matter was adjourned to 30.07.2025 in order to enable the contemnor to appear in person. On 09.07.2025, the contemnor was represented by Mr. Rakesh Pathak, Advocate.

4. When the matter came up before the Division Bench again on 30.07.2025, the contemnor was present in person. He was represented before the Court by Mr. R.K. Ojha, learned Senior Advocate assisted by Mr. Rakesh Pathak, Advocate. Mr. Sudhir Mehrotra, Advocate appeared on behalf of the Court.

5. We must note here that at the earliest stage of proceedings, that is to say, on 30.07.2025, the first day, the contemnor appeared he tendered an unconditional apology, which was carried in his affidavit dated 08.08.2025. The Court, taking that apology into consideration, directed the contemnor to tender the same before the Judicial Officer, in whose presence the contempt had been committed, leading to the institution of the present proceedings. It was also recorded in the order of the day made by the Division Bench that the Judicial Officer was, at the relevant time, posted at Raebareli, after a routine transfer from Basti. The contemnor was, accordingly, permitted to tender his unconditional apology to the Judicial Officer at his current place of posting through the learned District Judge, Raebareli. Mr. Ojha, on 30.07.2025, assured their Lordships that necessary compliance would be made within a period of two weeks. Mr. Mehrotra was granted time to submit a report from the Judicial Officer concerned within a further period of one month. This matter was directed to be listed on 15.09.2025.

6. On 15.09.2025, the Court and the contemnor were both represented before the Division Bench and the contemnor appeared in person again. Mr. Sudhir Mehrotra produced a report from the Judicial Officer, which was taken on record. The Court did not find the report sent by the Judicial Officer to be complete. Accordingly, this cause was adjourned to 22.09.2025 to enable Mr. Mehrotra to place the entire report on record. The personal presence of the contemnor was not exempted and he was directed to appear again. On the 22nd of September, 2025, this contempt

reference came up before the Court again, when the report submitted by the learned Civil Judge was perused. The two affidavits put in by the contemnor, that is to say, the affidavit dated 08.07.2025 and a later affidavit dated 14.09.2025, were also perused. The parties agreed that the contempt application be heard and decided on the existing pleading and materials. Thus, the contemnor waived his right to the framing of a formal charge, as he was apparently aware with all the allegations that were the subject matter of the instant contempt proceedings. Accordingly, the present matter was heard by consent of parties and judgment reserved.

7. Heard Mr. Sudhir Mehrotra, learned Special Counsel for the High Court and Mr. Radha Kant Ojha, learned Senior Advocate assisted by Mr. Rakesh Pathak, Advocate appearing on behalf of the contemnor-opposite party.

8. If we were to look at the reference made by Mr. Amit Mishra, the then Civil Judge (Sr. Div.), Basti dated 29.01.2025, we are clear in our mind that the words that the contemnor spoke in Court while appearing in a cause robed from the Bar for one of the parties on 22.01.2025 in O.S. No. 679 of 2024, most certainly amount to contempt of court within the meaning of Section 2(c) of the Act of 1971. These words certainly scandalize and lower the authority of the Court within the meaning of Section 2(c)(i) of the Act of 1971. We do not wish to reproduce the precise words that the contemnor had employed during the hearing of the temporary injunction application in O.S. No. 679 of 2024, where he was appearing for the plaintiff.

9. Suffice it to say that those words were entirely unrelated to the proceedings of the Court and were a calculated attempt to browbeat the Court into passing an order that was not the free dictate of the learned Judge's conscience. That way, it was interference with the due course of judicial proceedings within the meaning of Section 2(c)(ii) of the Act of 1971. The reason why we do not reproduce the obnoxious words employed by the contemnor is that by making them part of our order we would be echoing disrespect shown to the Court and the judiciary as a whole, a matter which the public at large nowadays have the tendency to receive almost with delight and are inclined readily to accept the truth of such insinuations, howsoever baseless. We must say here that any outlandish expression in contemporary times employed against the Courts and Judges has become a favourite pastime of the public, who, untrained as they are in the law, much more than the yesteryear generation, are prone by this behaviour of theirs to usher in a lawless society. It is keeping in mind those common perceptions and irresponsible public behaviour that we have eschewed the course of quoting the ignoble words spoken by the contemnor before the Court of the learned Civil Judge.

10. Now, turning to the fact if the contemnor indeed deserves to be held guilty of the contumacious words that he spoke in Court of Mr. Amit Mishra, the then Civil Judge (Sr. Div.), Basti, we take note of the fact that the contemnor expressed an early and unconditional apology in his affidavit dated 08.07.2025, where he has stated on oath:

"4. That the deponent is tendering unconditional apology in the present contempt application with respect to unfortunate incident taken place on 22.01.2025 before the court of Civil Judge (Senior Division), Basti. He is deeply regretted from the bottom of his heart about the aforesaid incident in which some unwilling disrespect has occurred.

5. That the deponent has no intention and object to dishonor the concerned court. Before this unfortunate incident from his practicing life no complaint whatsoever was made against him by the court. Even no incident of disrespect of the court has been taken place by the deponent.

6. That the conduct of the deponent was neither deliberate nor intended to show any disrespect to the authority of Hon'ble Court.

7. That the deponent assures this Hon"ble Court that he will be more careful in future and will refrain from any such act, expression, or conduct that may be perceived as contemptuous or disrespectful toward the court. He will be responsible, and respectful in all legal and judicial matters.

8. That the deponent tendering his unconditional, sincere and heartfelt apology to this Hon'ble Court for any act or omission on his part that may have caused disrespect, interference, or prejudice to the administration of justice. Further deeply regret his actions/words, which were not intended to disrespect or undermine the authority of Hon'ble Court or the judicial process.

9. That the deponent solemnly undertakes and assures this Hon'ble Court that he will not, in the future, engage in any act or conduct that could be construed as contemptuous or disrespectful to the judiciary or its proceedings. He holds the judiciary in the highest esteem and committed to upholding its dignity and authority."

11. In compliance with the orders of the Division Bench dated 30.07.2025, the contemnor appeared before Mr. Amit Mishra at Raebareli on 12.08.2025 and tendered an unconditional apology. The learned Civil Judge accepted the apology for himself, but he did say that disrespectful words had been spoken of the learned District Judge, Basti and also this Court, which he had no authority to condone. Nevertheless, so far as he was concerned, the apology was accepted. The relevant part of the learned Civil Judge's report dated 30.08.2025, reporting about the apology tendered by the contemnor before him reads:

"That pursuant to the directions of the Hon'ble Court in the above mentioned case, Shri Hari Narayan Pandey, Advocate, appeared before me on 12.08.2025 and tendered his unconditional apology in writing through Respected District Judge Raebareli. Having considered his submission and the deep remorse expressed, I state with due respect that I accept his apology insofar as it concerns the remarks made against me in my capacity as Presiding Officer. However, it is also a fact that on the said occasion, Shri Hari Narayan Pandey had intentionally used disparaging and offensive words in the open Court in the presence of litigants and other advocates against the Hon'ble High Court and Respected District Judge Basti. I most respectfully submit that such language is wholly unbecoming of a member of the Bar and deserves to be condemned in the strongest terms. I do not consider myself competent to deal with that part of the misconduct, and therefore leave it to the wisdom of the Hon'ble Court to consider whether his apology in that regard merits acceptance. This is submitted most respectfully for the kind perusal and further orders of the Hon'ble High Court."

12. The contemnor appeared before us and we granted him opportunity to have his say. He did not justify his words in the least measure and said before us that he was utterly distressed on the day when the unfortunate incident had happened for his own reasons. We had the occasion to watch the contemnor's demeanour in Court as he addressed us. We are convinced that he is a well-groomed member of the Bar, aware of the niceties of the law and etiquette in Court. Therefore, the words that he spoke in Court and landed himself in contempt proceedings, do seem to be the result of something extraneous, that affected his conduct in Court, which is not this way when he generally appears. He has put in long years of practice and there is nothing to show that he has indulged in contumacious conduct in the past. He has tendered unconditional apology at the earliest, which the learned Civil Judge accepted, of course, for himself. The learned Civil Judge has also remarked that he found the apology to be the expression of remorse, which led him to accept it. We are convinced that it was an expression of genuine remorse and not merely a contrivance to escape the consequences of contempt.

13. At one stage of proceedings, when we thought of accepting the apology at the hearing of this application, Mr. Mehrotra, appearing for the High Court, had some words of caution for us as he said that commission of criminal contempt of Court has become the order of the day. It was his caution that made us reserve opinion and we have carefully considered whatever Mr. Mehrotra had to say in the matter. We must remark that Mr. Mehrotra's words were certainly not misplaced and had lots of wisdom to them. Though, we do not take judicial notice because that would have consequences, but we do pay judicial attention, as it must be, to the fact that instances of criminal contempt galore on the social media in the name of freedom of expression, which cross the line. There are virtual abuses on media hurled at superior Courts, which are, by no means, within the fold of the defence, called fair comment or the informed criticism of a judgment. This is not the subject matter of the present contempt reference, but we do wish to remind the public to be cautious in future, because words that are most unambiguously contumacious, circulate on the social media, which, as and when, taken cognizance of in our contempt jurisdiction, may expose the contemnor to penalties of the law, which the Court may not hesitate to impose.

14. So far as the present contempt matter is concerned, we accept the contemnor's apology and discharge the notice issued to him.

15. This contempt matter is **consigned to record**.

(2026) 2 ILRA 907
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.02.2026
BEFORE

THE HON'BLE MANISH KUMAR, J.

Contempt Application (Civil) No. 99 of 2010

Ram Shanker Shukla & Anr. ...Applicants
Versus
Madhukar Shukla & Ors. ...Opposite Parties

Issue for consideration

Contempt if Counsel give an undertaking on its own without client's instructions.

Headnotes

Contempt of Court - Statement of counsel before Appellate Court-The counsel for the respondent no. 1 -made statement that the appellant does not intend to sell any property nor is going to sell the same-nothing on record that the counsel was instructed by respondent no. 1 to give any undertaking before the Appellate Court-counsel have stated before the Appellate Court on his own -lawyers should follow the client's instructions rather than substitute their judgment for that of the client- Case of respondent no. 1 squarely covered by *Himalayan Coop. Group Housing Society* -no contempt is made out. **Application dismissed.** (E-9)

Case Law Cited

Himalayan Cooperative Group Housing Society Vs. Balwan Singh and others reported in (2015) 7 SCC 373

List of Acts

Nil

List of Keywords

Client's instructions

Appearances of parties

Counsel for Applicant(s) : Anurag Srivastava, Abhishek Kumar Singh, Anand Dubey, Anurag Dixit, Bhupendra Pratap Singh Counsel for Opposite Party(s) : Pritish Kumar, Indrapal Singh, N.L.Pandey, Pt. S. Chandra, R.S.Tripathi, S.N. Tilhari, Vivek Sarswal

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

1. Heard.

2. Present contempt application has been preferred against alleged non-compliance of the judgment and order dated 02.09.2009 passed in Special Appeal No. 579 of 2009. The relevant paras of the said judgment and order are being reproduced hereinbelow:-

" We, therefore, set aside the order passed by the learned Single Judge and remit the matter to the learned Single Judge for being decided afresh, after afforing opportunity to the appellant, namely, opposite party no. 2 in the writ petition, in respect of the injunction being granted to the respondents.

So far the direction for deciding the recall application is concerned, we do not find any ground to interfere with the same, as both the parties agree that the application may be directed to be considered and disposed of expeditiously.

We expect that the application shall be decided within the time provided by the learned Single Judge.

At this juncture the counsel for the appellant says that the appellant does not intend to sell any property nor is going to sell the same."

3. Learned counsel for the applicant has submitted that despite the undertaking given by respondent no. 1 before the appellate court, he has executed the sale deeds on 23.12.2009 and 24.12.2009 during the pendency of the writ petition.

4. It is further submitted that the respondent no. 1 after giving an undertaking before the Appellate Court was not supposed to execute the sale deed dated 23.12.2009 and 24.12.2009 in the light of the interim order dated 27.07.2009 passed in the Writ Petition. The relevant para of the said interim order is being reproduced hereinbelow:-

"Till disposal of the aforesaid application, the parties shall not change the nature of property in dispute"

5. On the other hand learned counsel for the respondent no. 1 has submitted that neither any undertaking has been given nor the respondent no. 1 had instructed his counsel to make any statement on his behalf before the Appellate Court hence, it could not be said that the statement made by the learned counsel for the respondent no. 1 in the appeal, where the respondent no. 1 was appellant, was not an undertaking and in support of his submission, he placed reliance upon the judgment of Hon'ble Supreme Court passed in the case of ***Himalayan Cooperative Group Housing Society Vs. Balwan Singh and others reported in (2015) 7 SCC 373***.

6. It is further submitted that the writ petition was also dismissed as withdrawn by the petitioner, who is the applicant herein on 11.01.2010.

7. It is further submitted that respondent no. 1 while submitting his reply to the charge has specifically mentioned in the affidavit that the statement given by his counsel is not in his knowledge, otherwise, he would not have sold the property and if the affidavit is read in totality then it has come out that he has not given any instruction to his counsel for making any such statement before the Appellate Court.

8. After hearing learned counsel for the parties and going through the record of the case, it is found that before the Appellate Court, the counsel for the appellant i.e. respondent no. 1 herein "says that". There is nothing on record that the counsel was instructed by the respondent no. 1 to give any undertaking before the Appellate Court. It is the counsel who seems to have stated before the Appellate Court on his own. The relevant paras of the judgment of Hon'ble Supreme Court relied upon by learned counsel for the respondent no.1 is being reproduced hereinbelow:-

"21. If for any reason, the writ court perceived the oral request made by the respondents to have justified the ends of justice and desired to accept the concession so made by the counsel for the appellant Society, the said request not being the subject-matter of the writ petition required the Court to query whether the counsel for the appellant Society has been authorised to make such a statement by the appellant Society or whether any such resolution has been passed by the appellant Society giving concession in matters of this nature. Since the required caution was not exercised by the learned Judges of the writ court, the directions issued by the writ court suffer from infirmity and hence require to be set aside.

22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

31. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment."

9. The submission of the learned counsel for the applicant that the said statement/undertaking given by the counsel for the respondent no. 1 before the Appellate Court must be read with interim order dated 27.7.2009 passed in the Writ Petition and the conjoint reading of those would demonstrate that the submission made by the learned counsel for the respondent no. 1 before the Appellate Court amounts to undertaking, the said submission of learned counsel for the applicant is not tenable for the reason that the Appellate Court had set aside the interim order dated 27.07.2009 while remitting the matter to the learned Single Judge, so it can not be read alongwith the same.

10. It has been held by Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society (supra), which has been relied upon by learned counsel for the respondent no. 1 that the lawyers should follow the client's instructions rather than substitute their judgment for that of the client and it is always better to seek appropriate instructions from the client or his authorized agent before making any concession which may, directly or remotely, affect the rightful legal right of the client, which it appears not the case in the present proceedings.

11. The case of the respondent no. 1 is squarely covered by the judgment of Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society (supra). Further the applicant within few months after passing the order in the Special Appeal had withdrawn the writ petition on

11.1.2010. During the period of withdrawal of the writ petition and special appeal, there existed no interim order.

12. In view of the facts, circumstances and discussion made hereinabove, no contempt is made out against the respondent no. 1, thus, present contempt application is hereby ***dismissed***.

13. Charge framed against the respondent no. 1 is hereby withdrawn.

14. Notice issued, if any, stands discharged.

(2026) 2 ILRA 911
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.02.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Criminal Appeal No. 9 of 2016

Ajay Kumar **...Appellant**
Versus
State Of U.P. **...Respondent**

Issue for consideration

Matter relates to conviction only on the basis of theory of last seen.

Headnotes

Indian Penal Code, 1860 - S. 302 - Evidence Act, 1872 - Ss. 8, 101, 106 and 114 -Murder - Circumstantial evidence - Motive and theory of last seen together - Prosecution case based purely on circumstantial evidence - factum of discovery of dead bodies and homicidal death of the deceased stood proved- the fact of marriage could not be proved -evidence relating to "last seen together" was "not proximate" and the factum of having seen the deceased in the company of the accused/appellant was "seriously doubtful" - Held, Section 106 of the Evidence Act is "not a panacea for the defect in proving the case" -if the prosecution fails to establish a complete chain of circumstances in the first place, the accused's failure to discharge the burden under Section 106 becomes irrelevant -no other corroborative evidence against the accused/appellant - conviction only on the basis of last seen together could not be sustained - accused/appellant acquitted by giving benefit of doubt; impugned judgment reversed and set aside; **Appeal allowed.**(E-9)

Case Law Cited

1. Arjun Marik Vs State of Bihar, reported in 1994 Supp(2) SCC 372;
2. Krishnan alias Ramaswamy and Ors. Vs State of Tamil Nadu, reported in (2014) 4 SCC 715;
3. Kanahiya Lal Vs State of Rajasthan, reported in (2014) 4 SCC 715;
4. Sharad Birdhichand Sharda v. State of Maharashtra, reported in (1984) 4 SCC 116
5. Nandu Singh v. State of Chhattisgarh, reported in 2022 SCC Online SC 1454
6. Shambu Nath Mehra v. State of Ajmer, reported in AIR 1956 SC 404
7. Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra, reported in (2012) 10 SCC 373
8. Nagendra Sah v. State of Bihar, reported in (2021) 10 SCC 725

9. Anees v. State (NCT of Delhi), reported in (2024) 15 SCC 48
10. Umedbhai Jadavbhai v. State of Gujarat, reported in (1978) 1 SCC 228

List of Acts

1. Evidence Act, 1872
2. Indian penal Code, 1860

List of Keywords

Last seen together; Section 106 of the Indian Evidence Act; circumstantial evidence

Appearances of parties

Counsel for Appellant(s) : Neeta Singh Chandel, Arshad Hafeez Khan, Dinesh Kr. Sharma, Furkan Pathan, Piyush Kumar Singh, Prabha Shankar Pandey
Counsel for Respondent(s) : Govt. Advocate

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) has been filed by the accused/appellant - Ajay Kumar, against the judgment and order dated 05.10.2015 passed by the Additional Sessions Judge, Court No. 9, Barabanki, in Sessions Trial No. 992 of 2011 (State Vs. Ajay Kumar) arising out of Case Crime No. 133 of 2011 wherein he has been convicted and sentenced for punishment under Section 302 of the Indian Penal Code for life imprisonment, along with fine of Rs. 20,000/- with default stipulation.

CASE OF THE PROSECUTION

2. The prosecution case can be succinctly narrated as that on 22.04.2011, the informant Omchand Yadav (P.W.-1) who was working as a watchman in village Chiloki, submitted a written complaint/Tehrir (Exhibit-Ka-1) at Police Station Safdarganj, District Barabanki, stating inter-alia that on the said date at about 11:00 PM, while he was on routine night patrol of the said village, certain villagers informed him that two dead bodies were lying in the Rakhuna Chiloki forest. The said informant on receipt of such information proceeded to the said place of incident along-with some villagers and on reaching the spot noticed that dead body of one woman was lying in a pit about 5 feet deep located at a field situated approximate 100 meters behind the Government Girls Inter College and a gamcha was also found wrapped around her neck and blood was oozing from her mouth. Further, at a distance of about 50 meters another dead body of a girl aged about 8-9 years was found lying in a drain, with a tukda of cloth tied around her neck. Various articles, including sarees, blouses, underwear, shirt and a bag, were found lying scattered at the place of incident. According to the informant, the condition of the bodies and the surrounding circumstances indicated that the victims had been murdered at the same very spot.

3. On the basis of the aforesaid written complaint/Tehrir (Exhibit-Ka-1), Case Crime No. 133 of 2011 under Section 302 of the Indian Penal Code was registered at Police Station Safdarganj, District Barabanki, against unknown persons and subsequently, the investigation of the case was started. The Investigating Officer after recording of the statement under Section 161 Cr.P.C. and on completion of the investigation, found material indicating the involvement of the accused/appellant Ajay Kumar. Thus, a charge-sheet (Exhibit-Ka-8) came to be filed against the said

accused/appellant-Ajay Kumar, under Section 302 of the Indian Penal Code before the competent Court and after following the due process of law, the case came to be committed to the Court of Session for Trial vide order dated 18.07.2011.

4. The learned Trial Court, after being satisfied that a prima facie case was made out against the accused/appellant Ajay Kumar, framed the charge against him under Section 302 of the Indian Penal Code vide order dated 12.08.2011. The charge was read over and explained to the accused/appellant Ajay Kumar in Hindi, wherein he denied the charges and claimed for Trial. Therefore, the case was taken up for Trial.

PROCEEDINGS BEFORE THE TRIAL COURT

5. To bring home the charges, the prosecution examined nine witnesses in the following chronological manner being: -

P.W.-1	Om Chand Yadav	Witness of Chik F.I.R.
P.W.-2	Dr. Sunil Kumar, posted as Senior Consultant of the District Hospital, Barabanki on 23.04.2011	Witness of Postmortem
P.W.-3	Smt. Sona Devi	Villager/witness of last seen.
P.W.-4	Smt. Dhuriya	Villager/witness of last seen.
P.W.-5	Vinod	Villager/witness of last seen.
P.W.-6	Ganesh	Brother-in-law of the deceased/ witness of motive
P.W.-7	S.I. Nirbhay Kumar Singh	Investigating Officer of the present case.
P.W.-8	Sandeep	Tea shop owner/ witness of last seen.
P.W.-9	S.I. Pradeep Kankan	Witness of *panchayatnama.*

6. Besides the aforesaid oral testimonies, the prosecution also relied on various documentary evidence exhibited during the course of Trial, running from *Exhibit Ka-1 to Exhibit Ka-27.*

7. Upon completion of the prosecution evidence, the statement of the accused/appellant Ajay Kumar was recorded under Section 313 of Cr.P.C., wherein he denied all the circumstances put forth against him by the prosecution. In his additional statement, the accused stated that P.W.-6, Ganesh was a relative residing in his village and, due to prior enmity, had falsely implicated him in the present case.

8. The accused/appellant Ajay Kumar chose not to lead any defence evidence, as this Court finds that the learned Trial Court records that despite being afforded adequate opportunity, the accused/appellant Ajay Kumar did not adduce any evidence in his defence.

9. Upon consideration of the rival submissions and the evidence available on record, the learned Trial Court returned a finding that the prosecution had successfully established a complete and unbroken chain of circumstances through cogent oral and documentary evidence. The defence contention that no weapon of offence was recovered, was considered and rejected by the Trial Court, particularly in view of the recovery of material articles such as a gamcha and a piece of cloth found around the necks of the deceased persons, which were duly proved through prosecution witnesses. The Trial Court further rejected the defence plea regarding absence of motive, holding that sufficient material existed on record to negate the said contention against the accused/appellant Ajay Kumar.

10. The learned Trial Court also placed reliance upon the evidence relating to the Court marriage of the accused/appellant Ajay Kumar with the deceased Shubhangi. Though the notary of the marriage was not examined, the Trial Court found that the oral evidence on record sufficiently established that the accused/appellant Ajay Kumar was commonly known in the village as the second husband of the deceased, which circumstance was duly corroborated by the testimony of prosecution witnesses.

11. While analyzing the evidence in its entirety, the learned Trial Court further held that the testimony of the prosecution witnesses with respect to the -last seen- circumstance was trustworthy and reliable, as no material contradiction was found between their statements recorded under Section 161 Cr.P.C. and their depositions before the Court. Further, the delay of two to three days in recording statements under Section 161 Cr.P.C. was held to be inconsequential in the facts of the case.

12. The learned Trial Court went on to conclude that since the deceased and her minor daughter were last seen in the company of the accused/appellant Ajay Kumar, shortly before their death and no plausible explanation was offered by the accused/appellant Ajay Kumar regarding the circumstances leading to their death, the presumption under Section 106 of the Indian Evidence Act could be invoked. Consequently, the learned Trial Court recorded its satisfaction in holding the accused/appellant Ajay Kumar guilty of the offences charged and sentenced him for life imprisonment under Section 302 I.P.C. along with fine of Rs. 20,000/- with default stipulation vide judgment and order dated 05.10.2015, passed in Sessions Trial No. 992 of 2011.

PROCEEDINGS BEFORE THIS COURT

13. Being aggrieved by the aforesaid conclusion of the learned Trial Court, the present appeal being Criminal Appeal No. 9 of 2016 came to be filed by the accused/appellant- Ajay Kumar.

14. The bail application of the accused/appellant- Ajay Kumar having been rejected by this Court, the accused/appellant- Ajay Kumar is in jail, since 23.04.2011 and as such the period of his incarceration is more than 14 years and 8 months.

SUBMISSION ON BEHALF OF THE PARTIES

15. Learned counsel for the accused/appellant Ajay Kumar has submitted that Ajay Kumar has not been named in the F.I.R. (Exhibit Ka-26) and his conviction is based on circumstantial evidence, whereas as a matter of fact, there is no complete chain of evidence against him.

16. The post-mortem report dated 23.04.2011 and the evidence of Doctor reveals that the probable time since death was about 2 days, which apparently meant that the alleged incident might have taken place on 21.04.2011, at about 3-4 PM. However, according to him, there is no evidence that the accused/appellant Ajay Kumar was seen with the deceased or at the crime-spot by any of the witnesses soon before or after the occurrence of the incident.

17. Learned Counsel has vehemently submitted that there is no recovery of any article from the pointing out or from the possession of the accused/appellant Ajay Kumar. He further states that none of the witnesses have been produced by the prosecution to establish any link between the alleged recovery of crime weapon i.e. the piece of saree or gamcha with that of the accused/appellant Ajay Kumar.

18. According to the learned Counsel, the prosecution failed to prove any motive on the part of the accused/appellant Ajay Kumar to commit the alleged crime. He submits that motive is a very significant limb in cases sought to be proved by circumstantial evidence. He further states that neither there is any investigation nor any evidence on the aspect, as to why the accused/appellant Ajay Kumar would commit murder of the deceased at a place about 300 Km away from the village of the deceased and/or the accused/appellant Ajay Kumar. According to him, the appellant is not a beneficiary from the death of the deceased and rather it has come in the evidence that it is P.W.-6 (Ganesh), who is the real beneficiary from the death of the deceased.

19. The learned Counsel for the accused/appellant has strenuously argued that the Trial Court has presumed that the deceased is the wife of the accused/appellant Ajay Kumar, although the basis of the said relationship being the Notary affidavit dated 28.12.2010 was neither produced by the prosecution nor the same was proved by any witnesses.

20. According to the learned Counsel for the accused/appellant Ajay Kumar, the alleged circumstantial evidence of the last seen i.e. P.W-3 (Sona Devi), P.W.-4 (Smt.Dhuriya) and P.W.-5 (Vinod) are interested witnesses to support the beneficiary P.W.-6 (Ganesh), who is devar and all these witnesses belong to same village. In any case, he has highlighted that there are major contradiction in their deposition and do not inspire any confidence. He has submitted that the learned Trial Court has erroneously convicted the accused/appellant Ajay Kumar without any cogent evidence and ignoring the basic principle of criminal jurisprudence that in case of any suspicion on the testimony of the witnesses the benefit of doubt should always accrue in favour of the appellant/accused. Thus, he has prayed for exonerating the accused/appellant Ajay Kumar.

21. *Per contra,* the learned A.G.A. appearing for the State has supported the conviction order of the learned Trial Court. According to the learned A.G.A. the Trial Court has meticulously considered the various evidence, which has come on record and on the appreciation of the said

evidence came to a conviction of guilt of the accused/appellant Ajay Kumar. He has further submitted that the contradiction pointed out by the Counsel appearing for the accused/appellant are not material and are merely human error which has been accepted by this Court to be natural variation and not material which would have any effect on the veracity of the deposition of the witnesses.

22. According to the learned A.G.A., a plain reading of the testimony of the last seen theory witnesses, it can be easily propounded that it is the accused/appellant Ajay Kumar, who was last seen in the company of the deceased, before she and her minor child was murdered and as such the learned Trial Court has rightly invoked the provisions of Section 106 of the Indian Evidence Act to seek the explanation from the accused/appellant Ajay Kumar, which he miserably failed and as such the Trial Court has rightly convicted the accused/appellant Ajay Kumar. Thus, according to him no interference was required in the impugned judgment and as such has prayed for dismissal of the present appeal.

ANALYSIS AND FINDINGS

23. Heard Sri Piyush Kumar Singh, learned counsel for the appellant and Sri Umesh Verma, learned A.G.A. appearing for the State.

24. There is no dispute that the case of prosecution is based purely on circumstantial evidence in the form of motive and theory of last seen together, since no witness claims to have seen the alleged incident, wherein the deceased Subhangi and her 8/9 years old minor daughter was done to death.

25. At the vert outset, it needs to be recorded that the deceased persons are resident of village - Bhairabpur Dhoula, Police Station - Raunapur, District - Azamgarh, as has come in the testimony of P.W.-3 (Sona Devi), P.W.-4 (Smt. Dhuriya) and P.W.-5 (Vinod), all co-villager and witness of Last seen together theory, according to the prosecution story. Further, P.W.-6 (Ganesh), who is the brother-in-law (devar) of the deceased has also deposed that the deceased and the accused/appellant Ajay Kumar were resident of the aforesaid village and goes to an extent to say that both he and the accused/appellant Ajay Kumar were caught together by the police from their village and taken to the Barabanki postmortem house, wherein the dead bodies were got identified by the said witness P.W.-6 (Ganesh) by the police. Therefore, there is no gain saying in believing that whether it is the deceased or the accused/appellant, both of them are resident of village - Bhairabpur, District-Azamgarh.

26. As far as the discovery of dead bodies are concerned, it is more than evident that the same has been recovered from Rakhuna Chiloki forest, Village - Chiloki, P.S.: Safdarganj, Nawabganj, District: Barabanki. This Court takes note of the fact that the distance between village - Bhairabpur, District - Azamgarh i.e. the residence of the deceased and Police Station - Safdarganj, District-Barabanki i.e. the place for discovery of the dead body of the deceased is approximately 300 Kilometers. Therefore, a very crucial aspect of the present case, according this Court would be also to see as to what evidence has come on record to show, as to how and in what circumstances the

deceased (or say the dead body of the deceased) travelled this 300 KM and what is the evidence to link the accused/appellant to the said place of crime spot.

27. No doubt, it is a well-established canon of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, however, the said conviction always comes with a caveat that such conviction ought to be based on evidence deemed to be credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused/appellant person-s guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused/appellant. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence has been crystallized by the Hon-ble Supreme Court in the case of ***Sharad Birdhichand Sharda v. State of Maharashtra***, reported in ***(1984) 4 SCC 116***; wherein it was held:

"153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned -must or should- and not -may be-established. There is not only a grammatical but a legal distinction between -may be proved- and -must be or should be proved- as was held by this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793]*** *where the observations were made: [SCC para 19, p. 807] -Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between (1984) 4 SCC 116. 20 -may be- and -must be- is long and divides vague conjectures from sure conclusions.-*

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(emphasis supplied)

28. Having noted the principles governing a case based purely on circumstantial evidence, this Court proceeds to discuss the evidence led by the prosecution in order to bring home the charges against the accused/appellant Ajay Kumar. The evidence brought on record by the prosecution to

establish the charge of murder against the accused-appellant Ajay Kumar, can be formulated into the following circumstances:

(i) The first circumstances would be the discovery of dead bodies of two unknown persons lying in the Rakhuna Chiloki forest, P.S.-Safdarganj, Sub-district - Nawabganj, District – Barabanki;

(ii) The second circumstance would be the cause of death of the deceased persons;

(iii) The third circumstance would be the recovery of a photocopy of a Notary Affidavit dated 28.12.2010 relating to the solemnization of a marriage between the deceased lady and the appellant from the crime spot;

(iv) The fourth circumstance would be the motive for doing the deceased to death by the accused/appellant Ajay Kumar;

(v) The fifth circumstance would be the evidence of last seen together, so as to invoke the provision of Section 106 Indian Evidence Act and cast an onus on the accused/appellant Ajay Kumar to explain the circumstances under which the deceased was found murdered.

29. As far as the first circumstance is concerned, P.W.-1 has deposed that in Rakhuna Chiloki Forest, the dead body of deceased Subhangi was found in a pit behind the Government Girls Inter College with a gamcha (towel) tied around her neck and a dead body of minor girl lying near the drain. He proved the written complaint/Tehrir as Exhbit- Ka-1, which led to lodging of a F.I.R. being case Crime No. 133 of 2011 (Exhibit- Ka-26) against unknown persons under Section 302 I.P.C. Thereafter, P.W.-9 proved the Inquest proceedings and the panchayatnama of both the deceased persons as Exhibit Ka-12 and Exhibit Ka-19. Thus, the factum of discovery of dead bodies at Rakhuna Chiloki forest, village - Chiloki, Police Station - Safdarganj, District- Barabanki, stands proved.

30. The second circumstances is the cause of death. As aforesaid, this Court finds that the investigation started with the lodging of F.I.R. and the *panchaytnama* records that the deceased Subhangi had a knot of gamcha tied around her neck and the identity of the said deceased could not be ascertained even after talking to several persons in the vicinity. Thus, to know the cause of death both the bodies were sent for post mortem. The post mortem reports of both the deceased (Exhibit-Ka-2 and Exhibit- Ka-3) were proved by P.W.-2. The said witness, who is a Doctor and posted as Senior consultant at the District Hospital, Barabanki has deposed that *a contusion ligature mark 34cm X 2- cm was present all around the neck at the level of thyroid cartilage*. He has also deposed that the death was caused due to ante-mortem strangulation and the injuries sustained by both the deceased were sufficient to cause death in the ordinary course of nature. Thus, the second circumstances relating to the homicidal death of the deceased also stands proved.

31. The third circumstance would be the recovery of a photocopy of a Notary Affidavit dated 28.12.2010 from the crime spot relating to the solemnization of a marriage between the deceased lady and the accused/appellant Ajay Kumar. As regards the recovery of the said Notary Affidavit,

the Investigating officer (P.W.-7) deposed that he recovered the said Notary Affidavit from the crime spot along with various articles strewn at the crime-spot like sarees, blouse, petticoats, Mobile, cream, needles and thread, nail polish, bag etc., including the crime-weapon. However, this Court finds that a recovery memo *(fard)* was prepared as Exhibit ka-5, for all the articles, except the Notary Affidavit. Further, recovery of crime-weapon, i.e. part/piece of saree and gamcha used to tie around the neck so as to throttle the deceased persons were also marked as *Exhibit Ka-6* and *Exhibit Ka-7;* however no fard/ recovery memo was prepared with respect to the Notary Affidavit, nor the same was filed along with the charge-sheet or has been brought on record.

32. Further, no witnesses have been produced to prove the factum of marriage between the deceased and the accused/appellant Ajay Kumar, nor to prove the contents of the said Notary Affidavit. The Notary Affidavit dated 28.12.2010 alleged to be a marriage certificate is not available on the record of the present case and has mysteriously vanished. This Court finds that according to the Investigating Officer, the Notary affidavit was one of the most vital document to ascertain the identity of the deceased persons and was also a link to the accused/appellant Ajay Kumar, however, this Court is absolutely clueless as to in what circumstances, the said Notary Affidavit was not brought on records of the present case.

33. Further, no doubt P.W.-3 in her statement has stated that the deceased is wife of the appellant, however, she has also stated that Shubhangi and her child were the residence of her village and the accused/appellant Ajay Kumar is from some other village and came to live along with the deceased only before 3/4 months, before the incident. Apparently, the factum of marriage seems to be unreliable for obvious reasons as it has also come in evidence that she does not know as to what the accused/appellant Ajay Kumar did for his living nor as to from which village he had come. Similarly, P.W.-4 although in his examination-in-chief stated the factum of a Court-marriage, however, in her cross-examination she admits that she is not aware as to where and when the said marriage was performed. P.W.-4 also says that she and P.W.-6 (Ganesh/Devar) belongs to the same fraternity/*biradari* .

34. It is also easily verifiable from the testimony of P.W.-6 (Ganesh) that although, he has testified that the deceased and the accused/appellant Ajay Kumar had a Court-marriage and the said paper was shown to him by the Investigating Officer, however. in his cross examination he admits that the paper of Court-marriage shown to him by the Investigating Officer was being seen by him for the first time. Further, the Investigating Officer, has testified in his cross examination that he had never visited the house of P.W.-6 (Ganesh) and that is why there was no question of showing him the notarial affidavit of Court marriage. Interestingly, all these fact witnesses have deposed relating to the marriage of the deceased with the accused/appellant Ajay Kumar, however, none of them knew the name of the child aged about 8/9 years old nor they knew as to what the accused/appellant Ajay Kumar did for his living nor they knew, as to from which village the accused/appellant Ajay Kumar had come from. Thus, the testimony of these fact witnesses relating to the marriage does not boost of confidence and are untrustworthy and has to be taken with a pinch of salt, keeping in view that all these fact witnesses belong to the same village and same fraternity/biradari. Thus, the fact of marriage could not be proved form the evidence on record, however, this Court reasons to believe that some relation existed between the deceased and the accused/appellant Ajay Kumar.

35. The fourth circumstance is to be found from the reading of the evidence would be the theory of motive propounded by the prosecution for committing the offense of murder by the accused/appellant Ajay Kumar. As far as the theory of motive is concerned, it is trite law that proof of motive is not sine qua non in a case of murder. However, in a case based purely on circumstantial evidence, motive if properly established, assumes great significance and would definitely provide an important corroborative link in the chain of incriminating circumstances and strengthen the case of prosecution. The reliance in this regard may be placed on the case of ***Nandu Singh v. State of Chhattisgarh,*** reported in ***2022 SCC Online SC 1454***.

36. As far as the present case is concerned, there are five fact witnesses. Out of the said five witnesses, except for P.W.-6 (Ganesh), none of these witnesses have deposed anything relating to motive. A careful scanning of the evidence of P.W.-6 would reveal that the sole motive assigned for murder by him is the threat extended by the accused/appellant Ajay Kumar, during the life time of the deceased. According to the said witness, the accused/appellant Ajay Kumar had extended threat of life to the deceased- Subhangi, in case she did not stop following him. However, in his cross-examination, the said witness admitted that neither he nor the deceased -Subhangi had ever lodged any complaint related to the said threat. He also admits that the said fact of threat to life was not told by him to the police during his recording of statement under Section 161 Cr.P.C. Further, he admits in his cross- examination that after the death of his brother- Shankar, the village land came to be vested with Subhangi, his Bhabhi (sister-in-law) and after her death, the land presently came to be vested with him. Besides, the said stray statement of P.W.-6, there is no evidence nor any investigation, which has come on record to show the ill-motive of the accused/appellant. Thus, the motive as tried to be proved against the accused/appellant is absolutely far-fetched and no immediate or proximate reasons have come on record to show any motive of the accused/appellant to commit the offense of murder. The accused/appellant Ajay Kumar admittedly is not even a beneficiary of death of the deceased person. Thus, we have no hesitation in holding that the evidence led by the prosecution to prove the theory of motive for commission of the crime as attributed to the accused/appellant Ajay Kumar, is far from convincing and a vital link in the chain of incriminating circumstances is snapped. In view of the above finding, unquestionably, the trial Court erred in holding that the prosecution has been able to prove the motive for the murder against the accused/appellant Ajay Kumar, beyond all manner of doubt.

37. The fifth circumstance would be the evidence of last seen together, as propounded by the prosecution, thereby, trying to shift the burden of proof by virtue of Section 106 of the Evidence Act and placing the accused/appellant Ajay Kumar under the onus to explain the circumstances under which Subhangi and her 8/9 years old minor daughter was found murdered. It is a cardinal principle of criminal jurisprudence that Section 106 of the Evidence Act shall apply and the onus to explain would shift on the accused only after the prosecution succeeds in establishing the basic foundational facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer a proper explanation about the existence of the said other facts, the Court can draw an appropriate inference against the accused. In cases based on circumstantial evidence, the accused's failure to provide a reasonable explanation as required under Section 106 of the Evidence Act can serve as an additional link in the chain of circumstantial evidence - but only if the prosecution has already established other essential ingredients including the foundational fact, sufficient to shift the

onus on the accused. However, if the prosecution fails to establish a complete chain of circumstances in the first place, then the accused's failure to discharge the burden under Section 106 of the Evidence Act becomes irrelevant.

38. The law concerning the invocation of shifting of onus under Section 106 of the Evidence Act has been explained by the Hon-ble Supreme Court in the case of ***Shambu Nath Mehra v. State of Ajmer***, reported in ***AIR 1956 SC 404***; wherein it was held as follows:

"8. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof:

*"**101.Burden of proof.**-Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.-*

9.-Illustration (a) says:

"Adesires a court to give judgment that-B-shall be punished for a crime which-A-says-B-has committed.

Amust prove that-B-has committed the crime.-

10.This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are -especially- within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word -especially- stresses that. It means facts that are-pre-eminently-or-exceptionally-within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried…."

39. Further, in ***Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra, reported in (2012) 10 SCC 373***; the Supreme Court observed as under:

"23."It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We

make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

40. A similar observation is found in ***Nagendra Sah v. State of Bihar,*** reported in ***(2021) 10 SCC 725***; wherein the Hon-ble Supreme Court has held that:

"22."Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23.-When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

41. Recently, Hon-ble Supreme Court in the case of ***Anees v. State (NCT of Delhi),*** reported in ***(2024) 15 SCC 48***; held in the following terms:

"45."Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.-

(emphasis supplied)

42. Applying the aforesaid principles to the case at hand, the prosecution would be required to establish the basic foundational fact that the accused/appellant Ajay Kumar and Subhangi and her daughter (deceased) were last seen together, and to be specific during the time immediately preceding the incident. On a minute perusal of the testimony of the fact witnesses it is revealed from the deposition of P.W.-3 (Sona Devi) that she had seen the accused/appellant Ajay Kumar

along with the deceased persons leaving the village. In her cross-examination, she deposed that she was not able to meet them as they were leaving the village and told that either on the 3rd or 4th day after they left, the Barabanki Police had come to her village. She does not say anything about the timing, but says it was during evening. Thus, the evidence relating to -last seen together- is not proximate as there is a gap of 3-4 days between the incident of seen together and the crime committed. Further, the said witness is not sure about the number of days before she allegedly saw the deceased in the company of the accused/appellant Ajay Kumar. P.W.-4 (Dhuriya) also says that she had seen the accused/appellant Ajay Kumar leaving the village together some three years ago in the afternoon, however, he does not know as to at which place he had seen these people together.

43. P.W.-5 (Vinod) says that he had also seen the accused/appellant Ajay Kumar along with the deceased leaving the village around 11 AM. However, in his cross-examination, he has stated that it is correct that he has not seen the deceased and the accused/appellant Ajay Kumar going together. Thus, an apparent contradiction appears in his statement. Further, he admits that the fact of having seen both the accused/appellant Ajay Kumar and the deceased leaving together from the village has not been told by him to the police, when his statement was recorded under Section 161 Cr.P.C. The next fact witnesses, namely P.W.-6 (Ganesh) admits in his cross-examination that he had not seen the accused/appellant Ajay Kumar and the deceased leaving together from the village. Thus, the factum of having seen the deceased in the company of the accused/appellant Ajay Kumar leaving together or as to on which date or time is seriously doubtful. Apparently, the P.W.-7 (Investigating officer) has stated in his testimony that he has recorded the statement of P.W.-3 (Sona Devi) and P.W.-5 (Vinod) on 06.07.2011 i.e. after more than 75 days of the incident and that of P.W.-4 on 11.07.2011 i.e. after more than 80 days. Although, different time of having seen the accused/appellant along with the deceased, leaving the village has been said by witnesses P.W.-3, P.W.-4 and P.W.-5 in their testimony, which appears to be minor inconsistencies, the delay in recording the police statement of those witnesses calls for a close scrutiny of their version. Keeping in view that human memory fades with time and any narration of facts or events would depend on the perception and on the knowledge, which the said witness has gained in the intervening period between the date of crime and the date of recording the statements.

44. In any case, it is apparent from the facts of the present case that admittedly, the dead bodies were recovered not after 3/4 days of having seen together, but also some 300 KM away precisely at Rakhuna Chiloki forest, Village - Chiloki, P.S.- Safdarganj, Nawabganj, District: Barabanki. Thus, the testimony of last seen together does not appears to be immediately preceding the incident or proximate to the happening of murder of the deceased persons. The Hon-ble Supreme Court in the case of ***Rambraksh Vs State of Chhattisgarh,*** reported in ***(2016) 12 SCC 251***; held that the last seen theory would be advantageous to the prosecution to prove a case based on circumstantial evidence only when the time gap between the last seen point and the discovery of the death is so small and proximate that no one else could have committed the crime, but for that person. The Supreme Court even in those cases where the accused was last seen in the company of deceased, went on to hold that even in these cases the circumstance of last seen together alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused-s guilt. In the aforesaid judgment of ***Rambraksh (Supra)***, the Hon-ble Supreme Court went on to hold as under:

"12."It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.-

(emphasis supplied)

45. Further, there are consistent line of judgment, starting from ***Arjun Marik Vs State of Bihar***, reported in 1994 Supp(2) SCC 372; ***Krishnan alias Ramaswamy and Ors. Vs State of Tamil Nadu***, reported in ***(2014) 4 SCC 715; and Kanahiya Lal Vs State of Rajasthan***, reported in ***(2014) 4 SCC 715***; which have held that evidence of last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 I.P.C.

46. According to this Court, the best witness to narrate about the last seen together theory would had been P.W.-8 (Sandeep Kumar), the witness, who allegedly saw the accused/appellant Ajay Kumar and the deceased together at his shop of tea and samosa. However, the deposition of the said witness is of not much use as not only he refuses to identify the accused/appellant Ajay Kumar due to passage of time and his shop to be very busy, so as to identify a solitary client like the accused/appellant, but also testifies that no statement under Section 161 Cr.P.C was recorded by the police after the time of incident.

47. Thus, this Court finds nothing in the testimony of the fact witnesses which could even remotely suggest that the accused/appellant Ajay Kumar was last seen together immediately before or after the incident, as propounded by the prosecution, thereby, trying to shift the burden of proof by virtue of Section 106 of the Evidence Act and placing the accused/appellant Ajay Kumar under the onus to explain the circumstances under which Subhangi and her 8/9 years old minor daughter was found murdered. This Court finds that there had been a growing trend in the Trial Court to invoke the provisions of Section 106 of the Indian Evidence Act at the drop of hat, for getting that time and again the Hon-ble Supreme Court has held that Section 106 is not a panacea for the defect in proving the case against the accused/appellant Ajay Kumar. The prosecution case has to stand on its own legs and prove all the elements necessary to establish the offence against the accused/appellant Ajay Kumar.

48. In addition thereto, it is seen from the evidence that the F.I.R. was lodged on 22.04.2011, the postmortem was conducted on the dead bodies on 23.04.2011 and on the same date the accused/appellant Ajay Kumar was arrested. The Investigating officer (P.W.-7) has stated that the accused/appellant Ajay Kumar was arrested on 23.04.2011 on the basis of Notary affidavit found from the crime spot on 22.04.2011. Admittedly, the said notarial affidavit has not been proved nor filed on record and the statement of the fact witnesses, which allegedly saw the accused/appellant

Ajay Kumar together with the deceased going away from the village was recorded after more than two and half months of the incident, which creates a serious doubt on the testimonies of these fact witnesses.

49. From the evidence of P.W.-3 (Sona Devi) and P.W.-6 (Ganesh/ devar) it also transpires that the deceased had a mother-in-law. However, the prosecution has not explained as to where the mother-in-law was on the date of the incident. Nothing is available on record to throw any light regarding the same. Likewise, the prosecution has also failed to provide any explanation whatsoever as to why the beneficiaries of death of the deceased person namely the mother-in-law and one Uma as named by the P.W.-6 in his cross-examination, were not examined in evidence. This Court also notes that although a mobile was recovered from the crime spot, however, no investigation was carried with the help of said mobile, which could had given vital information and evidence relating to the death of the deceased. Failure to examine them in evidence calls for drawing of adverse inference thereby, further denting the credibility of the prosecution case, especially the link of -motive- for the murder of the deceased and the last seen theory proposed by the prosecution to convict the accused/appellant Ajay Kumar.

50. There is another doubtful aspect of the matter. Although, the presence of the Notary Affidavit cannot be doubt as P.W.-7 (Investigating officer) has deposed that the whereabouts of the deceased persons and the accused/appellant Ajay Kumar came to be revealed from the said Affidavit only. However, the same has mysteriously vanished in thin air. Further, if for a while, the accused/appellant Ajay Kumar is presumed to be the real culprit, then the said notarial affidavit, which had the effect of connecting and leading to the accused/appellant Ajay Kumar with that of the deceased Subhangi, would had been altogether removed or destroyed or at least not left at the crime-spot by the accused/appellant. Leaving the said notarial affidavit at the crime-spot would had been a self-goal for the accused/appellant Ajay Kumar. Thus, allegedly recovery of only the said notarial affidavit from the crime spot and not other important document of the deceased like, the Aadhar Card, pension papers, property papers etc., creates a doubt about the complicity of the accused/appellant Ajay Kumar in the present case. The said fact is further testified from the statement of P.W.-7, who has testified that although the name of the accused/appellant Ajay Kumar was clear from the notary affidavit, however, the name of Shubhangi/deceased was not clear. Apparently, it seems that entire case started by presuming the accused/appellant Ajay Kumar to be guilty and evidence were as such collected to vindicate the said presumption rather than finding the real culprit, who was responsible for crime against the deceased. Further, the conduct of the accused/appellant Ajay Kumar after the incident i.e. being stationed at the village of the deceased as testified by P.W.-6 (Ganesh) is also a relevant factor to show his innocence, under Section 8 of the Indian Evidence Act. This Court finds profitable to quote a very interesting observation of the Supreme Court relating to standard of evidence required from the prosecution to prove a case based of circumstantial evidence. The Supreme Court in the case of ***Umedbhai Jadavbhai v. State of Gujarat***, reported in ***(1978) 1 SCC 228***; held that while convicting the accused based on circumstantial evidence,there should remain no circumstance which aligns with the innocence of the accused. The observations made by the Court read thus:

"7."It is well-established that in a case resting on circumstantial evidence all the circumstances brought out by the prosecution, must inevitably and exclusively point to the guilt of

the accused and there should be no circumstance which may reasonably be considered consistent with the innocence of the accused. Even in the case of circumstantial evidence, the Court will have to bear in mind the cumulative effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may be fatal to the prosecution case."

(emphasis supplied)

51. Further, this Court finds that no efforts have been made by the prosecution to lead and connect the articles or the crime weapon recovered from the crime-spot with the accused/appellant Ajay Kumar. There is absolutely no evidence on record nor any testimony of any of the witnesses to show that these articles were recovered at the behest of the accused/appellant Ajay Kumar or that these articles belonged to him or to show that as to how these articles belonging to the accused/appellant Ajay Kumar could had reached the crime-spot. No efforts have been made by the prosecution to prove any of the circumstances, which would lead to any inkling as to how and in what circumstances the deceased (or say the dead body of the deceased) were found some 300 kilometers from their ordinary place of residence. Apparently, it seems the prosecution has built its case entirely on the fourth and fifth circumstances to prove their case against the accused/appellant Ajay Kumar, which according to this Court have miserably failed and fallen like a pack of cards as these circumstances does not establish facts, which could irrefutably points towards the guilt of the accused/appellant - Ajay Kumar.

52. Thus, this Court has no hesitation in holding that the nature of circumstantial evidence available against the accused/appellant Ajay Kumar, may would at best raise a doubt that he may have committed the offence but the same is not so conclusive that he can be convicted only on the evidence of the last seen together. Be that as it may, it is a settled proposition that whenever any doubt is created in the mind of the Court, the benefit shall accrue to the accused and not the prosecution. The present is a case where except for the weak evidence of last seen together, there is no other corroborative evidence against the accused/appellant Ajay Kumar. Therefore, the conviction only on the basis of last seen together cannot be sustained.

53. As a sequel to above, we are of the view that the prosecution has failed to prove the chain of incriminating circumstances against the accused/appellant Ajay Kumar by convincing evidence and beyond the shadow of doubt, so as to affirm his guilt. The Trial Court clearly erred while appreciating the evidence and in holding that the prosecution has proved the case against the accused/appellant Ajay Kumar beyond all manner of doubt. Hence, the accused/appellant Ajay Kumar deserves to be acquitted of the charge by giving him the benefit of doubt.

54. Resultantly, the impugned judgment dated 05.10.2015 passed by the learned Trial Court in *Session Trial No. 992 of 2011 (State Vs Ajay Kumar)* arising out of Case *Crime No. 133 of 2011,* is hereby reversed and set aside.

55. Consequently, we also direct that if the accused/appellant Ajay Kumar is in custody, he shall be released forthwith, if not wanted in any other case.

56. The appeal is ***allowed*** accordingly.

(2026) 2 ILRA 927
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.02.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 17 of 1988

Amar Singh & Ors. **...Appellants**
Versus
State Of U.P. **...Respondents**

Issue for consideration

Matter pertains to dacoity with murder

Headnotes

Indian Penal Code-Section 396 -dacoity with murder- enmity between parties -admitted by the prosecution witnesses-Kunji, who is alleged to have fired and shot Summera to death, has not been challaned by the police as an accused-no motive for the appellants to commit dacoity at Pohap Singh's house-Pohap Singh was not examined-six accused arraigned were well known and familiar to the prosecution witnesses-committed dacoity visible in electric light-no recovery of any looted items, objects, or materials-prosecution witnesses say facts that are against human nature- improbable and unbelievable version of events-**Appeal allowed.**(E-9)

Case Law Cited

1. Iqbal & another v. State of UP; (2015) 6 SCC 623
2. Lakshman Prasad v. State of Bihar; AIR 1981 SC 1388
3. Sushil And Others v. State of U.P. 1995 SSC (Cri.) 388
4. State of Punjab v. Sucha Singh (2003) 3 SCC 153

List of Acts

Indian Penal Code

List of Keywords

Dacoity; visible in electric light; did not cover his face; recover of any looted articles; conceal his identity.

Appearances of parties

Counsel for Appellant(s) : Bimla Prasad, K.c. Saxena, Kartikey Singh, Rajesh Pachauri, Rajrshi Gupta Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the convicts, to wit, Amar Singh, Prakash @ Om Prakash, Hardayal, Bahori and Biri Singh, against the judgment and order passed by Mr. Jaswant Singh, the then Ist Additional Sessions Judge, Mathura dated 22.12.1987 in Sessions Trial No. 166

of 1986, State v. Amar Singh and Others (arising out of Case Crime No. 196 of 1985), under Section 396 IPC, Police Station Goverdhan, District Mathura.

2. By the impugned judgment and order, the learned Additional Sessions Judge, Mathura, has convicted the appellants for an offence punishable under Section 396 IPC and sentenced them to suffer rigorous imprisonment for life. Aggrieved by the judgment and order dated 22.12.1987, the appellants have preferred this appeal.

3. The prosecution case, in brief, is that on the basis of a written report dated 11.11.1985 (Exhibit Ka-1) submitted by the informant Tika Ram (PW-1), a First Information Report dated 11.11.1985 (Exhibit Ka-11) was registered as Case Crime No. 196 of 1985, under Section 396 IPC, at Police Station Goverdhan, District Mathura, against six nominated accused, which includes the appellants and six unnamed men.

4. According to the prosecution case, in the intervening night of 10/11.11.1985, at about 2:00 a.m., the informant Tika Ram (PW-1), heard gunshots and cries of distress coming from the direction that his brother Pohap Singh's house was situate. Upon hearing the same, the informant, along with Baboo Lal and other villagers, rushed towards the place of occurrence. On reaching the spot, they saw that 10-12 armed dacoits were committing dacoity in Pohap Singh's house. The dacoits armed with deadly weapons, were moving in and out of the house, and were assaulting the inmates. In the electric light at Pohap Singh's house at the time of occurrence, the informant Tika Ram (PW-1), his brother Pohap Singh, and his nephew Murari Lal, clearly saw and identified six of the miscreants, namely Hardayal, Beeri Singh, Bahori Jatav, Prakash, Amar Singh Jatav, and Kunji, who were well known to them since before. During the course of the incident, the dacoits were firing indiscriminately, as a result of which, Summera, son of Sufha Jatav, resident of the same village, sustained fire arm injuries and succumbed thereto. Pohpi, Murari, Banwari Lal, Baboo Lal, Ramshri, Kishni, Ramvati, and Sundarlal also sustained injuries in the incident.

5. Further, the prosecution case is that the dacoits looted cash and ornaments from Pohap Singh's house. The looted articles included silver and gold ornaments belonging to Premvati and the daughter-in-law of Pohap Singh, besides one gold Kantha weighing one tola and cash to the tune of Rs. 11,000/-. After committing the offence, the dacoits fled towards Neem Gaon. The prosecution has also alleged the existence of previous enmity. It is stated that on 13.07.1985, the appellant Hardayal had eloped with the wife of one Deepa of the village, and that Pohap Singh had helped Deepa in that matter. On account of the said dispute, the appellant Hardayal barboured animosity towards Pohap Singh and, in furtherance of the same, committed the present offence along with the other appellants.

6. On the basis of the written report lodged by the informant, an FIR (Exhibit Ka-11) was registered under Section 396 IPC against the accused, including the appellants. The investigation of the case was taken up by Investigating Officer Virendra Kumar Tiwari (PW-4). He inspected the place of occurrence and directed Sub-Inspector, Ashok Kumar to hold inquest *(Panchayatnama)* on the cadaver of Summera. PW-4 collected empty cartridges, tikli, and pellets from the place of occurrence and prepared the recovery memo. After inspecting the place of occurrence, he prepared the site plan (Exhibit Ka-14). PW-4 also prepared necessary documents (police papers), including

the photolash, chalanlash, letter to the CMO, and letter to the R.I. Thereafter, the dead body of the deceased Summera was sent for autopsy and the nine injured persons were sent for medical examination.

7. Dr. M.K. Gupta of District Hospital, Mathura, conducted the postmortem examination on the dead body of deceased Summera and reported following ante-mortem injuries in his postmortem report (Exhibit Ka.27):

(i) Contusion 4 x 3 cm on right side forehead 4 cm above right eyebrow.

(ii) Abrasion 0.25 x 0.25 cm on 3 cm on the right chin.

(iii) Abrasion 2 x 1 cm on left temporal region 3 cm lateral to the left eye.

(iv) Three gun shot wounds on the front of upper part of right side chest, size of each 0.25 x 0.25 cm. Blackening, tattooing absent.

(v) Two gun shot wounds on lateral side of middle and lower part of right side chest. Size 0.25 x 0.25 cm. Blackening, charring, tattooing absent.

(vi) Multiple gun shot wound (4) on front and lateral part of right side of upper and middle part of abdomen. Blackening, charring, tattooing absent.

(vii) Multiple gun shot wound (4)- two on front and two on back of lower part of right side arm. Blackening, charring, tattooing absent. Size 0.25 x 0.25 cm to 0.2 x 0.2 cm.

(viii) Three gun shot wounds size from 0.25 x 0.25 cm to 0.2 x 0.2 cm on the front and upper part of right thigh. Blackening, charring, tattooing absent.

(ix) One gun shot wound 0.25 x 0.2 cm on the right side of upper part of gestines. Blackening, charring, tattooing absent.

(x) Two gun shot wounds on upper part of left thigh. Size 0.25 x 0.25 cm. Blackening, charring, tattooing absent.

(xi) Abrasion 1 cm x 0.5 cm on the lateral side of left knee.

In the postmortem report, Dr. M.K. Gupta opined that death was caused due to 'shock and hemorrhage'.

8. All the injured persons, namely, Smt. Kishni, Smt. Ramwati, Pohpi, Murari Lal, Smt. Prem, Smt. Ramshri, Sunder, Babu Lal and Banwari, were referred to District Hospital, Mathura, where, their medical examination was conducted by Dr. RR Vaishya and he reported following injuries as per Exhibit Ka.2 to Exhibit Ka.10 as reproduced below:

(i) Injury Report of Smt. Kishni (Exhibit Ka.2)

1. Pellet wound of entry 0.2 x 0.2 cm on medial side of middle part of left thigh.

2. Pellet wound of entry 0.2 x 0.2 cm on front upper part of right leg.

(ii) Injury Report of Smt. Ramwati (Exhibit Ka.3)

1. Pellet wound of entry 0.2 x 0.2 cm on front middle and lower part of abdomen near pubic bone.

2. Pellet wound of entry 0.2 x 0.2 cm on front upper part of left thigh.

3. Pellet wound of entry 0.2 x 0.2 cm on medial side of left ankle.

(iii) Injury Report of Pohpi (Exhibit Ka.4)

1. Multiple pellet wounds of entry in an area of 14 cm x 1 cm on medial side of left foot.

(iv) Injury Report of Murari Lal (Exhibit Ka.5)

1. Multiple pellets wounds of entry in an area of 23 cm x 10 cm on front of right leg, x-ray advised.

2. Abrasion (scabbed) 3 cm x 0.5 cm on front & lower part of left leg.

3. Traumatic swelling 6 x 4 cm on front of left knee.

4. Multiple abraded scabbed contusion on back of left side chest upper part.

(v) Injury Report of Smt. Prem (Exhibit Ka.6)

1. Pellet wound of entry 0.3 x 0.3 cm on front of right thigh middle part.

(vi) Injury Report of Smt. Ramshri (Exhibit Ka.7)

1. Pellet wound of entry 0.3 x 0.3 cm on back & middle of left forearm.

2. Pellet wound of entry 0.3 x 0.3 cm on left blank.

3. Pellet wound of entry contusion 3 cm x 2 cm on medial side & upper part of left thigh.

(vii) Injury Report of Sri Sunder (Exhibit Ka.8)

1. Complaint of pain in right foot but no mark of external injury seen.

(viii) Injury Report of Sri Baboo Lal (Exhibit Ka.9)

1. Scabbed abrasion 0.2 x 0.3 cm on outer surface & middle of right ear.

2. A scabbed linear abrasion 2 cm long on right side middle part of neck.

3. Multiple pellets wound of entry in an area of 30 x 15 cm back of both side chest & upper part right upper arm.

4. Multiple pellets wound of entry in an area of 15 x 6 cm on both buttocks.

(ix) Injury Report of Sri Panwari (Exhibit Ka.10)

1. Multiple pellets wounds of entry in an area of 17 x 15 cm on right ride face & head, congestion & ecchymosis of right eye conjunction.

2. Multiple pellets wound of entry in an area of 21 x 6 cm on medial side of right knee and leg.

3. Multiple pellets wound of entry in an area of 30 x 8 cm on front & medial side of left leg.

9. The Investigating Officer, Virendra Kumar Tiwari (PW-4) recorded statements of eye-witnesses and other witnesses of the incident under Section 161 Cr.P.C. Thereafter, the Investigating Officer, Virendra Kumar Tiwari (PW-4) was transferred. After his transfer, Rahtu Singh (PW-5) took charge of investigation of this case and completed the same submitting a charge-sheet (Exhibit Ka.26) under Section 396 IPC against the appellants, namely, Amar Singh, Prakash @ Om Prakash, Hardayal, Bahori, and Biri Singh in the Court of the Magistrate.

10. After submission of the charge-sheet (Exhibit Ka.26)) in the concerned Court by PW-5, the learned Magistrate committed the case to the Court of Session as it was triable by the Court of Sessions.

11. The learned Ist Additional Sessions Judge, Mathura framed charges against the appellants, namely, Amar Singh, Prakash @ Om Prakash, Hardayal, Bahori, and Biri Singh, under Section 396 IPC. The charges were read over to the appellants, who pleaded not guilty and claimed trial.

12. The prosecution to substantiate its case examined prosecution witnesses i.e. Tika Ram (PW-1), Baboo Lal (PW-2), Banwari Lal (PW-3), Virendra Kumar Tiwari (PW-4) and Rahtu Singh (PW-5). Apart from oral evidence, the prosecution also relied upon documentary evidence in support of its case, such as, Exhibit Ka.1 to Exhibit Ka. 27.

13. After recording of evidence of the prosecution witnesses, the appellants were examined under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., all appellants

denied the charges. In their statement recorded under Section 313 Cr.P.C., they have stated that due to enmity and rivalry in village, they have been falsely implicated in this case. They have also stated that they are innocent and have not committed dacoity as alleged.

14. After the prosecution evidence, the defense have not produced any evidence in their support. The Trial Court, after hearing arguments of both sides, passed the impugned judgment and order of conviction and sentence dated 22.12.1987 against the appellants, convicting them of the offence punishable under Section 396 IPC and sentencing them. All the appellants were sentenced to rigorous imprisonment for life.

15. We have heard Mr. Rajrshi Gupta, learned Counsel for the appellants and Mr. Anil Kumar Mishra, learned Additional Government Advocate for the State.

16. Learned Counsel for the appellants submitted that there is enmity between parties as admitted by the prosecution witnesses, which has resulted in a false nomination for them in the First Information Report. He next submitted that it is also admitted to the prosecution that though the appellants were known to the injured and the informant since before, but the appellants did not take any precaution to conceal their identity. He next submitted that Kunji, who is alleged to have fired and shot Summera to death, has not been challaned by the police as an accused in the present case. There was no motive for the appellants to commit dacoity at Pohap Singh's house, particularly when the appellant Hardayal had already executed a will of his property in favour of Ram Kumar, the real nephew of Pohap Singh. It was also argued by the learned Counsel for the appellants that the prosecution witnesses did not say which appellant had what weapon and who caused injuries to whom, when they were well known to the prosecution witnesses since before. All the prosecution witnesses belong to the same family. They are father, son and nephew. They are partisan who harboured animosity against the appellants and cannot be believed when independent witnesses whose presence is admitted at the spot have not been produced. The prosecution deliberately withheld Pohap Singh as a witness in the case at whose house the dacoity is said to have been committed. It is also submitted that despite the dacoits being known and familiar, who were *challaned* by the police, the police could not recover any looted articles, ornaments and other valuables from the appellants' house. It is also submitted that apart from the appellants who were known, six unknown men also participated in the commission of dacoity as per prosecution story but the unknown offenders could not be arrested by the police. In the light of above arguments, learned Counsel for the appellants submitted that all the charge-sheeted and known appellants were falsely implicated in this case of dacoity only on the ground of previous enmity with a view to seek revenge from them. Hence, it is submitted by the learned Counsel for the appellants that the present criminal appeal is liable to be allowed and judgment and order of conviction and sentence dated 22.12.1987 deserves to be set aside.

17. Per contra, the learned A.G.A. for the State has vehemently opposed the submissions advanced by learned Counsel for the accused-appellants and contended that the written report (Exhibit Ka-1) was promptly lodged by the informant, Tika Ram (PW-1), wherein he specifically named all the appellants along with some unknown men. It was submitted that the appellants committed dacoity and murder visible in electric light. As a result of the acts of the appellants, one Summera died on the spot due to firearm injuries, and nine others sustained firearm injuries. The

prosecution witnesses, namely, Tika Ram (PW-1), Baboo Lal (PW-2), and Banwari Lal (PW-3), who are eyewitnesses to the incident, have fully supported the prosecution case in their depositions. The motive for the commission of dacoity was previous enmity with the appellant Hardayal. Owing to this enmity, the appellant Hardayal along with other appellants, hatched a plan to seek revenge. All the appellants were well known and familiar to the prosecution witnesses.

18. Further, the learned Trial Judge, upon proper appreciation of the evidence of the prosecution witnesses, found the appellants guilty of the alleged offence. By a well-reasoned and speaking judgment, the learned Trial Judge passed a judgment of conviction, and, accordingly, held the appellants guilty. There is no illegality, perversity or misappreciation of evidence in the findings recorded by the learned Trial Court. The appeal preferred by the accused-appellants is devoid of merit and liable to be dismissed.

19. We have heard the arguments advanced by learned Counsel for the appellants and the learned A.G.A. for the State, and have gone through the evidence available on record. We have also perused the judgment and order of conviction and sentence dated 22.12.1987.

20. In the light of the arguments advanced by learned Counsel for the parties, we find that the present case is one of dacoity with murder. We further find that the six accused arraigned were well known and familiar to the prosecution witnesses, who is said to have committed dacoity visible in electric light.

21. A perusal of the written report (Exhibit Ka-1) reveals that the motive for the commission of the crime was enmity harboured by the appellant Hardayal. It is stated therein that Hardayal had eloped with the wife of Deepa, a resident of the same village. In connection with this dispute, Pohap Singh, brother of the informant Tika Ram (PW-1), had extended assistance to Deepa, on account of which the appellant Hardayal, in retaliation, along with the other men arraigned, committed dacoity at Pohap Singh's house. It is further said in the written report that the dacoity was committed in the presence of electric light, enabling clear visibility, and that all the dacoits were seen and their identities fully known to the prosecution witnesses. Apart from the named accused, six other unknown dacoits are also said to have participated in the incident, who could be identified by the prosecution witnesses if produced before them.

22. It is also a noteworthy fact that the incident occurred in the night intervening 10/11.11.1985 at about 2:00 a.m., and the First Information Report was lodged promptly on 11.11.1985 at 3:30 a.m. The place of occurrence, situated in village Sakarva, is at a distance of only two miles from the concerned police station. After receiving the information, the Investigating Officer conducted a raid on 13.11.1985 at the house of the appellant Bahori. But, he was not present at his residence. The Investigating Officer searched the house of the appellant Bahori, but no looted article was recovered from his house, as evident from Exhibit Ka-24. The Investigating Officer also conducted a raid at the house of accused Hori Singh, who was also not present at his residence at the relevant time. A search of Hori Singh's house was carried out, but the Investigating Officer was unsuccessful in recovering any looted article from his possession, as reflected in Exhibit Ka-25.

23. When informant, Tika Ram (PW-1) was examined in the Court, he stated in his examination-in-chief that "The accused persons present in Court, namely, Biri Singh, Bahori, Amar Singh, Prakash @ Om Prakash and Hardayal, are known to me since before the incident. Hardayal is from my village, and the others used to visit his place frequently, that is how I know them. About three-four months prior to the incident, the accused Hardayal had eloped with the wife of Deepa, a resident of our village, and had started living in Krishna Nagar. My brother, Pohap Singh, had helped Deepa, on account of which the accused persons bear a grudge (enmity) against us. It is a matter, that is about one and half years old. At 2 O' clock in the night dacoity was committed at the house of my brother, Pohap Singh. At that time, I was sleeping at my house. I woke up to the sound of gunshots coming from the direction of Pohap Singh's house and went towards his home. Baboo Lal and others from the neighborhood were also with me. The lights were on in the Veranda, Courtyard (Angan) and the shop at Pohap Singh's house. I saw there that 10-12 men, armed with sticks (lathi), axes (farsa), country-made pistols (katta) and torches, were beating and looting Pohap Singh's family members and were moving in and out. Pohap Singh and his sons, Banwari and Murari, were sleeping in the Veranda. They were also assaulted by the dacoits. One dacoit had climbed onto the upper roof and was saying, 'I am the Kunji of Totha, if anyone comes, I will shoot him down.' He was firing. The dacoits looted for half an hour and then left. We did not chase them out of fear. Among those dacoits/miscreants, we identified five men i.e. Bahori, Biri Singh, Amar Singh, Prakash, and Hardayal. These people were involved in the assault and looting. Murari, Banwari, Pohap Singh, Premvati, Ramvati, Ramshri, Kishni and Sundar sustained injuries, and one Summera died on the spot from a bullet fired by the dacoits."

24. During his cross examination, the informant, Tika Ram (PW-1) has stated that "The accused Hardayal had made a will in the name of my son, Ram Kumar. At that time, Hardayal's wife had run away and Hardayal was ill, until then, he had not remarried. Hardayal had no children from his first wife. Before this dacoity, the accused Hardayal had cancelled that will on the date 28.03.1984. I felt neither good nor bad about Hardayal cancelling the will. It is wrong to say that I have falsely implicated Hardayal and his family members in this dacoity because of the cancellation of the will."

25. PW-1, in his cross-examination, further stated that he was not aware that all the accused were related to each other. He also stated that he did not know that Amar Singh and Prakash were cousins of Biri and Bahori. PW-1 further stated that none of the dacoits had covered their faces at the time of commission of the offence.

26. Thus, the evidence of the informant Tika Ram (PW-1) reveals that he stated in Court the same facts as mentioned in his written report (Exhibit Ka-1). According to him, the appellant Hardayal was the mastermind behind the incident. Hardayal had eloped with Deepa's wife, and when Pohap Singh, Tika Ram's brother, helped Deepa, Hardayal harboured animosity against Pohap Singh. Hardayal's first wife later left him, and he had executed a will in favour of Tika Ram's son, Ram Kumar, but cancelled it 3-4 months before the incident.

27. Upon a perusal of the written report (Exhibit Ka-1) and the evidence of informant Tika Ram (PW-1) in Court, it is revealed that according to this witness, the appellant Hardayal, along

with his relatives, committed dacoity at the house of Pohap Singh. The incident occurred in the presence of electric light, and the appellants did not cover their faces.

28. Upon a perusal of the evidence of informant Tika Ram (PW-1), it is clear that due to the enmity, the appellant Hardayal, along with his relatives, committed the alleged dacoity at the house of Pohap Singh, the brother of informant Tika Ram (PW-1). However, upon examining Tika Ram's evidence, we find that it lacks forthrightness and truthfulness. It appears that this witness, due to enmity, falsely implicated known and familiar persons in this case. The testimony of this witness does not inspire confidence, making it unreliable.

29. The prosecution produced Baboo Lal as PW-2 and Banwari Lal as PW-3. Upon a perusal of evidence of these two witnesses, it is revealed that they stated in their evidence that at the time of the incident, there was electric light, and in the presence of electric light, they identified Hardayal, Biri Singh, Bahori, Amar Singh, and Prakash while they were assaulting and committing dacoity. These two prosecution witnesses stated that they saw Hardayal and others assault with fire arms and other weapons, resulting in Summera's death and injuries to nine others. Banwari Lal (PW-3) also said in his cross-examination that amongst the accused, only Hardayal is from his village, and the rest usually come to Hardayal's place. Thus, it appears that Hardayal was from the same village, and other accused were relatives or acquaintances of Hardayal. The testimonies of Baboo Lal (PW-2) and Banwari Lal (PW-3) corroborate the informant Tika Ram's (PW-1) account.

30. It is also noteworthy that the Investigating Officer could not recover any looted articles, such as, ornaments, or other things from the appellants' houses or possession. No recovery of any looted items, objects, or materials could be made by the Investigating Officer from the possession of the accused persons or from their houses, although the First Information Report was lodged promptly. Since the Investigating Officer could not recover a single ornament, valuable or thing from the appellants' houses of the accused persons or at their instance, the appellants cannot be held connected to the dacoity.

31. It is a well-known fact that dacoits usually commit their evil deeds by the darkness of night and cover their faces so that their identity cannot be known. However, surprisingly, in this case, the appellants allegedly committed dacoity at the house of Pohap Singh, brother of the informant Tika Ram (PW-1), at night, visible in electric light, and even without covering their faces. It is also a very surprising fact that the appellant Hardayal was a resident of the same village as informant Tika Ram (PW-1), yet he did not cover his face during the crime. It appears that the appellant Hardayal, along with other perpetrators, intentionally committed the crime at the house of Pohap Singh, visible in electric light, without covering their faces, so that the informant Tika Ram (PW-1) and the other prosecution witnesses, namely, Baboo Lal (PW-2) and Banwari Lal (PW-3), could easily identify them and lodge a First Information Report against them.

32. Upon a perusal of the evidence of eye witnesses in this case, it is revealed that all the prosecution witnesses of fact narrated a concocted, artificial, and fabricated story only due to enmity against the appellant Hardayal. It is a fact that any person who is committing a crime tries his best to conceal his identity so that the victim of the crime and the police do not trace out his presence at the place of occurrence and cannot connect him to the commission of the crime. But in

this case, the prosecution witnesses say facts that are against human nature, that all the appellants were committing the dacoity even without covering their faces. Due to these reasons, we are unable to believe the evidence of these prosecution witnesses.

33. It is worthwhile to refer, at this stage, to the authority of the Supreme Court in ***Iqbal & another v. State of UP; (2015) 6 SCC 623.*** The Supreme Court observed in paragraphs 10, 16 and 17 of the report as follows:

10. In cases of dacoity, usually, the offence is committed by unknown persons with the criminal background. It is only in very few cases, are the accused dacoits known to the victim. PW 1 Patia Singh and PW 2 Jay Singh have stated that they had witnessed the incident from a distance of three-and-a-half yards. PW 3 Begraj also stated that he had witnessed the incident from a distance of five-six yards in the feeble torchlight. Admittedly, according to the witnesses, there was no electricity at the time of incident in their houses. They claimed that they could see the accused persons with the help of their torchlights. In the courts below, on behalf of the accused persons, it was argued that the night of incident was an amavasya-new moon night. On a perusal of calendar of that month in that year, it is seen that the intervening night of 21-9-1979/22-9-1979 was a new moon night i.e. 'amavasya'.

16. It is pertinent to note that in the present case no recovery of articles which are the subject of dacoity was made from the appellants or other non-appealing accused persons. In his complaint, PW 1 gave a list enumerating fifty expensive items, such as gold jewellery, silver articles, sarees and clothes and also cash. As per the recovery memo, what was recovered was just three kilograms of ghee in a claypot. In his deposition, PW 8 Nepal Singh (investigating officer) has stated that at the instance of Kripa, he had recovered a "chaptaghu" and an "attire". However, in the recovery memo, only three kilograms of ghee is mentioned which is said to have been recovered on the disclosure statement of accused Kripa. From the appellants as well as from the non-appealing accused persons, not a single valuable item out of the whole list of stolen articles was recovered. It is quite unbelievable that within a short span of time i.e. from 21-9-1979 (date of incident) to 9-10-1979 (date of arrest), the accused would have converted or sold out all the valuable items. Even if we accept that they had done so, the prosecution ought to have adduced evidence as to how and in what manner the articles which were the subject-matter of dacoity were either disposed of or converted. Murder and robbery were part of the same transaction. Consequent upon the disclosure statement, only three kilograms of ghee was recovered.

17. In order to bring home the guilt of the accused persons, it is the duty of the prosecution to prove that the stolen property was in the possession of the accused persons or that the accused had knowledge that the property was a stolen property or the accused persons had converted the stolen property. No such recovery was made to connect the appellants and other non-appealing accused persons with the crime."

34. The Supreme Court in ***Lakshman Prasad v. State of Bihar;AIR 1981 SC 1388,*** observed the following key points in the context of a case of dacoity in para 3 of the report, which is reproduced as under:

"3. The central evidence against the appellant consisted of the testimony of PWs 1 and 2 who were the servants of complainant PW 4 Baijnath Prasad. It appears from the evidence that Baijnath Prasad was a rich businessman of the locality and the accused-appellant Lakshman Prasad was his next door neighbour having a double storey house. Both the courts below have accepted the prosecution case that a dacoity took place in the house of Baijnath Prasad in the course of which cash and other articles were stolen away. In the instant case, counsel for the appellant has not challenged this finding of the courts below. We are also satisfied that a dacoity undoubtedly took place in the house of Baijnath Prasad. The only question that falls for consideration is whether or not the appellant participated in the crime. PWs 1, 2 and 4 have supported the prosecution case that the appellant clearly participated in the dacoity and was, in fact, the leader of the dacoits. After going through their evidence, we do find that there is some amount of consistency in their evidence but mere congruity or consistency are not the sole test of truth. Sometimes even falsehood is given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. This appears to be one of these cases. There are many inherent improbabilities in the prosecution case so far as the participation of appellant is concerned. In the first place, admittedly the appellant was a respectable man in the sense that he was possessed of sufficient means and was a well-known homeopath doctor and also the neighbour of the complainant. In this view of the matter, it is difficult to believe that he would commit dacoity in the house of his own neighbour and that too in the early hours of the evening, so that he may be caught any moment and take the risk of a conviction under Section 395 Indian Penal Code. Secondly, the evidence of the complainant PW 4 clearly shows that the dacoits had no doubt concealed their identify but they did it in such a way that their faces were visible. Indeed, if the appellant had participated in the dacoity and took the precaution of concealing his identity, then he would have seen to it that his face was fully covered so that identification by the complainant or the witnesses would become impossible. If he was a dare-devil, then he would not have concealed his identity at all. Thirdly, FIR having been lodged the same evening the police visited the house of the appellant next morning and found him there. If the appellant had really participated in the dacoity, he would have at least made himself scarce. The house of the accused was also searched and nothing incriminating was at all found. Finally, there was the important circumstance that in view of a dispute between complainant Baijnath Prasad and the appellant, there was a clear possibility of the appellant having been falsely implicated due to enmity. The complainant himself admits that there is a boundary wall around the house of the appellant and there is a road which runs to the east of his house and the mill of the complainant is situated to the west of the house. There is evidence of DW 2 that there has been some dispute between Baijnath Prasad and accused Lakshman Prasad two or three years before the occurrence of dacoity in respect of a passage near the house of accused Lakshman Prasad through which he used to go to his mill. The evidence of DW 2 does support what the complainant has himself admitted. The gravest provocation which the complainant must have felt was the fact that Lakshman Prasad bought a piece of land near his house from Kishori Lall, the nephew of Baijnath Prasad. This is proved by Ex. Kha and the evidence of DW 4. The High Court also observed that the sale-deed executed by the nephew of the complainant in favour of the appellant was executed only a month before this occurrence. This therefore furnishes an immediate motive for the false implication of the appellant. Another important circumstance which seems to have been overlooked by the courts below is that PW 4 has clearly admitted in his evidence at page 44 of the paper-book that immediately after the occurrence, a number of people near the mosque assembled, of whom he recognized Suba Raut and

Moti Raut, but they never came to his help. The witness also says that when he came from the west, he saw 40 to 50 persons at a little distance, including Ganesh Raut, Achhelal, Mathura Ram and Rameshwar. Obviously, if an occurrence of dacoity had taken place in the early hours of the evening, the near neighbours must have assembled and yet none of these neighbour have been examined to support the complainant's version that the appellant has participated in the occurrence. It seems to us that the reason why these persons did not choose to support the complainant was that perhaps the appellant had been falsely implicated and hence the persons who had assembled may not have relished the idea of supporting the complainant if he had gone to the extent of falsely implicating the appellant in the dacoity. These intrinsic circumstances speak volumes against the prosecution case and raise considerable amount of suspicion in our minds regarding the complicity of the appellant in the dacoity. It is well settled that while witnesses may lie, circumstances do not."

35. When the evidence in the present case is examined in the light of the aforesaid principles laid down by the Supreme Court, it emerges that dacoits ordinarily commit dacoity during darkness of the night after covering their faces, so as to avoid identification and evade tracing by the police. However, in the case at hand, the offence was committed in a bold and unusual manner, in the presence of electric light and without the appellants covering their faces.

36. In view of the principles laid down by the Supreme Court in the aforesaid authorities, the testimony of the prosecution witnesses does not inspire confidence and cannot be safely relied upon to establish the commission of the offence by the appellants. Furthermore, the Investigating Officer failed to recover any looted articles, ornaments, or other incriminating material from the appellants' possession.

37. In view of the facts and circumstances of the case, it is amply clear that the prosecution witnesses have not placed the true facts before the Court. Consequently, the prosecution story appears to be concocted and false. In other words, the prosecution have put forward an improbable and unbelievable version of events and falsely implicated the appellants in the crime.

38. Upon a perusal of the written report (Exhibit Ka-1) and the testimony of eye-witnesses for the prosecution, namely, the informant Tika Ram (PW-1), Baboo Lal (PW-2), and Banwari Lal (PW-3), it appears that the accusation levelled against the appellant Hardayal and his relatives of committing dacoity at the house of Pohap Singh, brother of the informant Tika Ram (PW-1), is false and fabricated. The first cause of animosity, as stated in the FIR and reiterated by the informant Tika Ram (PW-1), is that the appellant Hardayal had eloped with the wife of Deepa, and that Pohap Singh had supported Deepa in the said matter. The second cause of animosity is that Hardayal had executed a will in favour of Ram Kumar, son of the informant Tika Ram (PW-1), which was subsequently cancelled by him three to four months prior to the incident. In view of these admitted causes of animosity, the prosecution version that Hardayal and his relatives committed dacoity openly, in the presence of electric light, and without covering their faces, appears highly doubtful and suspicious.

39. The Supreme Court in the case of ***Sushil And Others v. State of U.P. 1995 SSC (Cri.) 388*** and in the case of ***State of Punjab v. Sucha Singh (2003) 3 SCC 153***, has held:

"Enmity is a double edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."

40. Thus, only on the ground of enmity, without any other corroborating or connecting evidence, an accused cannot be held guilty of the commission of a crime because if enmity can be a ground for commission of a crime, it can also be a ground for false implication in any case. As such, only on the ground of enmity, it cannot be legally presumed that the appellants in this case, in the presence of electric light, without covering their faces, had committed dacoity at the house of Pohap Singh, brother of the informant Tika Ram (PW-1).

41. Upon a perusal of record, it is evident that Pohap Singh, at whose house the dacoity is said to have committed, was not examined by the prosecution as a witness. The reasons for the prosecution's failure to produce Pohap Singh are best known to the prosecution themselves. This fact also goes against the prosecution.

42. Upon a perusal of the reasoning and findings of conviction recorded by the Trial Court, it is evident that the Trial Court has failed to consider the aspect of enmity in the correct perspective. It is well settled that enmity is a double edged weapon which cuts both ways. It may constitute motive for commission of the crime, and at the same time, may also provide a motive for false implication. The learned Trial Court has also failed to consider that offences of this nature are ordinarily committed in a clandestine manner, with the assailants concealing their identities and covering faces. Despite these material aspects, the learned Trial Judge did not give due consideration to them and, in a cursory manner, wrongly and contrary to settled principles of law, relied upon the prosecution evidence. In view of the foregoing discussion, and in the light of the law laid down by the Supreme Court, we are unable to sustain the findings, reasoning, and conviction recorded against the appellants in the present case by the learned Trial Judge.

43. It was also the responsibility of the prosecution to produce evidence of an electricity department employee from the concerned sub-division or feeder, who could have verified from which feeder village Sakarva was supplied electricity. If such an official had been examined as a prosecution witness, he could have testified whether, on the date and time of the alleged incident, i.e., the intervening night of 10/11.11.1985 at about 2:00 a.m., electricity supply was available in village Sakarva or not. This omission assumes significance, inasmuch as, it is a fundamental principle of criminal law that the burden lies upon the prosecution to prove its case beyond reasonable doubt.

44. Although, six persons were named as accused, only five were charge-sheeted by the Investigating Officer, as the named accused, Kunji Jatav, could not be traced out and challaned by the police. Thus, in view of the foregoing discussions, we are of considered opinion that the reasoning and findings recorded by the Trial Court, holding the accused-appellants guilty and convicting them, are not sustainable in the eyes of law. We find considerable force in the submissions advanced by the learned Counsel for the accused-appellants. For the reasons aforesaid, the present criminal appeal deserves to be allowed and is, accordingly, ***allowed.***

45. Consequently, the judgment and order of conviction and sentence dated 22.12.1987 passed by the learned Ist Additional Sessions Judge, Mathura, in Sessions Trial No. 166 of 1986 (State v. Amar Singh and Others), arising out of Case Crime No. 196 of 1985, under Section 396 IPC, Police Station Goverdhan, District Mathura, is hereby ***set aside.***

46. The present criminal appeal on behalf of the appellant **Hardayal** has already been abated vide order dated 26.07.2018. The appellants, namely, *Amar Singh, Prakash @* **Om Prakash, Bahori** and **Biri Singh,** are on bail. They need not surrender. Their bail bonds stand cancelled and sureties discharged.

47. The appellants, **Amar Singh, Prakash @ Om Prakash, Bahori** and **Biri Singh**, each shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against his acquittal.

48. Let a copy of this judgment be transmitted to the learned Trial Court along with the lower Court records forthwith for necessary compliance.

(2026) 2 ILRA 940
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 05.02.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Jail Appeal No. 62 of 2024

Kumari Janki **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to quantum of punishment to be governed by the Juvenile Justice (Care and Protection of Children) Act, 2015.

Headnotes

Indian Penal Code-Sections 302 and 120B; The Juvenile Justice (Care and Protection of Children) Act, 2015 - dying declaration -examination-in-chief- the complainant fully corroborated the prosecution's case-Held, complainant may have turned hostile during cross-examination, the core of the testimony remains: the deceased was set on fire-Deceased's own statement substantiates that the appellant, along with other accused persons, poured kerosene over her and set her ablaze- Kumari Janki (name changed), played a direct role in the incident- undisputed fact that the appellant was a juvenile at the time of the commission of the offence.- the dying declaration satisfies the requirements of Section 32(1) of the Evidence Act for conviction under Section 302 IPC, the quantum of punishment is strictly governed by the Juvenile Justice (Care and Protection of Children) Act, 2015- incident was neither accidental nor suicidal, but homicidal-trial court has awarded a sentence of ten years- already undergone incarceration for a period of more than seven years-

continued detention is de hors the provisions under Section 21 and Section 18(1)(g) of Act, 2015-maximum period for which a juvenile can be detained is three year- conviction upheld-sentences altered. **Appeal allowed.**(E-9)

Case Law Cited

1. State of U.P. vs. Ram Sagar Yadav (1985) 1 SCC 553
2. Kamlendra Singh @ Pappu Singh Vs. State of M.P. (2013) 12 SCC 239

List of Acts

1. The Juvenile Justice (Care and Protection of Children) Act, 2015
2. Indian penal Code, 1860

List of Keywords

Dying declaration; direct role; de hors the provisions under Section 21 and Section 18(1)(g); homicidal.

Appearances of parties

Counsel for Appellant(s) : Adnan Ahmad, Amresh Kumar, Dinesh Kumar Counsel for Respondent(s) : G.A.,

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard, Shri Arvind Saroj, Advocate holding brief of Shri Dinesh Kumar, learned counsel for the appellant and Shri Anirudh Kumar Singh, learned AGA for the State.

2. The instant appeal has been preferred against the impugned judgment and order dated 01.08.2023 passed by the learned Special Judge, Court No. 44, Barabanki, in Criminal Trial No. 51 of 2018 (State Vs. Kumari Janki), arising out of Case Crime No. 0118 of 2017, under Sections 302 and 120B IPC, Police Station Haidargarh, District Barabanki, whereby the learned Trial Court convicted the accused appellant for the offence under Section 302 IPC and awarded the sentence of 10 years imprisonment with a fine of ₹5,000/-, and under Section 120B IPC for 2 years imprisonment.

Factual Matrix

3. The facts giving rise to this case are that the complainant's daughter, Chamela, was married to Udai Raj approximately 20 years ago. However, Udai Raj kept a mistress named Kumari Janki (Name Changed). It is averred that Udai Raj, along with his mistress Kumari Janki (Name Changed), and others named Rameshwar and Bahadur, were pressuring Bhawani Prasad, the deceased's father-in-law, to dispose of land situated in Dandupur. The deceased opposed this transaction. Consequently, on April 4, 2017, at approximately 2:00 PM, the accused persons allegedly locked the deceased inside the house and set her ablaze, resulting in her death from severe burn injuries. In this regard, the complainant, Chotka (mother of the deceased), moved an application at Haidargarh police station. On that basis, a First Information Report (FIR) was lodged under Sections 302 and 120-B of the Indian Penal Code (IPC) against Udai Raj, Kumari Janki (Name Changed), Bhawani Prasad, Bahadur, and Rameshwar. The deceased was admitted to the hospital, where her statement (dying declaration) was recorded by a Magistrate. Following the victim's death, an inquest report was prepared, and the body was sent for autopsy. The Investigating Officer (I.O.) prepared the site plan, inspected the place of occurrence, and recorded the statements

of the witnesses. After collecting sufficient evidence against the accused persons, the I.O. concluded the investigation and filed a charge sheet under Sections 302 and 120-B of IPC. The appellant claimed she was a juvenile at the time of the occurrence. Consequently, the Juvenile Justice Board (JJB) determined her age based on her academic documents and found that, as her date of birth is October 24, 1999, she was 17 years, 5 months, and 10 days old at the time the offense was committed. Accordingly, she was declared a juvenile.

4. In view of above and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short Act), it was observed that the appellant"s age falls within the age group of 16 to 18 years at the time of the incident. Since the charges leveled were for a heinous offence under Section 302 of the IPC, the case falls under the category of heinous crimes as defined by the Act under Section 2(33) IPC. Consequently, a preliminary assessment was conducted under Section 15 of the Act, which determined that the appellant possessed the mental and physical capacity to understand the nature and consequences of the alleged offence. Based on this assessment, and in accordance with Section 18(3) of the Act, the case was transferred to the Children's Court for trial. The proceedings were subsequently conducted by the Children's Court in a consolidated manner alongwith the other co-accused. Upon the framing of charges, the appellant and co-accused denied the allegations and claimed to be tried. To prove the charges leveled against the accused, the prosecution has produced the following evidence.

(I) **Oral Evidence (Prosecution Witnesses)-** The prosecution examined following seven witnesses to establish the charges under Sections 302 and 120B of the Indian Penal Code:

"P.W. 1: Smt. Chhotka *" The complainant and mother of the deceased (Chamela).*

P.W. 2: Shyam Narayan *" The brother of the deceased.*

P.W. 3: Patiram *" The first Investigating Officer (I.O.) and Sub-Inspector.*

P.W. 4: Prabhat Kumar *" The second Investigating Officer.*

P.W. 5: Dr. Kuldeep Maurya *" The medical officer who conducted the post-mortem examination.*

P.W. 6: Sushil Pratap Singh *" The Tehsildar (Naib Tehsildar at the time) who recorded the dying declaration.*

P.W. 7: Dr. V.C. Pandey *" The Senior Surgeon who certified the fitness of the deceased to give a statement."*

(II) Documentary Evidence (Prosecution Exhibits)- The following documents were submitted and marked as exhibits to support the prosecution's case:

"Exhibit Ka-1*: Written complaint (Tehreer) filed by the complainant.*

Exhibit Ka-2*: Panchayatnama (Inquest Report).*

Exhibit Ka-3: *Site Plan (Naksha Nazri) of the place of occurrence.*

Exhibit Ka-4*: Chik First Information Report (FIR).*

Exhibit Ka*-5: G.D. Entry (Kaymi G.D.) regarding the registration of the case.*

Exhibit Ka-6*: Challan Nash (Dead body challan).*

Exhibit Ka-7*: Photo Nash (Photographs of the deceased).*

Exhibit Ka-8*: Letter to the R.I. (Reserve Inspector).*

Exhibit Ka-9*: Letter to the C.M.O. (Chief Medical Officer).*

Exhibit Ka-10*: Specimen Seal (Namuna Mohar).*

Exhibit Ka-11: *Charge Sheet filed against the accused.*

Exhibit Ka-12*: Post-Mortem Report.*

Exhibit Ka-13*: Dying Declaration (Mrityukalik Bayan) of the deceased, Chamela."*

5. PW-5: Dr. Kuldeep Maurya conducted the post-mortem of the deceased, Chamela. His evidence is recorded as follows:

"On 05.04.2017, he was posted at New P.H.C. Ghazipur Dariyabad, Barabanki. On that day, he was assigned post-mortem duty. He reached the Post-Mortem House, Barabanki, where a sealed body was received along with police documents through Constable Mahendra Yadav of Police Station Kotwali Nagar, who identified the deceased. The body was of Chamela, wife of Udayraj Nishad, resident of Dandupur, Police Station Haidergarh, aged 38 years. According to the records, the deceased died during treatment in the hospital.

External Examination*: The body was of medium build, height 148 cm, and identification marks were noted. There were no clothes on the body. Bangles were present on both hands. A Vego (IV cannula) was attached to the left hand. Rigor mortis was absent. The hair on the head was burnt, and there was a smell of kerosene. The eyebrows, face, and head hair were found burnt.*

Injuries before Death*: The face, neck, chest, abdomen, both hands, and the lower parts of the body were 90% burnt. Deep burn injuries were present, and a 'Line of Redness' was observed at the burnt areas. Blisters were present on the burnt portions. Soot (kalikh) from smoke was present in both eyes. In his opinion, the deceased was burnt while alive. Both soles of the feet were not burnt.*

Internal Examination*: Upon opening the body, sufficient soot from smoke was found inside the respiratory tract (trachea). The stomach contained 250 ml of semi-digested food, and gas was present in the intestines.*

Conclusion: *In his opinion, the death of the deceased occurred as a result of injuries sustained due to pre-mortem burning. He prepared the post-mortem report in his own handwriting and signature, which is Exhibit Ka-12."*

6. P.W. 7: Dr. V.C. Pandey (Senior Surgeon) certified the fitness of the deceased for recording her dying declaration. His evidence is as follows:

"On 04.04.2017, he was posted as Senior Surgeon at District Hospital, Barabanki. On that day, the then Naib Tehsildar Sushil Pratap Singh came to the hospital and expressed his intention to record the statement of the injured Chamela, wife of Udayraj. Thereafter, he went to the injured Chamela along with him and talked to her; she was in full consciousness.

After examination, he found that the patient was capable of giving a statement. He then informed the Naib Tehsildar that the victim was fit to give a statement. He recorded his recommendation/certification on the paper on which the Naib Tehsildar was to record the statement. The Naib Tehsildar recorded the statement in his presence by asking questions.

After the victim gave her statement, he again inquired from her and observed her condition; she was in full consciousness. He also recorded a note regarding her condition, stating that the patient was in full consciousness while giving the statement. The patient was capable of giving a statement and remained fully conscious until the end of the entire statement and was aware of the time and place.

His signatures are present at the beginning and the end of the statement, which is enclosed in the file as Exhibit Ka-13, which he re-authenticated."

7. Thereafter, following the closure of prosecution evidence, the statement of the accused-appellant was recorded under Section 313 of the Cr.P.C.. In her statement, she denied all evidence and incriminating circumstances presented against her. She further stated that prior to the current case, the co-accused, Bhawani Prasad, had lodged a case against Hansa Ram (the husband of the complainant, Chotka) and his nephew, Udai Raj, for the murder of his daughter. Due to this existing enmity, the complainant lodged a false FIR against the appellant and tutored the deceased to give a statement against her before death. At the stage of defence evidence, no oral or documentary evidence was produced. After hearing the learned counsel for both parties, the learned Trial Court, vide its judgment and order dated 01.08.2023, convicted the appellant, Kumari Janki (name changed). Being aggrieved and dissatisfied from the impugned judgment and order, the appellant has filed the present criminal appeal.

Submission of learned counsel for the appellant:

8. Learned counsel appearing on behalf of the appellant submitted that the learned trial court passed the impugned judgment in a mechanical and cursory manner and failed to consider the facts, evidence, and circumstances in the correct legal perspective. He contended that the findings are perverse and that the trial court failed to consider the fact that appellant was below 18 years of age at the time of the alleged incident; therefore, trial against her should not have been proceeded as an adult. He further submitted that the learned trial court failed to correctly interpret the provisions of Sections 19 and 21 of the Juvenile Justice Act. Furthermore, there are major contradictions in the testimonies of the witnesses, and the witnesses of fact turned hostile. Despite these aspects and the lack of independent witnesses, the trial court wrongly appreciated the evidence and relied solely on the testimonies of interested witnesses.

9. Learned counsel for the appellant further submitted that according to the medical report, the deceased had sustained 90% burn injuries. Thus she was not in a physical or mental state to give a statement. Despite this fact, a dying declaration was recorded. Therefore, no reliance can be placed on such a manipulated declaration. As the evidence adduced by the prosecution is not of sterling quality, they have failed to prove the charges against the appellant beyond a reasonable doubt. Consequently, the impugned judgment and order are liable to be set aside, and the appellant is entitled to be acquitted.

Submission of learned Additional Government Advocate:

10. Per contra, the learned AGA appearing for the State submitted that while academic documents indicated the appellant was below 18 years of age at the time of the incident, her trial was properly conducted by the trial court in accordance with the provisions of the Juvenile Justice Act. Since her age was determined to be between 16 to 18 years, and the court found she possessed the mature mental faculty to understand the nature and consequences of the offence, the findings in this regard are in consonance with the law. He further submitted that the deceased was admitted to the hospital, where her mental status was duly tested. The Magistrate subsequently recorded her statement after receiving a fitness certificate from the attending doctor. Therefore, the appellant"s contention that the deceased was not in a physical or mental position to provide a statement while hospitalized, is not tenable.

11. Learned AGA further submitted that the prosecution produced sufficient evidence to prove the charges levelled against the accused. This prosecution evidence was considered in its entirety by the learned trial court, who has rightly concluded that the charges levelled against the accused are fully proved. As the trial court committed no illegality or perversity in passing the impugned judgment and order, this appeal is devoid of merit and is liable to be dismissed.

12. We have heard the submissions of the learned counsel for the parties and perused the material available on record.

13. The material available on record reveals that the appellant had claimed to be a juvenile at the time of the alleged incident. Consequently, her age was determined by the Juvenile Justice Board (JJ Board) in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act. After providing a full opportunity to adduce evidence in this regard, the learned JJ

Board found, based on her academic records, that the appellant's date of birth made her 17 years, 5 months, and 10 days old at the time of the offence. The Board, under Section 2(33) of the Act, determined that the offence committed by the appellant under Section 302 of the IPC falls within the category of 'heinous offences'.

14. It is further observed that for being the age group between (16-18) the preliminary assessment conducted under Section 15 of the JJ Act revealed that she possessed the mental and physical capacity to understand the nature and consequences of the offence. Considering her maturity and cognitive ability at the time, the JJ Board directed that her case be transferred for trial as an adult before the Children's Court, pursuant to Section 18(3) of the Act. Therefore, the contention raised by the appellant regarding her status as a juvenile could be tried only by JJ Board is not tenable.

15. Insofar as the oral testimony of the prosecution witnesses is concerned, Chotka, the mother of the deceased was examined as P.W. 1. In her statement, she testified that her daughter, Chamela, was married to Udai Raj. However, Udai Raj was in a relationship with Kumari Janki (name changed). Consequently, the appellant, along with other co-accused persons, mounted pressure over the father-in-law, Bhawani Prasad, to dispose of the property in question. When the deceased opposed this, the appellant and the co-accused allegedly set her ablaze. It is noteworthy that the cross-examination of this witness took place eighteen months after the examination-in-chief. During her cross-examination, the witness turned hostile, stating that the incident actually occurred due to the deceased's own negligence while she was cooking food.

16. Among the other witnesses of fact, PW-2, Shyam Narain, the brother of the deceased, stated that the deceased was his real sister. He further stated that the deceased sustained burn injuries from a stove while she was preparing food. However, the witness subsequently turned hostile. On the basis of above, the learned counsel for the appellant submitted that the trial court failed to consider the evidence of the witnesses in the right perspective. Nevertheless, it is pertinent to mention that it is a settled principle of law that even if the testimony of a witness becomes partially deficient, it does not necessarily invalidate the entire case if the charges are otherwise proved. In India, the doctrine of 'Falsus in uno, falsus in omnibus' (false in one thing, false in everything) is not applicable. Therefore, despite a major portion of the evidence being deficient, if the remaining evidence is sufficient to prove the charges, the testimony of the witnesses cannot be discarded entirely.

17. In this case, the dying declaration of the deceased was recorded by Magistrate Sushil Singh, who was examined as PW-6. He testified that, acting upon the recommendation of the doctor, he recorded the statement of the deceased at the hospital. He stated that during the course of recording the evidence, she was fully conscious, a fact which was certified by the doctor. This witness proved the statement as Exhibit Ka-13. During his cross-examination, he stated that the doctor was present while the statement was being recorded and that the patient was in their complete senses. Consequently, nothing adverse emerged from the cross-examination.

18. The learned trial court cited numerous rulings concerning dying declarations. According to the law laid down by the Hon"ble Apex Court in this regard, it may safely be concluded that if the

court is satisfied that a declaration inspires confidence regarding truthfulness, a conviction can be based upon it without further corroboration. This principle was upheld in **State of U.P. vs. Ram Sagar Yadav (1985) 1 SCC 553.** However, it has also been observed in other cases that it is the duty of the court to scrutinize a dying declaration carefully to ensure it is not the result of tutoring, prompting, or imagination.

19. The deceased had an opportunity to observe and identify the assailant and was in a fit state to make the declaration. Normally, in order to satisfy itself as to whether the deceased was in a fit mental state to make a dying declaration, the court looks to medical opinion. Generally, dying declarations should be recorded in a question-and-answer format. However, if a declaration is not elaborate, consisting of only two sentences in the actual words of the maker, the mere fact that it is not in a question-and-answer format cannot be a ground for challenging its acceptability or reliability.

20. In view of the above, a perusal of the material available on record, specifically the dying declaration of the deceased, reveals the facts which are reproduced hereunder:-

"बयान - मृत्यु पूर्व

मैं चमेला पत्नी उदयराज उम्र लगभग 38 वर्ष निवासी ग्राम दादूपुर, थाना- हैदरगढ़, जिला बाराबंकी पूरे होशोहवास में सशपथपूर्वक बयान करती हूँ कि आज दिनांक 04-04-2017 को सांय 4:00 बजे मेरे ससुर भवानी, मेरी सौत जनका व सौत की भतीजी आरती ने मेरे ऊपर मिट्टी का तेल डालकर आग लगा दिया। आज दोपहर में मेरे पति उदयराज घर पर नहीं थे, तब मेरे ससुर ने मुझे गाली देना शुरू किया तो मैंने कहा कि मैं अपनी ननद के घर जा रही हूँ तो मेरे ससुर ने कहा कि गेट में ताला बन्द कर इसे जला दो। मेरे ससुर ने गेट में ताला बन्द कर दिया और मेरी सौत की भतीजी ने मेरे ऊपर मिट्टी का तेल डाल दिया और मेरी सौत ने आग लगा दी। उस समय मेरे पति घर से बाहर कहीं गए हुए थे। आग लगाने का कारण ससुर द्वारा गाली देने के दौरान ननद के घर चली जाने की बात कहने पर की गयी। इस घटना में अन्य किसी व्यक्ति की भूमिका नहीं थी। मेरी शादी के 19 वर्ष हो गये हैं। मेरी एक दो साल की पुत्री है।

बयान सुनकर तस्दीक किया।"

21. Thus, in light of the above statement, it is pertinent to mention the legal provisions contained under Section 32(1) of the Indian Evidence Act, 1872. The relevant portion of Section 32, which deals with statements made by persons who cannot be called as witnesses (Dying Declaration), is reproduced below:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., *is relevant. " Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:"*

(1) ***When it relates to cause of death****. " When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person"s death comes into question. Such statements are*

relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

22. In view of the deceased"s statement, recorded as a dying declaration, she categorically stated that the nephew of the appellant"s step-mother (or co-wife) poured kerosene over her body and set her ablaze. The medical officer further certified that the deceased was in a fit mental condition during the recording of the statement and remained conscious throughout. Furthermore, the appellant has not contended that the deceased was tutored by her parents. In the examination-in-chief, the complainant fully corroborated the prosecution's case. While the complainant may have turned hostile during cross-examination, the core of the testimony remains: the deceased was set on fire. Regarding the identity of the perpetrators, the deceased's own statement substantiates that the appellant, along with other accused persons, poured kerosene over her and set her ablaze.

23. Applying the aforesaid principles to the present case, it is evident from the dying declaration that the appellant, Kumari Janki (name changed), played a direct role in the incident. However, this Court cannot overlook the undisputed fact that the appellant was a juvenile at the time of the commission of the offence. While the dying declaration satisfies the requirements of Section 32(1) of the Evidence Act for conviction under Section 302 IPC, the quantum of punishment is strictly governed by the Juvenile Justice (Care and Protection of Children) Act, 2015. Specifically, Section 18(1)(g) of the Act mandates that a child in conflict with law can be sent to a special home for a period not exceeding three years. In the instant case, the appellant has been in continuous custody since April 7, 2017, totaling more than seven years. This period of incarceration significantly exceeds the maximum three-year reformative sentence permissible under the law. Consequently, even if the conviction based on the dying declaration is sustained, the appellant's further detention is unsustainable and contrary to the legislative intent of the Juvenile Justice Act.

24. Consequently, it is fully established that the incident was neither accidental nor suicidal, but homicidal. The evidence adduced by the prosecution successfully proves the charges levelled against the appellant beyond a reasonable doubt. The learned Trial Court thoroughly perused the facts, evidence, and circumstances of the case in its entirety and arrived at the correct conclusion that the evidence clearly demonstrates that the appellant, actively participated in the commission of the offence.

25. Insofar as contention regarding the quantum of sentence is concerned, we find that it must be made clear that where a juvenile covered within the law falls within the category of age group of 16 to 18 years and their trial has been conducted by a Children's Court for a heinous offence, the sentence must be balanced against the reformative spirit of the law. In the present case, the trial court has awarded a sentence of ten years.

26. In the instant case, the appellant, Kumari Janki (name changed), has been in jail since April 7, 2017. As of April 7, 2024, she has already undergone incarceration for a period of more than seven years. This continued detention is de hors the provisions under Section 21 and Section 18(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which read as under:"

*"**Section 21**: Order that may not be passed against a child in conflict with law" No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force."*

***Section 18(1)(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."*

27. A perusal of the aforementioned provisions makes it clear that the maximum period for which a juvenile can be detained is three years. Considering that the appellant has already spent more than seven years in custody, her continued incarceration is not only in violation of the statutory mandate of the Juvenile Justice Act but also infringes upon her fundamental rights. Consequently, the sentence awarded by the learned Trial Court, insofar as it exceeds the maximum permissible limit under the Act, is unsustainable in the eyes of law.

28. Having considered the evidence on record, this Court finds no reason to interfere with the finding of guilt recorded by the learned Trial Court. However, as regards the sentence, it is pertinent to note that the appellant was a 'child in conflict with law' on the date of the incident. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015, mandates a 'non-obstante' clause, providing that no child shall be sentenced to death or life imprisonment. While the Trial Court awarded a sentence of 10 years and a fine of Rs. 5000/- , the statutory framework of the Act, particularly Section 18, limits the period of stay in a Special Home to a maximum of three years.

29. In the present case, the record reveals that the appellant has already undergone approximately seven years and two months of incarceration, having been in jail since April 7, 2017. While the conviction under Section 302 IPC is upheld, the sentence is modified in light of the mandate of the Juvenile Justice Act and the principles laid down by the Hon"ble Apex Court in **Kamlendra Singh @ Pappu Singh Vs. State of M.P. (2013) 12 SCC 239.** Since the appellant has already served a period far exceeding the maximum three-year term prescribed under the Act, the sentence already undergone is deemed sufficient to meet the ends of justice.

30. It is evident that by enacting Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the legislature, in its wisdom, intended to grant specific benefits to individuals declared as children on the date of the incident. This benefit applies specifically to the sentencing portion of a judgment, ensuring that they are not awarded death or life imprisonment"whereas in the instant case, the appellant was sentenced to 10 years of imprisonment with a fine under Section 302/120-B IPC. The Hon"ble Apex Court has categorized four distinct approaches for such cases: (i) Where the conviction is upheld, but the sentence is quashed; (ii) Where the conviction is upheld, but the sentence is modified to the period already undergone; (iii) Where both the conviction and sentence are set aside; (iv) Where the conviction is upheld, and the matter is referred to the Juvenile Justice Board for awarding a suitable sentence.

31. Applying these parameters to the present case, while the appellant's involvement is noted in the trial court's findings, the fact remains that she has already undergone over seven years and two months of incarceration, having been in jail since 07.04.2017. Therefore, we are of the considered view that, without disturbing the conviction, the appellant, Kumari Janki (name changed), should be released as she has already served a period exceeding the maximum three-years term permissible for a juvenile delinquent under the Act.

32. The judgment and order dated August 1, 2023, passed by the Additional District and Sessions Judge, Barabanki, in Criminal Trial No. 51 of 2018 (arising out of Case Crime No. 0118/2017), is modified to the extent mentioned above.

33. Accordingly, the present appeal is hereby **allowed** with the aforementioned modifications.

(2026) 2 ILRA 950
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 26.02.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Jail Appeal No. 66 of 2021

Etwari **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the conviction of the appellant under S. 6 of the Protection of Children from Sexual Offences Act, 2012 on the basis of circumstantial evidence is sustainable in law and whether the chain of circumstances is complete pointing only towards the guilt of the appellant. (Paras 3,4,35)

Headnotes

Criminal Law - Protection of Children from Sexual Offences Act, 2012 - S. 6 - Conviction based on circumstantial evidence - Completeness of chain - Chain of circumstances must be complete and consistent only with hypothesis of guilt – Conviction sustainable where chain is complete. (Paras 3, 4, 35, 36)

Evidence Act, 1872 - S.s 118 and 119 - Competency of witness - Minor victim of "feeble mind" - Testimony of victim of weak mental condition - Evidence cannot be discarded merely on ground of mental weakness if understandable through signs/gestures. (Paras 25, 26)

Evidence - Related witness - Father and brother of victim - Testimony cannot be discarded merely due to relationship - Must be tested on reliability and consistency. (Paras 28, 29, 30)

Criminal Law - POCSO Act - Rape of minor - Medical evidence corroborating prosecution case - Conviction justified. (Paras 12, 13, 15)

Evidence - Extra judicial confession - Can be relied upon when supported by other evidence. (Para 21)

Investigation - Sniffer dog evidence - Not substantive evidence of guilt - Can only support investigation and arrest. (Paras 33, 34)
Defence - Plea of enmity - Not proved - Cannot discredit prosecution case. (Paras 3, 28, 38)
Criminal Appeal - Jail Appeal - No interference warranted where trial court judgment is reasoned and based on evidence. (Paras 39, 40)
Held: It is a case of circumstantial evidence but all the chain of the circumstances consistently indicates towards the guilt of the appellant and appellant only - prosecution proved its case beyond reasonable doubt - The testimony of victim, though of weak mind, is admissible as "a person, who is of weak mind, his testimony cannot be ignored only on this ground" - related witnesses cannot be termed as interested witnesses merely due to relationship and their evidence is reliable - medical evidence fully supports the prosecution case and establishes commission of rape - sniffer dog evidence cannot be the sole basis of conviction but can support investigation - plea of enmity is rejected as "the plea of enmity taken by the appellant has not been proved" - Accordingly, "the conviction of the appellant for the offence punishable under S. 6 of the POCSO Act is upheld and the sentence awarded is confirmed". (Para 12,15,26,28,29,30,33,34,35,38,40) (E-7)

Case Law Cited

State of Rajasthan Vs. Darshan Singh Alias Darshan Lal, **(2012) 5 SCC 789***; Baban Shankar Daphal and Others Vs. State of Maharashtra,* **MANU/SC/0099/2025***; Ravasaheb Vs. State of Karnataka,* **MANU/SC/0248/2023***; State of Maharashtra Vs. Bandu Alias Daulat,* **(2018) 11 SCC 163***; Lalit Kumar Yadav Alias Kuri Vs. State of Uttar Pradesh,* **(2014) 11 SCC 129***; Sharad Birdhichand Sarda Vs. State of Maharashtra,* **AIR 1984 SC 1622** *; Abdul Rajak Murtaja Dafedar Vs. State of Maharashtra,* ***(1969) 2 SCC 234****; Gade Lakshmi Mangaraju Vs. State of A.P.,* ***(2001) 6 SCC 205****; Dinesh Borthakur Vs. State of Assam,* **(2008) 5 SCC 697.**

List of Acts

Protection of Children from Sexual Offences Act, 2012; Protection of Children from Sexual Offences Rules; Indian Penal Code, 1860; Indian Evidence Act, 1872 Code of Criminal Procedure, 1973

List of Keywords

Circumstantial evidence; Chain of circumstances; Minor victim; Rape; POCSO Act; Weak minded witness; Competency of witness; Related witness; Extra judicial confession; Medical evidence; Sniffer dog; Enmity; Benefit of doubt; Conviction; Life imprisonment.

Case Arising From

APPELLATE JURISDICTION: Arising from judgment and order dated 21.01.2015 passed by learned Additional Sessions Judge / Special Judge, POCSO Act, Unnao in Special Session Trial No.01/2023 (State Vs. Etwari and Another) convicting the appellant under S. 6 POCSO Act.

Appearances for Parties

Advs. for the Appellant:
Sri Diwakar Singh, learned Amicus Curiae.
Advs. for the Respondents:
Sri Pawan Kumar Mishra, learned A.G.A. for the State

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

(1) The instant Jail Appeal has been filed against the judgment and order dated 21.01.2015 passed by learned Additional Sessions Judge, Court No.8 / Special Judge, POCSO Act, Unnao in Special Session Trial No.01/2023; State Vs. Etwari and Another, arising out of Case Crime No.249/2013, under Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (here-in-after referred as POCSO Act), Police Station Kotwali, District Unnao, by means of which,

Etwari and Ramzan alias Ramzani have been convicted under Section 6 of the POCSO Act with punishment of life imprisonment and fine of Rs.10,000/- each and in default of payment of fine, to undergo one year's rigorous imprisonment. It has further been directed that 50% of the amount of both the fines would be paid to the victim as compensation. The learned Trial Court has further recommended for damages to the victim under Rule 7 of the Protection of Children from Sexual Offences Rules.

(2) Heard Sri Diwakar Singh, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned A.G.A. for the State.

(3) Learned Amicus Curiae for the appellant submitted that the appellant has wrongly and illegally been convicted and punished by means of the impugned judgment and order without considering the evidence and material on record appropriately. He further submitted that the appellant is innocent and he has falsely been implicated in this case. He further submitted that there is no eye witness to the incident and it is a case of circumstantial evidence and chain of circumstances is not complete, therefore, it could not have been said that the appellant has committed the crime and convicted. He further submitted that the appellant has been implicated in the case only on account of enmity and the investigation is tainted, which has been done only with a view to implicate the appellant, as looking to the kind of crime, the police was under pressure to solve the case. Thus, learned Amicus Curiae submitted that the impugned judgment and order is not sustainable in the eyes of law and the same is liable to be set aside and the appellant is liable to be acquitted.

(4) Learned A.G.A. vehemently opposed the submissions of learned Amicus Curiae for the appellant. He submitted that the appellant has rightly and in accordance with law been convicted and sentenced by means of the impugned judgment and order considering and dealing the same appropriately. He further submitted that the appellant has committed a heinous crime with a minor girl, who was not mentally sound completely. He did not dispute that this is a case of circumstantial evidence but the chain of circumstances is complete, which refers only to the guilt of the appellant. He further submitted that the appellant has failed to show any reason for false implication and the plea of enmity could not be proved. Even otherwise he submitted that the ground of enmity shown by the appellant is highly improbable, on account of which, the parents could have implicated him at the cost of reputation of their minor daughter. He further submitted that father and mother are the best persons to understand the things told by such a challenged person i.e. the victim. Thus, the submission is that the impugned judgment and order has rightly been passed in accordance with law after considering the evidence and material on record by a reasoned and speaking order, which does not suffer from any illegality or error, which may call for any interference by this Court. He further submitted that the instant Jail Appeal filed by the appellant is misconceived and lacks merit, which is liable to be dismissed.

(5) We have heard learned counsel for the parties and perused the records.

(6) The prosecution story, in brief, is that the complainant Jaipal Yadav S/o Sri Hiralal Yadav, resident of 64, Anwar Nagar, Chowki Kila, Police Station Kotwali, District Unnao gave a written report stating therein that his father has a hotel of tea at Ibrahim Bagh Chauraha, from which, he

and his father earn livelihood. Yesterday i.e. on 11.02.2013 at about 08:30 PM, complainant's sister, who is aged about 8 years, went to defecate but she did not return for a long, therefore, the complainant and his father went to search her. They heard the groaning of victim from inside the boundary wall of Ramesh (Dhobi), Mohalla Pahli Kheda, then, they went there and found that the blood was oozing out from the private parts of the victim and her mouth was tightened with a cloth and some unknown persons have committed misdeed with her and went away after leaving her there. They took the victim to the district hospital for treatment, from where after primary treatment, she was referred to Kanpur, where her treatment was going on. It has also been stated in the written report that before the incident, Etwari, who works on the shop of tea of Badakke and resides at the aadhat of chicken (murga) of Afzal, was seen there and he was also seen there after the incident. Some people have also seen him taking away the victim and the complainant is sure that the incident and the misdeed have been committed by Etwari. It has further been stated in the written report that seeing and hearing about the incident, there is fear and terror among the ladies of the area.

(7) In pursuance of the aforesaid written report, a case under Section 376 of the Indian Penal Code, 1860 was registered and after investigation, the charge sheet (Ex. Ka-8) was filed against Etwari and Ramzan alias Ramzani under Section 3/4 of the POCSO Act, on which cognizance was taken by the Sessions Judge on 29.05.2013. Thereafter, after providing the prosecution papers to the accused persons, they were heard on charge and on account of prima facie evidence against the Etwari and Ramzan alias Ramzani, a charge under Section 6 of the POCSO Act was framed. The accused persons denied the charge and pleaded for trial.

(8) In order to prove its case, the prosecution produced Jaipal, the complainant as P.W.-1, Hiralal as P.W.-2, Constable Nazrul Hasan as P.W.-3, Dr. Sanju Agarwal as P.W.-4, Victim as P.W.-5, Vivek Dubey as P.W.-6, Kripa Shanker Saroj, Investigating Officer as P.W.-7, Kallu Ram Bharti, Investigating Officer as P.W.-8, Dr. Rakesh Kumar Tripathi as P.W.-9, Mahesh as P.W.-10, Shivkumar as P.W.-11, Constable 694 Mohammad Afzal as P.W.-12, Saiyed Mohammad Azmeri as P.W.-13 and Ashok Kumar as P.W.-14. P.W.-13 and P.W.-14 were declared hostile and they were cross-examined by the prosecution.

(9) The prosecution also placed on record and proved the documentary evidence.

(10) We have considered the submissions of learned counsel for the parties and perused the records.

(11) The P.W.-1; complainant stated that his father and he have a hotel of tea at Ibrahim Bagh crossing. On 11.02.2013, his sister, who is aged about 8 years, went from the shop to defecate and when she did not return for a long, then he and his father went for her search. They heard groaning of his sister from the plot of Ramesh (Dhobi) and they reached near the victim and found her in pool of blood and a cloth was also tightened on her mouth. He got shocked with it and, firstly, he and his father brought the victim to their shop and, thereafter, they took her to the hospital, where the doctor advised to take the victim to the Hallet Hospital, Kanpur. The P.W.-2, who is father of the victim as well as of the complainant, has joined the P.W.-1 in stating that he was in his shop of tea at Ibrahim Bagh Crossing at 08:00 PM - 08:30 PM on 11.02.2013 with his daughter i.e. the

victim, who is aged about 8 years. The victim went to defecate and when she did not return for a long time, then he went to search her and found her in the boundary of plot of Ramesh (Dhobi). He found that the victim was seriously injured and blood was oozing out from the place of urination and her mouth and neck were tightened. He took the victim to the District Hospital, Unnao but on account of serious condition, he took her to the G.S.V.M. Medical College, Kanpur.

(12) Dr. Sanju Agrawal appeared as P.W.-4. She proved medical examination report of the victim as Ex. Ka-4, which was conducted by her on 11.02.2023 at 10:00 PM at District Hospital, Unnao. She stated that condition of the girl was very critical. There was injury and swelling on the right eye of the victim. General condition was very critical. Blood stains were on both the legs. There was extensive bleeding. Vagina was torn, which was going upto rectum. Anal in sphincter was torn. First aid was given to the girl and swab was collected from vagina and sent for testing to lab. For better treatment, she was sent to G.S.V.M. Medical Colllege, Kanpur. It has also been stated that blue lungi, bed sheet of coca cola colour and piece of blood soaked cloth were sealed and handed over to the police. Thus, it has been proved that the victim was found in very critical condition in a plot and the medical examination report supports the condition told by the brother, who is complainant and the father of the victim.

(13) Dr. Rakesh Kumar Tripathi, Assistant Professor, Surgery Department, G.S.V.M. Medical College, Kanpur appeared as P.W.-9 and stated that the victim, who was aged about 7 years, D/o Hiralal, 64 Anwar Nagar, Police Station Kotwali Unnao was admitted in the maternity hospital at 11:50 PM on 11.02.2023 and a team of Dr. Anshu Mishra had seen the victim and after admission, she was referred for operation to the Surgery Department. Thereafter, Dr. Rakesh Kumar Tripathi and his team had seen the victim and found that there was extensive injuries in the lower part of her body and there was huge blood loss. The girl was not allowing the examination, therefore, after transfusion of blood, a plan was made for examination and surgery after comatising her. Accordingly, in the next morning, the victim was examined in the operation theater after comatising her, wherein, Dr. Rakesh Kumar Tripathi and Dr. Anshu Mishra found five following injuries:-

"(1) पेशाब के रास्ते के आस पास के हिस्से पर चोट था लेकिन पेशाब की नली ठीक थी।

(2) बच्चे की बेबी XXXX की बच्चेदानी की नीचे की दीबार दोनो तरफ दाई और बाई तरफ 4 से 5 से०मी० की गहराई तक पूरे तौर पर फटी हुई थी।

(3) बच्चेदानी और लेटरीन के बीच की जगह पूरे तौर पर फटी हुई थी।

(4) बेबी XXXX के लेटरीन का रास्ता (मल द्वार) के ऊपरी हिस्से में 4 से 5 से०मी० गहरा घाव था। मल द्वार की ऊपरी दीवार कैंटीरियर कॉन्टराइर वॉल) लगभग 4 से 5 से० मी० तक पूरे तौर पर फटी हुई थी।

(5) इसे 4th डिग्री पेरिनेल. टियर माना गया।"

(14) It has further been stated by him that all the torn parts were stitched, passage for latrine was made from the stomach, therefore, the same may be stopped from going downside and in

future, there may not be any damage to the injury. It was done after informing and with the consent of father of the victim. It has further been stated by him that the victim was kept for 10 days in the Gynae Department, thereafter, transferred to Surgery Department. He has also stated that he was referred on 11.02.2013 from District Hospital Unnao to L.L.R. Hospital after primary treatment at 10:00 PM. He proved medical examination report. In the cross examination, he supported his evidence given in the examination-in-chief and nothing can be extracted from him, which may create any doubt about the medical condition of the victim and the treatment given to her.

(15) The learned Trial Court has recorded that the medical examination report of the victim has been proved by the P.W.-4 and no cross-examination has been made by anybody from her, therefore, her statement is completely believable. The subsequent treatment of the victim has been proved by the Dr. Rakesh Kumar Tripathi, Assistant Professor, Surgery Department, G.S.V.M. Medical College, Kanpur, who appeared as P.W.-9. After considering the medical evidence of the victim, the learned Trial Court has categorically found that at the time of incident, a serious offence of rape has been committed upon the victim. This Court does not find any illegality or error in the finding so recorded by the learned Trial Court.

(16) The complainant further stated that the tea shop of Badakke is near his shop and near chicken's commission agency (आढ़त) of Afzal. The accused, Etwari resides in these shops and one or two persons have seen his sister going with the accused, Etwari and it has been mentioned in the F.I.R. also and on account of it, an apprehension was expressed that the complainant is confident that the incident and the misdeed have been committed by Etwari.

(17) The P.W.-2, Hiralal has stated that after one month of the incident when his daughter was better then she told that Kakwar (Etwari) and Ramzani have done misdeed with her. Ramzani used to bring thelia of chickens at the chicken's commission agency of Afzal and he used to sell the chicken after cutting in the neighbour of his shop. Both of them used to come to take tea at his shop. The information of incident was given by his son Jaipal at the police station and when his daughter told the names of accused persons to him, then he gave a written information of the incident at the police station, which is paper No. 8क / 2, which was written and signed by him, and the same has been marked as Ex. Ka-2. Thus, the names of the accused persons told by the father of the victim are same as told by the victim to her father and the complainant.

(18) The consistent case of the complainant and his father is that the victim had gone from their shop for defecation, when some persons of area had seen the accused going towards that side and with the victim. Mahesh, P.W.-10 stated that he works in superhouse and lives in Anwar Nagar and knows Hiralal, who is of his family. Hiralal has a hotel of tea on highway. The incident is of 14 months back. He had come back on the date of incident by 06:00 in the evening at his home, thereafter, he went at the hotel of Hiralal for having tea. Daughter of Hiralal, who is aged about 7 years, was at hotel at that time. At about 08:30 in the night, she went to defecate towards the field of Ibrahim Bagh. When he was sitting on the shop, Etwari and Ramzani, who have shops of chicken in front of the hotel of the Hiralal, came at the hotel, when the victim had gone to defecate, they also went behind her. After some time, he came back to his home. At about 09:30 - 10:00 in the night, he came to know that misdeed has been done with the victim and her condition is very bad. On hearing the news, he came running and found that Hiralal and Kali Prasad are

accompanying the victim, who was in pool of blood. Seeing the same, he was confident that the misdeed has been committed by Ramzani and Etwari, who had gone behind her. In the cross-examination, he denied the suggestion that he has any enmity with the Etwari. He also stated that the Inspector had enquired from him near the hotel of Hiralal on the date of incident. He, in his further examination, stated that the victim had gone alone to defecate and he had not seen anybody taking away the victim. In the cross-examination, he also stated that Etwari had come at the shop of Hiralal and from the shop, Etwari and Ramzani had gone behind the victim. He further stated that he had told all this to the Investigating Officer in his statement under Section 161 Cr.P.C. but he does not know as to why the name of Ramzani has not been written by the Investigating Officer. He also stated that it is wrong to say that he is first time taking the name of Ramzani. Thus, he has supported the prosecution case.

(19) P.W.-11, Shiv Kumar stated that the incident is of 13 - 14 months back. He had gone to the market of Unnao and was going back to his home after purchasing through Anwar Nagar at 09:00 in the night. When he reached ahead the hotel of Hiralal, Etwari and Ramzani were in very hurry and perturbation. He asked the Etwari as to where he is going, then he spoke nothing and both of them went with speedy steps. He knew Etwari and Ramzani since earlier and their shop of chicken is in front of the hotel of tea of Hiralal and he used to go to take tea at the hotel of Hiralal, therefore, knows them. On that night, there was a screaming and the police had reached there. He came to know that the 7 years' daughter of Hiralal has been raped. He had not gone at the place of incident in the night. He further stated that Etwari and Ramzani were going from the site where the rape of the girl was committed. In cross-examination, he stated that his statement was recorded after 2 - 3 days of the incident, he had told the name of Etwari and Ramzani in his statement but he does not know as to why it has not been written. Thus, this witness has also supported the prosecution case to the extent of presence of the accused persons and their coming back from the place of incident. He has also denied the suggestion that he had any hot talk or any abusive language with Etwari.

(20) The written complaint for lodging the F.I.R. was written by Ashok S/o Ghunni Prasad. The P.W.-1, complainant has stated in his evidence that he had given the report at Kotwali after getting it written from Ashok, which was written by him and read over to him and the complainant had signed the said report and, thereafter, handed over at the Kotwali. His report was written and the Inspector had made enquiries from him. He proved the paper No. क-4/2, which was read over to him and stated that it is the same report, which was got written by Ashok and signed by him. It was marked as Ex. Ka-1.

(21) Ashok Kumar appeared as P.W.-14. He stated that about quarter to 2 years back between 08:00 PM to 08:30 PM on the date of incident, he came to know that misdeed has been committed with the victim. The brother of the victim, Jaipal had come to him. He was at the shop. Jaipal asked for help, and then he, alongwith Jaipal, took the victim to the hospital, where her brother got her admitted. Next day, the report of this incident was got written by Jaipal and gave at the Police Station Kotwali, District Unnao. He proved the written report as Ex. Ka-1. Though he has been declared hostile but he proved that the written report was written by him as told by the complainant, Jaipal and thereafter it was given at the Police Station Kotwali. The victim was referred by the District Hospital, Unnao for G.S.V.M. Medical College, Kanpur. The learned Trial

Court has recorded that though he has been declared hostile, however, he has proved in his examination-in-chief that he had written the report (Ex. Ka-1) as told by the complainant, Jaipal. He also accepted that he knows Hiralal and his daughter, who are of his Mohalla and that Etwari had done the wrong work, which was told by him before many persons, when he was caught by the police. He also clarified that when the wrong work was done with the victim, then brother of the victim, Jaipal had come to him for help, then he went to the hospital alongwith him taking the victim. As such, this witness has also proved the extra judicial confession made by the accused.

(22) The second Investigating Officer, Sri Kripa Shankar Saroj, Incharge Inspector appeared as P.W.-7. He stated that he was posted as Station House Officer at Police Station Kotwali, District Unnao on 16.02.2013 and he himself entrusted the investigation to him and perused the paper Nos.1, 2, 3 and 4 of the earlier Investigating Officer. He stated that on 22.03.2013, the father of the victim, Hiralal gave an application to him mentioning therein that after returning from Kanpur, his daughter told her that two persons have committed rape with her and their names are Kakua and Ramzani. After recording the same in C.D. and annexing the application with the C.D., he recorded the statement of father of the victim, Hiralal on the same date and reached his house with him. He made enquiries from the victim but things were not being cleared and she was not able to speak clearly, therefore, her statement was recorded on the basis of question answers through her father. She told some things by mouth and some things by gestures. The videography of her statement was also got done and the same were recorded in the C.D., which is paper 6 क/4 and the same is signed by him and signed by the father of the victim and two witnesses and it was marked as Ex. Ka-6. Thus, the statement of victim under Section 161 Cr.P.C. was recorded, wherein she had supported the prosecution case. He further stated that the statements of two witnesses, namely, Shiv Kumar and Shahid were also recorded. Thus, on the basis of the statements of the victim and the complainant, the names of Ramzani @ Ramzan also came to light and on 24.03.2013, he arrested Ramzani @ Ramzan. The Sections 3/4 of the POCSO Act were added on 25.03.2013 and, on 09.04.2013, statement of the victim under Section 164 Cr.P.C. was got recorded. In the cross-examination, he explained as to how the statement of victim was recorded and the videography was got done and the name of Ramzani surfaced on the statement of the victim and nothing could be extracted, which may create any doubt about recording of the statement in the manner stated.

(23) Vivek Dubey appeared as P.W.-6. He proved that the video recording was made by him. He also told the name of the victim and told that she was so much frightened that she was not able to speak properly and she was making replies slowly after understanding the things told by her father. The questions, which were being asked by the Inspector, were put to her by her father and she was replying them slowly. He also stated that he had given C.D. Cassette to the Inspector of Kotwali, which was prepared by him. The sealed C.D. was opened. He, after looking to it, admitted that it was prepared by him, which was marked as Material Ex.-1. No cross-examination was made from him. Thus, his statement remains unrebutted.

(24) The victim appeared as P.W.-5. She was aged about 9 years and of feeble mind. The learned Trial Court has recorded that she was unable to understand the nature of questions and giving answers of them on repeated efforts and with the help of father. The Court tried to understand the facts through her language and appearance and no oath was administered to her. It has been recorded that she told her name and name of her father as Babu Papa. She further stated

that Tiwari (Etwari) and Razana (Ramzani) both had pressed her mouth and neck and took her away in lap and inserted her in bush of berry (बेर). They tied the cloth on her mouth and neck and opened her underwear. The learned Trial Court has recorded that all the injuries are still present on her private parts, which are covered with cotton bandages. On account of weak mind, she was unable to tell anything further, therefore, the examination-in-chief was closed. In the cross-examination, she stated that the Investigating Officer had made queries from her. She recognized the Etwari, who was present in the Court and stated that this is Tiwari (Etwari). A question was asked as to whether there is any enmity with the family of Etwari but the learned Trial Court has recorded that she was unable to understand the question. She further stated that she had gone to defecate. On a query as to whether it was day or night, she could not reply. Thus, with the help of father, she supported the prosecution case. In her further cross-examination on behalf of the accused, Ramzani, the Court has recorded that on being asked about the name of her brother, she only stated the name of Babu, by which name, she used to call her father, who had come with her. She told that she goes to school and studies in class-3. On being asked about the name of school, she denied by shaking her head. On being asked about the name of her mother, she stated Amma. She further stated that she has come from village today and she could not tell the name of village and number of members of the family. She also showed ignorance about the numbers. When she was asked 1, 2, 3, 4 and 5 then she told numbers 1, 2 and 3. About her sister, she stated that Didi has gone up. She also made replies to certain queries. On being asked as to how many persons had taken her away, she clearly stated that two persons had took away. In this regard she not only spoke from mouth but also told by sign by raising her hand and showing two fingers but the names could not be spelt out clearly. Thus, the victim has also supported the prosecution.

(25) Sections 118 and 119 of the Indian Evidence Act, 1872 provides as to who may testify, which are extracted here-in-below:-

***118. Who may testify**. --- All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.*

Explanation. --- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

***119. Witness unable to communicate verbally. ---** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:*

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.

(26) In view of above, unless the Court considers that any person is prevented from understanding the questions put to him or from giving rational answers to those questions whether

due to weakness of body or mind, or any other cause of the same kind. etc, all persons shall be competent to testify. The explanation to the aforesaid Section 118 of the Indian Evidence Act clarifies that a lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. According to the aforesaid Section 119 of the Indian Evidence Act, 1872, if a person is unable to speak, may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence. Thus, a person, who is of weak mind, his testimony cannot be ignored only on this ground, if he/she is able to give his/her evidence by any method and same can be understood by the Court.

(27) The Hon'ble Supreme Court, in the case of State of Rajasthan Vs. Darshan Singh Alias Darshan Lal; (2012) 5 SCC 789, has held that language is much more than word and like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey, but a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. The relevant paragraph Nos.28 and 29 are extracted here-in-below:-

28. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

29. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.

(28) In the aforesaid case, the statement was recorded with the help of father and an interpreter and the Court had found that he was interested witness and, therefore, assisted during trial and investigation, and acquitted the accused giving benefit of doubt. In the present case, the statement of the victim has been recorded with the help of father but in the presence of two witnesses under Section 161 Cr.P.C. and the videography of same was also done, which has been proved by videographer, who stated that she had answered slowly and no cross-examination was done from him. The victim has been examined before the learned Trial Court and before the learned Trial Court also, she has supported the prosecution case. Though a plea of enmity with the father has

been taken but the same has not been proved, therefore, merely because the father is father of the victim, it cannot be said that he was an interested witness and the innocent persons would be roped in the case. It has also been noticed that the father had given the application naming the appellant and co-accused only after the victim told him after relieved from the hospital, i.e. after about a month, and came back to home and told him about the accused persons. If his intention would have been to implicate the appellant and co-accused only on account of some enmity, he could have done it immediately after the incident. Even otherwise, the enmity pleaded by the appellant could not be proved and this Court failed to comprehend as to how a father would implicate innocent persons at the cost of reputation of daughter and social stigma, which may have been caused to her.

(29) The Hon'ble Supreme Court, in the case of Baban Shankar Daphal and Others Vs. The State of Maharashtra; MANU/SC/0099/2025, has held that 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. The relevant paragraph Nos.28 and 29 are extracted here-in-below:-

"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.

29. The distinction between "interested" and "related" witnesses has been clarified in Dalip Singh v. State of Punjab, where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

i. Md. Rojali Ali and Ors v. The State of Assam Ministry of Home Affairs through secretary;

ii. Ganapathi v. State of T.N.;

iii. Jayabalan v. Union Territory of Pondicherry."

(30) The Hon'ble Supreme Court, in the case of **Ravasaheb Vs. State of Karnataka; MANU/SC/0248/2023**, has narrated some of the principles essential for the consideration in regard to testimony of close relatives. The Hon'ble Supreme Court observed that the witness being a close relative is not a ground enough to reject his testimony and mechanical rejection of an even "partisan" or "interested" witness may lead to failure of justice. The relevant paragraph No.17.4 is extrated here-in-below:-

"*17.4 - A witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even "partisan" or "interested" witness may lead to failure of justice. The principle of "falsus in uno, falsus in omnibus" is not one of general application. "*

(31) The Hon'ble Supreme Court, in the case of **State of Maharashtra vs. Bandu Alias Daulat; (2018) 11 SCC 163,** upheld the conviction made under Section 376 I.P.C. for rape of a minor victim considering that the victim is deaf and dumb and mentally challenged to some extent and she was lured away by the accused by offering some sweet meat and was taken to the market and she explained to her mother by gesture as to what happened, on the basis of which, F.I.R. was registered and investigation was carried out and medical examination of the victim confirmed the commission of rape and the High Court had acquitted on the ground that the victim herself was not examined and factum of rape and involvement of accused could not be proved, whereas not only the victim had supported the prosecution case with her signs but also the medical supported the prosecution case.

(32) The first Investigating Officer, Incharge Inspector Kallu Singh Bharti appeared as P.W.-8. He stated that the F.I.R. of Case Crime No.249/2013, under Section 376 I.P.C. was registered at Police Station Kotwali, District Unnao in his presence and the investigation was entrusted to him on the direction of the Station House Officer. He proceeded from the police station alongwith the complainant to the place of occurrence and on his pointing out, inspected the place and prepared the site plan, which is paper No. 7क / 1 and marked as Ex. Ka-3. After recording the statements of witnesses and collecting the plain soil and blood stained soil and keeping them in separate boxes and sealing them and preparing the seal, he alongwith others proceeded towards the shop of tea of the complainant. He collected the clothes of the victim at the place of occurrence and kept them in a sealed cover. He further stated that on his prior information, the Dog Squad Unit had reached at the place of occurrence, who made the search with the help of trained dogs and the accused Etwari was searched but he was not found there. However, it was told by an informer that the witnesses Mahesh Kumar and Shiv Kumar have seen the Etwari going and coming from that side, therefore, their statements were recorded after calling them. It was found during investigation that the Etwari was at the Commission Agency (आढ़त) of Chicken of Afzal at Khorat Bagh, therefore, he went there and arrested the Etwari, who accepted his crime and on his pointing out, he recovered clothes worn by him at the time of incident, however, Etwari told that he has kept those clothes after washing them. He has further stated that he recorded the statements of Incharge of the Dog Squad Nazrul Hasan on 14.02.2014, who had brought Brano Dog with him, who after smelling the place of incident, went towards the tea shop of Etwari and directly to the hen farm of Afzal. The accused was arrested on the pointing of Dog Brano and he had accepted his crime. No cross-examination has been made from him on behalf of the accused Ramzani and Etwari and no cross-examination was made in regard to the Dog Squad and the pointing out by the Dog.

(33) The Incharge of Dog Squad Constable Nazrul Hasan appeared as P.W.-3. He stated that on telephonic information of the incident of misdeed, he had reached on the spot with the Brano Dog. The Brano Dog smelled the footprints of the accused, thereafter, it went to the place of incident and then to the main road and after crossing, he turned left and then right and from brick road to the hen farm of Afzal, which is about 200 meters away. After reaching on the hen farm, the Dog indicated towards the accused Etwari and the Etwari had accepted the crime of misdeed before the police. He also stated that the said hen farm is in Anwar Nagar. He had submitted the track report. In the cross-examination, he stated that he has been given training of Dog Squad and guiding the Dog in the Dog Squad. He also stated that the Dogs understand his expression and works after smelling. He denied the suggestion that on the direction of higher officer, he, in collusion with the complainant, has wrongly guided the Dog to mark Etwari. In view of above, the accused Etwari was also pointed out by the trained dog of the Dog Squad of the police and the Incharge of Dog Squad proved as to how the accused was pointed out by the trained dog and extra-judicial confession made by the appellant and nothing could be extracted in the cross-examination, which may create any doubt about his testimony. The learned Trial Court, after considering the evidence of P.W.-3, Constable Nazrul Hasan, has recorded a finding that though the cross-examination has been made from him but no cross-examination has been made about his command to the Brano Dog and his veracity. The learned Trial Court, after considering the site plan and the proof thereof made by the prosecution witnesses, has recorded a finding that the place of incident as well as the place of arrest of the accused has also been fixed and proved. The same were fixed and proved by evidence of other witnesses also. However, the conviction of the appellant has not been made on the basis of report of the Dog Squad but after considering the evidence and material on record and finding that the chain of circumstances lead towards the guilt of the appellant only. Thus, the evidence of the Incharge of the Dog Squad is only supportive and proved only arrest of the accused. Even otherwise, the conviction cannot be made independently on the basis of report of Dog Squad and tracking by the sniffer dog.

(34) The aforesaid issue has been considered by the Hon'ble Supreme Court, in the case of **Lalit Kumar Yadav Alias Kuri Vs. State of Uttar Pradesh; (2014) 11 SCC 129**, and the relevant paragraph Nos.34 to 38 of which are extracted here-in-below:-

34. It was lastly urged on behalf of the appellant that identification of accused by sniffer dog cannot be relied upon as it is not admissible in order to prove the guilt of the appellant.

35. Similar contention was raised in Abdul Rajak Murtaja Dafedar v. State of Maharashtra, (1969) 2 SCC 234, wherein this Court opined:

"11.....that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight."

36. In Gade Lakshmi Mangaraju alias Ramesh v. State of A.P., (2001) 6 SCC 205, this Court noticed the criticism advanced against the reception of evidence pertaining to sniffer dog. The objection was that the life and liberty of human being should not be made to depend on animals sensibilities and that the possibility of a dog misjudging the smell or mistaking the track

cannot be ruled out, for many a time such mistakes have happened. In the said case, this Court relying decision in Abdul Rajak Murtaja Dafedar (supra) case held:

"17. We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals."

37. In Dinesh Borthakur v. State of Assam, (2008) 5 SCC 697, while the same question was considered, referring to Gade Lakshmi Mangaraju (supra) case this Court held:

"40.....the law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused."

38. In the present case, the services of a sniffer dog was taken for investigation. The said dog traced the accused and he was formally arrested in the evening of the next day. The Investigating Officer, Ashok Kumar Yadav (PW-10) corroborated the evidence of Abdul Lais Khan (PW-4) to the effect that "Raja" sniffer dog after picking up scent from the place of occurrence tracked down the house of the accused. What is relevant to note is that the accused has not been convicted on the ground that the sniffer dog tracked down the house of the accused and barked at him. The evidence of dog tracking only shows how the accused was arrested. The Trial Court and the Appellate Court noticed the motive of the accused. Ram Chandra Chaurasiya (PW-1) disclosed in his evidence that a few days before the date of occurrence, the accused has teased his daughter and also threatened her. Her daughter Km."x" complained about the misconduct of the accused to her cousin Ashok Kumar and the latter admonished the accused for the same. Ashok Kumar died subsequently but the evidence of the girl"s father is quite convincing and worthy of credit. The aforesaid incident clearly reflects upon the motive of the accused.

(35) In view of above, though it is a case of circumstantial evidence but all the chain of the circumstances consistently indicate towards the guilt of the appellant and appellant only. The co-accused, Ramzani has died and his appeal has been abated.

(36) In the case of circumstantial evidence, the evidence and material on record is to be analyzed on the touch stone of 5 golden principles (Panchsheel) laid down by the Hon'ble Supreme Court, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622,** wherein while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The said 5 golden principles are as under:-

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the-innocence of the accused and must show that in all human probability the act must have been done by the accused."

(37) In regard to P.W.-13, Saiyed Mohammad Azmeri, who has also been declared hostile, the learned Trial Court has recorded that after analysis of his evidence, it could not be said that he does not know accused Etwari and his evidence is believable.

(38) In view of above, the prosecution proved its case beyond reasonable doubt. In the statement under Section 313 Cr.P.C., the appellant stated that he has falsely and wrongly been implicated on account of enmity and stated that wrong and false statements have been given. On a query as to whether he will give any defense, he stated yes. The family members of the victim have registered the case in collusion with the police and intermediaries. On a query as to whether anything else is to be said, he stated that he had quarrel with the complainant at the Commission Agency (आढ़त) of chickens of Afzal, and on account of enmity, he has been implicated. The plea of enmity taken by the appellant has not been proved and no evidence has been adduced by the appellant. Even otherwise, no such enmity could be proved and even it there was any such minor conflict, this Court fails to comprehend that a father and brother would implicate the appellant at the cost of reputation of daughter/sister and social stigma, which may cause to her.

(39) In view of above and considering the over all facts and circumstances of the case, we are of the view that the learned Trial Court has rightly and in accordance with law, after considering the evidence and material on record, convicted the appellant and sentenced him. There is no illegality or error in the impugned judgment and order, which has been passed by a reasoned and speaking order after considering the evidence and material on records and none of the grounds taken by the appellant are tenable in the eyes of law.

(40) The appeal is misconceived and is liable to be dismissed, which is accordingly **dismissed,** upholding the impugned judgment and order passed by the learned Trial Court. The conviction of the appellant for the offence punishable under Section 6 of the POCSO Act is upheld and the sentence awarded to him under Section 6 of the POCSO Act is confirmed.

(41) Let a copy of this judgment alongwith the Trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today for information and compliance.

(2026) 2 ILRA 965
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Jail Appeal No. 192 of 2022

Dharmendra @ Chandra Prakash ...Appellant
Versus
State of U.P. ...Respondent

Issue for consideration

Matter pertains to whether conviction under section 302 IPC is justified or the offence is covered under section 304 IPC.

Headnotes

Indian Penal Code, 1860-Section 302-accused used to consume intoxicant- there had been altercations between husband and wife-accused assaulting his wife-Smt Neetu Devi from sickle (Hansia) on her face and neck -appellant was accustomed to consuming intoxicant -incident took place over a petty dispute of consuming intoxicant-result of sudden fight-no premeditation-act was done in a heat of passion-no motive of the incident-Held, appellant entitled to the benefit of Exception 4 to Section 300 IPC.-conviction under Section 302 IPC cannot be sustained.- offence would squarely come within the ambit of Section 304 part-I IPC, instead of Section 302 IPC-**Appeal is partly allowed.** (E-9)

Case Law Cited

1. Jagtar Singh Vs. State of Punjab (1983) 2 SCC 342
2. K. Ramakoteswara Rao Vs. State of A.P., 1986 Cr.L.J. 680
3. Surinder Kumar Vs. Union Territory, Chandigarh, (1989)2 SCC 217
4. V. Sreedharan Vs. State of Kerala, AIR 1992 SC 754
5. Bhera Vs. State of Rajasthan, 2000 SCC (Cri) 1230
6. Mochi Raju Vs. State of Gujarat, JT 2001 (10) SC 398
7. Sukhbir Singh Vs. State of Haryaba, (2002) 3 SCC 327
8. Ghapoo Yadav Vs. State of M.P. (2003) 3 SCC 528
9. Sudhakar Vs. State of U.P., (2012)8 SC 289

List of Acts

The Indian Penal Code, 1860

List of Keywords

Premeditation; act was done in a heat of passion; Section 304 Part II; Exception 4 to Section 300 IPC; motive of the incident.

Appearances of parties

Counsel for Appellant(s) : From Jail, Harish Chandra Tiwari
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon’ble Chandra Dhari Singh, J.)

1. The instant criminal appeal has been filed by appellant-Dharmendra alias Chandra Prakash against a judgment and order dated 08.06.2022 passed by the Additional Sessions Judge, Court No. 4, Jhansi in Sessions Trial No. 336 of 2014 arising out of Case Crime No. 80 of 2014, under Section 302 IPC whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 20,000/- under Section 302 IPC and in case of default in payment of fine, he was further directed to undergo additional imprisonment of one year.

Brief Facts of the case

2. The facts that formed the bedrock of the present criminal appeal, in short compass, are that a written report was handed over by the first informant Rohit Kumar, son of Kailash Narain at police station Uldan at 01:30 AM on 23.07.2014 that on 22.07.2017 at about 08:30 PM, his cousin Dharmendra (hereinafter referred to as the accused-appellant), son of Vishwanath Srivas, who is permanent resident of village Dhabari, police station Tahrauli, district Jhansi and is presently residing with his grand-maternal father (Nana) at village Rajpura, police station Uldan, district Jhansi. Since accused used to consume intoxicant, there had been altercations between husband and wife. On hearing the shrieks from inside the house of the appellant, when he along with Jugul Kishore and Lalta Prasad went inside the house, they saw the accused assaulting his wife-Smt Neetu Devi from sickle (Hansia) on her face and neck. The FIR further recounts that on arrival of the witnesses, accused fled away with bloodstained Hansia (sickle) and in bloodstained clothes, which he was wearing at the time of occurrence. The information in respect of the aforesaid incident was communicated to the father of the deceased, who also arrived at the spot. On account of the injuries received, Smt. Neetu Devi (hereinafter referred to the deceased) succumbed to the injuries.

3. On the basis of the aforesaid report, a case was registered at Case Crime No. 80 of 2014, under Section 302 IPC, police station Uldan, district Jhansi.

4. After the registration of the first information report, the law set into motion and investigation of the case was taken up by PW-7, Inspector Satyendra Singh, who after completing necessary formalities, submitted charge sheet against the accused under Section 302 IPC. Bloodstained sickle and bloodstained clothes of the accused were also sent to Forensic Science Laboratory, Agra.

5. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 336 of 2014. The learned Additional Sessions Judge/Special Judge (SC&ST Act, Jhansi vide order dated 15.09.2015 framed the charges against the accused-appellant under Section 302 IPC, which was read over and explained to him.

6. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as seven witnesses, out of which PW-1, Rohit Kumar is the first informant of the case, PW-2, Jugul Kishore, PW-3, Lalta Prasad are the witnesses of facts, remaining witnesses are formal one.

7. PW-1, Rohit Kumar is the first informant of the case. In his examination-in-chief, he has reiterated the versions given in the FIR. He further deposed that on 23.07.2014, on the pointing out of the accused, the investigating officer recovered weapon of assault, i.e. bloodstained sickle (Hansia) and bloodstained clothes of the accused, on which he put his signature, which he proved as Ext. Ka-2 and Ka-3. He was also the witness of inquest. He also stated that accused-appellant is his cousin and he along with several persons of the village have seen the accused committing the murder of the deceased.

8. PW-2, Jugul Kishore in his examination-in-chief has deposed that he knows the appellant well. He used to live in a rented house in his neighbourhood. Accused-appellant and the deceased used to quarrel over intoxication by the accused. On 22.07.2014 at about 08:00-08:30, on hearing the hue and cry from the house of the appellant, when he along with Rohit and Lalta Prasad went inside the house, they saw the accused assaulting his wife (deceased) on her face from sickle (Hansia). They tried to apprehend the appellant, but as he was armed with sickle, no one could dare to go beside him and accused managed to escape. Accused"s wife died at the spot. He further deposed that he was also the witness of inquest.

9. PW-3, Lalta Prasad, in his examination-in-chief has deposed that on the date of occurrence, accused was living in the vacant house of his maternal grandfather along with his wife and children. There had always been altercation between the accused and the deceased as the appellant used to consume intoxicant. On 22.07.2014 at 08:00-08:30 PM, he was standing at the shop of Sita Ram. On hearing the shrieks of the deceased, when he along with Jugul, Rohit and other persons of the vicinity went to the house of the appellant, he saw appellant assaulting the deceased on her face and neck from sickle. On seeing them, the accused fled away. He saw the accused assaulting his wife in the light. Since, the accused was armed with sharp edged weapon, he could not muster courage to go near him. He further deposed that he was also the witness of inquest.

10. PW-4, Dr. Ram Naresh, in his examination-in-chief has deposed that at about 3:00 PM on 23.07.2014, he conducted the autopsy on the cadaver of the deceased and found the following ante mortem injuries:

1. Incised wound of size 08 cm x 01 cm x bone deep on nose and face left side 2.5 cm below the tip of nose. 2 cm below the lower lid of left eye, edges are clean cut. Clotted blood present underlying bone fractured.

2. Incised wound of size 12 cm x 5 cm x bone deep on left side of neck just above the thyroid cartilage directed obliquely up to the let ear lobe Underlying soft tissue trachea, esophagus end blood vessels of left side of neck damaged. Clotted blood present.

11. In the opinion of the doctor, the cause of death of the deceased was shock and haemorrhage as a result of antemortem injuries.

12. PW-5, Ghanaram Chaudhary, in his examination-in-chief has deposed that on 23.07.2014, he was posted at police station Uldan at Head Constable. On that date on the written report of Rohit

Kumar, he prepared Chik FIR at case crime No. 80 of 2014, underSection 302 IPC, police station Tahrauli, district Jhansi against the appellant, which he proved as Ext. Ka-6.

13. PW-6, Vijay Pratap Singh, in his examination-in-chief, has deposed that on 23.07.2014, he was posted at police station Uldan as Sub-Inspector. On that date, on the directions of the investigating officer, he conducted inquest on the body of the deceased. He also prepared required documents, sealed the dead body and handed over to Constable Raja Ram and Rajesh Kumar for getting postmortem done. At that time, the investigating officer collected plain and bloodstained earth, the memos whereof were prepared by him. On the pointing out of the appellant, bloodstained sickle (Hansia) was recovered by the investigating officer from the hut, inside the field of Ram Sahai, the memo of the same was prepared by him. He also prepared memo of bloodstained clothes of the accused on the dictation of the investigating officer.

14. After the closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him and claimed innocence by pleading false implication in the crime in question and claimed trial.

15. Learned Additional Sessions Judge, Court No. 4, Jhansi after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

16. Being aggrieved and dissatisfied with the order of conviction and sentence as aforementioned, the appellant has preferred the instant appeal.

Submission on behalf of the appellant

17. Learned counsel for appellant-accused at the very outset submits that he restricts his argument only to the extent for conversion of the sentence from Section 302 to Section 304 IPC and submits that since, there was no premeditation and the incident took place in a heat of passion, considering the injuries received by the deceased, the case shall not traverse beyond the purview of Section 304 I.P.C.

18. Learned counsel for the appellant further submits that motive to commit the incident in this case is absent

Submissions on behalf of the State

19. On the other hand, Shri R.K. Gupta, learned Additional Government Advocate representing the State submitted that the accused caused injury by sickle on the neck and face of the deceased, which resulted in her death and there was no grave or sudden provocation, the learned Trial Court on appreciation of the entire evidence on record, has rightly convicted and sentenced the appellant for the offence punishable under Section 302 IPC.

Analysis and conclusion

20. Heard Shri Harish Chandra Tiwari, learned Amicus Curiae for the appellant and leaned Additional Government Advocate.

21. As an abundant precaution, we have gone through the postmortem report and evidence of the prosecution witnesses. From the perusal of the postmortem report and the evidence of the Medical Officer, we do not find any reason to interfere with the finding that the death of the deceased is homicidal. We also do not find any reason to interfere with the finding of the trial court that it is the appellant who caused injuries to the deceased resulting in her death.

22. Having come to the conclusion that the appellant is liable for the death of the deceased, we will have to now examine whether the offence committed by the appellant would come under the ambit of Section 302 IPC or it can be altered to one under Section 304 IPC as argued by the learned counsel for the appellant.

23. For better appreciation of the contention of learned counsel for the appellants, we would like to refer certain pronouncement of Hon'ble Supreme Court on the point in question insofar as the appellant is concerned.

24. In **Jagtar Singh Vs. State of Punjab (1983) 2 SCC 342**, accused on the spur of moment inflicted a knife blow on the chest of the deceased. The injury proved fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. The Apex Court observed that quarrel was of a trivial nature and even in such a trivial quarrel appellant wielded a weapon like a knife and landed a blow on the chest. In these circumstances, it is inadmissible to infer that the accused at least could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. The Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

25. In **K. Ramakoteswara Rao Vs. State of A.P., 1986 Cr.L.J. 68*0***, a sudden quarrel arose between the accused and the deceased and the deceased threatened the accused with dire consequences. The accused stabbed the deceased with knife. The Court convicted the accused under Section 304 Part-I IPC.

26. In Surinder Kumar Vs. Union Territory, Chandigarh, (1989)2 SCC 217, Hon'ble Apex Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. Hon'ble Supreme Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, Hon'ble Supreme Court held thus:

"..... To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the

quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

27. In **V. Sreedharan Vs. State of Kerala, AIR 1992 SC 754**, the accused, as a result of provocation caused in the heat of passion upon a sudden quarrel, chased the deceased to some distance and then gave the single fatal blow, it was held that the whole incident was a continuous sequence. Hence the conviction of the accused was shifted from Section 302 to Section 304 Part-I IPC.

28. In **Bhera Vs. State of Rajasthan, 2000 SCC (Cri) 1230,** accused and the deceased quarrelled and while quarrelling the accused in anger suddenly took out the knife and gave knife blow on the chest of the deceased which resulted in his death. The Apex Court set aside the conviction of the appellant under Section 302 IPC, instead convicted him under Section 304 Part II IPC and sentenced him to 5 years imprisonment.

29. In **Mochi Raju Vs. State of Gujarat, JT 2001 (10) SC 398,** accused appellant and the deceased started fighting and during the quarrel appellant took out the knife from the pocket and gave one blow to the deceased on his chest. The Apex Court while convicting the appellant for an offence under Section 304 Part II, sentenced him to five years rigorous imprisonment.

30. In **Sukbhir Singh v. State of Haryana (2002) 3 SCC 327**, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court, Hon'ble Supreme Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

31. "In **Sukhbir Singh Vs. State of Haryaba, "(2002) 3 SCC 327,** the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

"...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were

inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner.

32. In **Ghapoo Yadav Vs. State of M.P. (2003) 3 SCC 528,** Hon'ble Supreme Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case."

33. In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC 444**, the Hon'ble Court held thus:

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality."

34. In **Sudhakar Vs. State of U.P., (2012)8 SC 289,** Hon"ble Supreme Court held as under:

"Going by the narration of the facts disclosed, there was nothing to suggest that there was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by learned counsel for the appellant, we are convinced that the offence alleged and as found proved against the appellant can be brought under the First Part of Section 304 of IPC. Accordingly, while affirming the conviction of the appellant, we are only altering the same as falling under Section 304 "Part I of IPC"in place of"Section 302 of IPC. As far as the sentence imposed on the appellant in as much as we reached at the conclusion that the conviction should fall under"Section 304"Part I of IPC, taking note of the sentence already undergone, we find from the Imprisonment Certificate that the appellant is in jail from 12.07.2004 and he is 60 year old, P.W.1, who is the wife of the appellant, is left all alone and the appellant having suffered imprisonment for more than eight years, we hold that the sentence already undergone would be sufficient punishment apart from the fine imposed with the default sentence as per the judgment of the Trial Court and as affirmed by the

High Court. The appeal stands partly allowed with the above modifications of the charge and the sentence imposed on the appellant."

35. In the light of the above pronouncements of Hon'ble Apex Court, we shall now proceed to consider whether case against the accused-appellant falls within the ambit of Section 302 IPC or Section 304 IPC.

36. PW-1, Rohit Kumar, who is the first informant and cousin of the deceased in his deposition has stated that there had always been quarrel between the deceased and the accused over consuming intoxicant. On the day of incident, on hearing the shrieks from inside the house of the appellant, when he along with Jugul Kishore, Lalta Prasad and several other people of the vicinity went inside the room, he saw that the accused assaulting his wife on her neck. On seeing them, the accused-appellant managed to escape. In his cross-examination, PW-1, Rohit Kumar has stated that accused-appellant was habitual of consuming intoxicant (Ganja), which was told to him by the parents of the accused-appellant and that he has also seen the appellant consuming intoxicant (Ganja). He further deposed that at the time of incident no person was present in the room except the appellant and the deceased. The later portion of the evidence of PW-1 suggests that the appellant had every opportunity to inflict more injuries, but he had not taken any undue advantage or acted in a cruel manner.

37. PW-2, Jugul Kishore, in his examination-in-chief has deposed that on the date of incident, on hearing the hue and cry from the house of the appellant, when he along with Rohit and Lalta Prasad went inside the house, they saw the accused assaulting his wife (deceased) on her face from sickle (Hansia). In his cross-examination, which was done on 18.05.2016, PW-2 has stated that since the habit of the accused was not good, his maternal uncle and other members of family called the accused to village so that he may improve his habit. There was always controversy between the accused and his wife deceased over consuming intoxicant. Appellant used to consume liquor and Ganja.

38. PW-3, Lalta Prasad, in his deposition has stated that on 22.07.2014 at 08:00-08:30 PM, he was standing at the shop of Sita Ram. On hearing the shrieks of the deceased, when he along with Jugul, Rohit and other persons of the vicinity went to the house of the appellant, he saw appellant assaulting the deceased on her face and neck from sickle. In his cross-examination, which was done on 21.06.2016, he deposed that the accused was living in the village 5-6 months prior to the incident in question. He wanders around drunk and consume Ganja. Accused-appellant used to beat his wife after consuming intoxicant.

39. On the conjoint reading of deposition of evidence of PW-1, Rohit Kumar, PW-2, Jugul Kishore and PW-3, Lalta Prasad, it is evident that the appellant was accustomed to consuming intoxicant and the incident in question took place over a petty dispute of consuming intoxicant. The incident was the result of sudden fight, there was no premeditation, act was done in a heat of passion and that the assailant had not taken any undue advantage or acted in a cruel manner. There was also no motive of the incident.

40. The cumulative effect of all these circumstances, in our opinion, should entitle the appellants to the benefit of Exception 4 to Section 300 IPC.

41. In view of the aforesaid legal proposition enunciated by Hon'ble Supreme Court and looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above, the conclusion is irresistible that the death was caused by the acts of the accused-appellant done with the intention of causing such bodily injury as would likely to cause death and, therefore, the offence would squarely come within the ambit of Section 304 part-I IPC, instead of Section 302 IPC.

42. In view of the above conspectus, the conviction of the appellant under Section 302 IPC cannot be sustained. This Court is reluctant in endorsing the life imprisonment. Accordingly, the conviction of the appellant under Section 302 IPC is set aside, instead, he is convicted under Section 304 Part-I IPC and sentenced to rigorous imprisonment of ten years. Appellant is stated to be in jail since 23.07.2014. He shall be released forthwith unless wanted in any other case provided he has completed the modified sentence of ten years.

43. Consequently, the appeal is partly allowed with the aforesaid modification in the impugned judgement and order dated 08.06.2022 passed by the Additional Sessions Judge, Court No. 4, Jhansi.

44. Office is directed to transmit the lower court record along with a copy of this order to the court concerned for compliance.

45. Shri Harish Chandra Tiwari, learned *Amicus Curiae* shall be paid a sum of Rs. 15,000/- (rupees fifteen thousand) only towards his assistance rendered to the Court in deciding this appeal.

(2026) 2 ILRA 973
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.02.2026

BEFORE

THE HON'BLE ANIL KUMAR-X, J.

Criminal Appeal No. 348 of 2026

Siraj Ali @ Babu **...Appellant**
Versus
State Of U.P. & Anr. **...Respondents**

Issue for Consideration

Matter pertains to whether the Trial Court was justified in allowing the application under S. 216 Cr.P.C. and altering the charge from S. 324 IPC to S. 307 IPC at the stage of trial and whether such alteration on the basis of an application filed by the prosecution is legally sustainable. (Paras 11,13,15)

Headnotes

Criminal Procedure Code, 1973 - S. 216 - Alteration of charge - Power exclusively confined with the Court as an enabling provision to alter or add any charge at any time before judgment - No party has vested right to seek addition or alteration of charge - Application by prosecution only brings facts to notice of Court - Court competent to exercise power independently - Order not vitiated merely because application moved by party - Held, no illegality in impugned order. (Paras 14,15,17,18)

Criminal Trial - Alteration of charge from S. 324 IPC to S. 307 IPC - Based on FIR allegations, X-ray report showing pellets, and statement of injured witness - At stage of framing or alteration of charge, existence of strong suspicion sufficient - Medical opinion not decisive over injured witness statement - Held, Trial Court rightly exercised discretion. (Paras 10,12,13)

Criminal Procedure - Right of accused - Prejudice due to alteration of charge - Mere partial cross-examination under earlier charge does not invalidate alteration when Court applies mind to material on record - Held, no prejudice warranting interference. (Paras 7,13,18)

Interpretation of precedent - P. Kartikalakshmi v. Ganesh - Restriction on vested right of parties, not on power of Court - Court not prohibited from considering applications under S. 216 Cr.P.C. - Held, Trial Court's approach consistent with law. (Paras 11,14,15)

Held: Power of invocation of S. 216 Cr.P.C. is exclusively confined with the Court as an enabling provision for alteration or addition of any charge at any time before pronouncement of judgment - no party neither de facto complainant nor the accused nor the prosecution has any vested right to seek such alteration - an application filed by any party only brings facts to the notice of the Court and the final decision must always depend on the Court's own satisfaction and independent application of mind - where from the FIR allegations the statement of injured witness and the X-ray report indicating presence of pellets there exists material sufficient to establish strong suspicion that the accused in furtherance of common intention fired upon the injured resulting in gunshot injury the alteration of charge from S. 324 to S. 307 IPC does not suffer from any infirmity - the conclusion drawn by the doctor and investigating officer will not prevail over the statement of injured witness at the stage of framing or alteration of charge - mere fact that the application under S. 216 Cr.P.C. was moved after partial examination of prosecution witness does not cause such prejudice as to vitiate the order when the Court has exercised its jurisdiction after due application of mind - impugned order justified and calls for no interference. (Paras 11,13,15,17,18) (E-7)

Case Law Cited

P. Kartikalakshmi Vs. Ganesh and Ors., (2017) 3 SCC 347; Guriya @ Tabassum Tauquir and Others v. State of Bihar and Another, AIR 2008 SC 95; Sethuraman vs Rajamanikam, (2009) 5 SCC 153.

List of Acts

Criminal Procedure Code, 1973; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Indian Penal Code, 1860;

List of Keywords

alteration of charge; S. 216 CrPC; vested right; strong suspicion; injured witness; X-ray report; pellets; firearm injury; prejudice; trial court discretion; application by prosecution

Case Arising From

APPELLATE JURISDICTION: Against the order dated 18.11.2025 passed by the learned Additional Sessions Judge, Court No.2/Special Court (SC/ST Act), Farrukhabad in Special Sessions Trial No.44 of 2016 arising out of Case Crime No.436 of 2013, at Police Station Kayamganj, District Farrukhabad allowing the application under S. 216 Cr.P.C. and altering the charge.

Appearances for Parties

Advs. for the Appellant:
Sri Srijan Pandey
Advs. for the Respondents:
Sri R.K. Singh, learned AGA for the State

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

1. Heard Sri Srijan Pandey, learned counsel for the appellant, and Sri R.K. Singh, learned AGA for the State.

2. This criminal appeal under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been preferred by the appellant against the order dated 18.11.2025 passed by the learned Additional Sessions Judge, Court No.2/Special Court (SC/ST Act), Farrukhabad, allowing the application u/s 216 Cr.P.C. preferred on behalf of the State in Special Sessions Trial No.44 of 2016 arising out of Case Crime No.436 of 2013, at Police Station Kayamganj, District Farrukhabad.

3. Learned counsel for the appellant has submitted that the order of the learned Trial Court in allowing the application under Section 216 Cr.P.C. filed by the prosecution is illegal. He further submitted that the Hon'ble Supreme Court in ***P. Kartikalakshmi Vs. Ganesh and Ors., (2017) 3 SCC 34***7 held that no party, neither the de facto complainant nor the accused or, for that matter, the prosecution, has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 of the Code of Criminal Procedure. The Hon'ble Supreme Court also observed that if such a course is adopted by the parties, then it will be well nigh impossible for the Criminal Court to conclude its proceedings and the concept of speedy trial will get jeopardized.

4. He submitted that the charges in this case were framed against the appellant on 24.11.2023 under Sections 323, 324, 506, 506 IPC and Sections 3(1)(10), 3(1)(Da) and 3(1)(Dha) of the SC/ST Act. However, an application under Section 216 Cr.P.C. was moved by the prosecution after partial examination of PW-1. There was no occasion for the learned Trial Court to allow the application filed on behalf of the prosecution.

5. It was further submitted that initially the FIR against the appellant and others was lodged under Section 307 IPC, wherein the respondent/informant alleged that co-accused Waseem Ali Khan fired upon respondent no.2, Devki Nandan alias Pintu. Respondent no.2, Devki Nandan alias Pintu, was brought before Dr. Rajeev Kumar at Samudayik Swasthya Kendra, Kayamganj, District Farrukhabad, for medical examination. The doctor found a lacerated wound measuring 0.4 * 0.4 cm on the right elbow and also advised an X-ray examination. The said doctor opined that the nature of the injury did not suggest that it was caused by a firearm. On the basis of the X-ray report, the doctor also observed that it appeared that two pellets were placed on the side of the injury in order to establish a firearm injury.

6. The Investigating Officer also concluded during investigation that the injury report suggested that all injuries were caused by hard and blunt objects. Hence, there was no indication to suggest that the injured sustained any firearm injury. The Investigating Officer further mentioned that the criminal prosecution was initiated due to prior enmity and that there was no motive on the part of the accused persons to cause injury to the injured.

7. Learned counsel for the appellant submitted that the appellant-accused was prejudiced by the step taken by the learned Trial Court in allowing the application under Section 216 Cr.P.C. after

partial cross-examination of PW-1. The counsel for the accused had prepared himself to cross-examine the prosecution witness on the basis of the charge framed under Section 324 IPC, and such cross-examination was also partially completed. If the application under Section 216 Cr.P.C. is allowed to remain in force, then the right to effectively cross-examine the prosecution witness with respect to the allegation under Section 307 IPC would never occur. Therefore, the impugned order allowing the application under Section 216 Cr.P.C. at the behest of the prosecution is perverse and illegal, and is liable to be set aside.

8. Per contra, Sri R.K. Singh, learned AGA for the State, submitted that the prosecution story from the very inception was that the appellant caught hold of the injured and co-accused Waseem Ali Khan fired upon him. The X-ray report of the injured also indicates the presence of two pellets on the injured side. Therefore, the impugned order altering the charge from Section 324 to Section 307 IPC does not suffer from any illegality.

9. Heard learned counsel for the parties and perused the impugned order.

10 The FIR in this case was lodged in the year 2013, wherein the informant/injured, Devki Nandan alias Pintu, stated that he was caught hold of by the appellant, accused Waseem Ali Khan, and one unknown person on 21.12.2013. They assaulted and abused him, and accused Waseem Ali Khan fired upon him, as a result of which the bullet hit his elbow. The X-ray report indicates the presence of two pellets on the injured side.

11. It would be pertinent to mention that initially the charges against the appellant were framed under Section 324 IPC. After partial examination of PW-1, an application under Section 216 Cr.P.C. was filed by the prosecution, which was allowed by the learned Trial Court vide its order dated 18.11.2025. In its order, the learned Trial Court also discussed the judgment of ***P. Kartikalakshmi (supra),*** relied upon by the appellant. The learned Trial Court held that the judgment of ***P. Kartikalakshmi (supra)*** only prohibits the contesting parties, including the prosecution, from filing an application under Section 216 Cr.P.C., but does not prohibit the Court from passing orders suo motu under Section 216 Cr.P.C. Therefore, the Supreme Court has not restricted a Trial Court from exercising its discretion under Section 216 Cr.P.C.

12. Apart from this, the learned Trial Court also discussed the injury report of the injured/informant, Devki Nandan alias Pintu, along with the X-ray report. The said X-ray report suggests the presence of two pellets on the injured side as well as injury to the bone on that side. The Trial Court also relied upon the statement of PW-1 recorded during trial, wherein the witness stated that he was fired upon by the accused persons, causing injuries to his right elbow.

13. The finding recorded by the learned Trial Court to alter the charge from Section 324 to Section 307 IPC does not suffer from any infirmity. The evidence available on record is sufficient to establish that the allegations and the evidence collected during investigation and trial are consistent on the point that the appellant, along with other accused, in furtherance of their common intention, fired upon the injured, resulting in a gunshot injury to the right elbow of the injured. The conclusion drawn by the doctor and I.O. in relation to the injury sustained by the injured will not prevail over the statement of injured witnesses, particularly at the stage of framing charges. It is

trite law that charges can be framed if there exists strong suspicion. Hence, the learned Trial Court did not commit any error in altering the charge from Section 324 to 307 IPC. This Court is of the view that had the Court not altered the charge, that would have been prejudicial to the prosecution.

14. Learned counsel for the appellant has very much emphasized the judgment of the Hon'ble Supreme Court in P. Kartikalakshmi (supra). It will be appropriate to refer to the relevant paragraph of the judgment, which reads as follows:-

"We were taken through Sections 221 & 222 of the Cr.P.C. in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 Cr.P.C. If such a course to be adopted by the parties is allowed, then it will be well nigh impossible for the Criminal Court to conclude its proceedings and the concept of speedy trial will get jeopardized."

15. If the observation of the Hon'ble Court is read carefully, it will appear that it did not prohibit the Trial Court from entertaining applications under Section 216 CrPC only because the application was filed by either party or the prosecutor. The Supreme Court, in this paragraph, only wanted to explain how Section 216 CrPC works. It clarified that the power to add or change a charge belongs only to the Court. Section 216 is an enabling provision, which means the Court can use this power whenever it feels necessary before judgment. The Court did not say that an application filed by a complainant, accused, or prosecutor is not maintainable. What it clearly said is that no party has a legal right to demand addition or alteration of charges. A party cannot insist that charges must be changed simply because it has filed an application. The real concern of the Supreme Court was that if parties are allowed to repeatedly seek change of charges as a matter of right, criminal trials will never end and the right to a speedy trial will be defeated. Therefore, the restriction is on the right of the parties, not on the power of the Court. It becomes manifest from a careful reading of the judgment that even if an application is filed, the Court is free to consider it and pass an order under Section 216 CrPC, provided the Court applies its own mind and finds that change of charge is required. The application only brings facts to the notice of the Court; the final decision must always be taken by the Court itself.

16. In order to bring home the above point, there are some clear examples from the Cr.P.C. where power is primarily with the Court (often suo motu), yet parties are not barred from filing applications. Here are some examples:-

(i) Section 319 CrPC ? Summoning Additional Accused: Court can summon a person not named as accused suo motu if evidence shows his involvement in the offence. But there is no bar for complainants, accused, or prosecution to file an application under Section 319. The same

proposition has been laid down by the Hon'ble Supreme Court in Guriya @ Tabassum Tauquir and Others v. State of Bihar and Another, AIR 2008 SC 95, wherein it was held as under:

"14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone, including an accused already before it, if it is satisfied that any person other than the accused has committed an offence and he is to be tried together with the accused."

(ii) Section 311 CrPC ? Power to Summon or Recall Witness: Court may summon, recall, or re-examine any witness at any stage on its own if necessary for justice. There is no restriction for either prosecution or accused to move an application. The same proposition has been laid down by the Hon'ble Supreme Court in **Sethuraman vs Rajamanikam, (2009) 5 S C C 153**, wherein it was held as under:

"4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C."

(iii) Section 156(3) CrPC ? Power of Magistrate to direct Investigation: Magistrate is empowered to direct investigation by police on his own satisfaction. But usually he exercises his power only after an application is submitted by a complainant.

(iv) Section 227 / 239 CrPC ? Discharge of Accused: Court is empowered to discharge accused if no sufficient ground exists. But the said power is usually invoked by Courts after the accused files a discharge application before it.

17. From the foregoing discussion, it becomes evident that power to pass order upon any application rests with the Court. But if any application is filed by any party, it is only meant to place facts before the Court. It is also true that no party has a vested right to demand an order upon any application moved by it. The Court alone is empowered to take a decision on any application after applying its own independent mind. In simple terms, the law gives power to the Court, but filing an application does not give any right to the parties. Any party who files any application only draws the Court's attention, and the final decision always depends on the Court's own satisfaction. Hence, if the Court passes an order after independently applying its mind, merely because such order was passed on an application filed by a party and not suo motu, the same cannot be set aside on that ground alone.

18. In view of the aforesaid facts and legal position, this Court finds no illegality or infirmity in the impugned order dated 18.11.2025 passed by the learned Additional Sessions Judge/Special Court (SC/ST Act), Farrukhabad, allowing the application under Section 216 Cr.P.C. and altering the charge. The learned Trial Court has exercised its jurisdiction after due application of mind and on the basis of material available on record.

19. Accordingly, the present criminal appeal lacks merit and is, hereby, dismissed. The impugned order is affirmed.

(2026) 2 ILRA 979
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 493 of 1988

Mangey & Anr. **...Appellant**
Versus
State **...Respondents**

Issue for Consideration

Matter pertains to whether delay in lodging the F.I.R., non-supportive medical evidence, and alleged inconsistencies in prosecution witnesses render conviction under S. 376 I.P.C. unsustainable. (Paras 11, 12, 26, 27)

Headnotes

Criminal Law - Indian Penal Code ,1860 - Criminal Appeal - Conviction under S. 376 I.P.C. - Challenge to - Delay in lodging F.I.R. - Whether fatal - Held, delay of about 12 hours "in the given circumstances a very natural one" and not fatal. (Paras 11, 26, 27)

Evidence - Prosecutrix testimony - Evidentiary value - "the deposition of the PW-1 is concerned, that is uncontroverted and fully reliable"- Conviction can be based solely on such testimony. (Paras 15, 28, 29)

Medical Evidence - No definite opinion regarding rape – Effect - "no inference can be drawn either side"- Not sufficient to discard prosecution case. (Para 27)

Witnesses-non-examination / hostility – Effect - "attempt by the defence side to win over the witnesses"- Not fatal where core evidence intact. (Paras 16, 27, 28)

F.I.R. - Delay explained - Social stigma and consultation - "discussion between the husband and her brothers - as the same involves the reputation". (Para 26)

Defence plea - False implication due to enmity - Not proved - "nothing on record which can create any shadow of doubt" (Para 29)

Held: The delay of about 12 hours which is in the given circumstances a very natural one - would not be of any consequence - from the medical report no inference can be drawn either side - it cannot be concluded that no rape had been committed - the deposition of the PW-1 is concerned, that is uncontroverted and fully reliable - in the cases of rape, ordinarily there is no direct evidence except that of the prosecutrix - conviction can be upheld if the deposition inspires the confidence of the court - there is nothing on record which can create any shadow of doubt which inspires the confidence of the court - this Court does not find any illegality in the conviction and sentence - Accordingly, the instant appeal fails and is dismissed.(Paras 27,28,29) (E-7)

Case Law Cited

Harpal vs. State, 1981: Criminal Law Journal page 1; State of Rajasthan vs. Dhanya, 1984 Criminal Law Journal 956

List of Acts

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

List of Keywords

delay in lodging F.I.R.; prosecutrix; medical examination; habitual to sexual intercourse; deposition; corroboration; rape; conviction; pressure by defence; eyewitnesses; affidavits; enmity; false implication

Case Arising From

APPELLATE JURISDICTION: Against the judgment and order dated 01.03.1988 passed by the Additional District and Sessions Judge, Meerut in Sessions Trial No. 563 of 1986 convicting the appellants under S. 376 I.P.C. and sentencing them to seven years rigorous imprisonment.

Appearances for Parties

Advs. for the Appellant:
Sri Atul Kumar
Advs. for the Respondents:
Sri S.K. Ojha, learned A.G.A.; Sri Satendra Nath Tiwari, learned A.G.A.

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

1. Learned counsel for the appellants submits that the non-bailable warrants have already been executed and both the appellants have already been arrested on 17.01.2026 and have been sent to the jail.

2. In view thereof, the instant recall application having become infructuous is disposed of specifically in the view of the fact that the criminal appeal is being heard on merits.

Order on Criminal Appeal

1. Heard Sri Atul Kumar, learned counsel for the appellants and Sri S.K. Ojha, learned A.G.A. for the State.

2. The instant criminal appeal has been filed by the appellants against the judgment and order dated 01.03.1988 passed by the then Additional District and Sessions Judge, Meerut in Sessions Trial No. 563 of 1986 (State vs. Mangey and others), whereby both the appellants herein were convicted for the offense under Section 376 I.P.C. and were directed to undergo seven years rigorous imprisonment.

3. The facts in brief are that on 14.08.1985 at around 6:00 AM in the morning, the informant PW3 herein has submitted a written report, which was scribed by PW2. On the basis of the said written report, the instant F.I.R. was lodged. The case of the prosecution is that on 13.08.1985 at 6:00 P.M., the wife of the complainant, the prosecutrix was going towards the fields in search of her husband from her house. When she reached about three to four fields away from the village, then both the accused persons came out from the maize field and obstructed the way of the prosecutrix and forcibly taken her into the maize field where they have broken the waist cord of the prosecutrix and thereupon both the accused persons have raped her turn by turn. Hearing her cries, Qasim and Ajba who were also coming from the village reached at the spot and saw that the prosecutrix was lying on the ground and both the accused persons had run away in the jungle. However, they could not be caught on the spot. Thereupon, the prosecutrix returned back to her house and when her husband came back from the fields, she narrated the entire story to her husband. Thereupon, next day morning, the complainant got scribed the written report and

submitted the same at the police station on 14.08.1985 at 6:05 AM at Police Station- Ramala. On the basis of such written report, the F.I.R. was registered, the case was investigated and charge-sheet was filed against the appellants herein. On submission of the charge-sheet, the case was committed to the sessions court for trial.

4. In support of its case, the prosecution has examined the prosecutrix as PW1, Jagbir Singh, scriber of the report as PW2, and Israel, the husband of the prosecutrix as PW3. Constable Ram Kishan as PW4 who has registered the F.I.R. and made the relevant GD entries. The Investigation Officer could not be examined as prior to the examination he has died. Thus, the Constable Ram Kishan has proved the F.I.R., GD entries, site-plan, charge-sheet, etc.

5. In 313 Cr.P.C. statements, both the accused persons have denied the charges and claimed trial.

6. After registration of the F.I.R., the medical examination of the prosecutrix was conducted on 14.08.1985 itself. On the internal examination of the prosecutrix, the Medical Officer has observed as under:

"No injury on private part. Hymen torn. Old healed hymen tear the vagina admits two fingers. Uterus normal in shape and size firm mobile in clear os clesed. No bleeding or discharge P/V, vaginal semen taken and sent for H.P. Enew."

7. For determination of the age of the prosecutrix, the X-ray was advised. As per the opinion of the Medical Officer, since the prosecutrix used to do sexual intercourse, therefore no definite opinion can be given with regard to rape. X-ray of the prosecutrix was also conducted on 17.08.1985 and according to the X-ray report, epiphysis around the elbow joint, wrist joint, and knee joint are fused. The aforesaid medical report was admitted by the defense, therefore the Medical Officer was not examined to prove the same during the trial.

8. In 313 Cr.P.C. statement, the accused Jan Mohammad has submitted that the prosecutrix had cut the grass from the field of Mangey and when Mangey has objected to her then she has also abused him. In fact, warned them that she will lodge a false report in collusion with the village Pradhan Sakoor.

9. The accused Mangey has also stated that in the morning at 8:00 AM when he reached on his field, he has found the prosecutrix there. She has cut the grass from their field, which was objected by him, and the co-accused Jan Mohammad has also reached there. On objections raised by the accused, the prosecutrix has abused them and thereafter had threatened for lodging the false case against the accused persons.

10. After concluding the trial, the trial court having found that the offense of rape has been committed by the accused persons, the appellants herein, the trial court has convicted them for offence under Section 376 I.P.C. and sentenced them to undergo seven years rigorous imprisonment against which the instant criminal appeal has been filed by the appellants.

11. Submission of learned counsel for the appellants is that the there is delay of about 12 hours in lodging the F.I.R. and from the close scrutiny of the statement of the prosecutrix as well as the husband of the prosecutrix, PW3, it is apparent that the F.I.R. is nothing but an afterthought. Thus, the F.I.R. which has been lodged as an afterthought is fatal to the prosecution case and the appellants have been falsely implicated by the prosecutrix in the instant case due to rivalry.

12. Learned counsel for the appellants further submits that the medical report do not support the prosecution case with regard to the commission of offense of rape against the prosecutrix. Prosecution has failed to examine the key eyewitnesses named in the F.I.R. Thus, the instant case was lodged due to enmity by the PW3 making the false allegations of rape of the prosecutrix. Therefore, learned counsel for the appellants seeks acquittal in the instant case.

13. Per contra, Sri S.K. Ojha, learned AGA for the State, assisted by Sri Satendra Nath Tiwari, learned AGA, submits that the delay in lodging the F.I.R. in the cases of rape, that too long back in the year 1985, was not fatal to the prosecution case because lodging of the F.I.R. for rape cases at that relevant time was a very courageous movement for the entire family as the reputation of not only the prosecutrix but the entire family was at stake. Therefore, as per the prosecution story, though rape was committed around 6:00 PM in the evening on 13.08.1985, the prosecutrix has come back to the house thereafter. On coming of her husband she has narrated the entire story. Thereafter, the responsible persons in the family have discussed the issue whether to lodge the F.I.R. or not of such a heinous crime, which was committed against the prosecutrix as it involved the reputation of the entire family including the reputation of the prosecutrix.

14. Learned AGA further submits that the Hon'ble Supreme Court in such circumstances has held that the delay in lodging the F.I.R. in such cases is not fatal to the prosecution case. In support of his submission he has relied upon the judgment of the Apex Court in ***Harpal vs. State, 1981 : Criminal Law Journal page 1 and State of Rajasthan vs. Dhanya, 1984 Criminal Law Journal 956.***

15. Learned AGA further submits that since the prosecutrix was a married lady and was habitual to sexual intercourse, which was a natural situation, in such circumstances, the medical opinion which has not given any definite opinion of the offense of rape against the prosecutrix is of no consequence, as her oral testimony is clear and uncontroverted even in the cross-examination. She has given the minute details how the offense was committed to her. The entire discussion is at page no. '11' of the impugned judgement. The deposition of the PW1 has been fully corroborated by the PW3, her husband. There is no iota of doubt with regard to the deposition of PW1 is concerned.

16. It is also submitted by learned AGA that the reasons for non-examination of the eyewitnesses, namely Ajba and Kasim, has been duly explained by the prosecution by moving the application for their discharge, as they have already submitted their affidavits denying the prosecution story, having been won over by the defense and the aforesaid application was also endorsed by the defense during the trial.

17. It is further submitted by learned AGA that the trial court has taken into consideration the entire facts and circumstances of the case as detailed by the PW1, which are corroborated by PW3 and thereafter, having been satisfied that charges of rape against the appellants are proved, they have been convicted. Therefore, learned AGA submits that no interference is called for in the impugned judgment and order passed by the trial court, convicting the appellants for the offense under Section 376 I.P.C. and sentencing them to seven years rigorous imprisonment, which is a minimum punishment at the relevant time for the said offense.

18. Having heard the rival submissions made by the learned counsel for the parties, this Court has carefully gone through the record of the case. Before proceeding further, it is relevant to take note of the statement of PW1, the prosecutrix. In her examination-in-chief, the prosecutrix PW1 states that she was the resident of Kalyanpur. She was married about eight years back. Since after the marriage, she is residing with her husband at village- Thal. She states her husband was doing the labor work on the agriculture field and he has also taken the field of Fatey Lohar and has also sown the maize on the said field. The name of her brother-in-law is Fayyaz. Her husband and brother-in-law both are residing at the same place. Her husband is weak, therefore she also used to help in the agriculture work. She further states that she knew the appellant no.1, Mangey. He is also resident of the same village. She is also acquainted with Jan Mohammad, who is also resident of the same village. She further states about one and half years ago her husband and brother-in-law had gone to the jungle and they were late in coming back. Therefore, in the evening she has gone in search of them. When she reached about 12 Kiyaris away, Jan Mohammad came there and obstructed her way. Mangey was also accompanying him. Thereafter, both the accused persons have forcibly pulled her towards the maize field. In the process one of her slippers left on the boundary of the field and one was on her foot. Thereafter, Jan Mohammad has removed her Salwar. Thereafter, both of them have insulted her.

19. She further states that they have kept her legs on their shoulders and thereafter have done the offense. The Court had observed that the prosecutrix was repeatedly asked what was the work done by them. Then, she stated that both of them have insulted her. At that time she was wearing the Salwar and Kameez and her Salwar was damaged due to the act done by the accused persons. Then, subsequently she stated that they have committed the bad act to her. She has shouted and on her shouting Kasim and Azabdeen have reached there. Having seen them the accused persons have fled away from the spot. Thereafter, both of them have brought her out from the field and then to village. After she reached the house her husband also came there and she has narrated the entire story to her husband. Next day morning she has accompanied her husband to the police station for lodging the report. Report was lodged by her husband. Thereafter, her medical examination was conducted at hospital at Meerut. The Salwar which was damaged due to the act done by the appellants was handed over to the police. When the sealed Salwar was shown to the prosecutrix, she has identified the same and said that she was wearing that Salwar during the incident. She further states that when her husband has come back at the house it was late night, when she has returned to house after the incident committed by the accused persons, thereafter, her husband has come back to the house.

20. At the time when the accused persons have committed the bad act after removing the salwar at that time it was still some time left for sunset. In the cross-examination she has stated that

her husband has three brothers, Israel, Fayyaz, and Meharban. Her husband is of the middle one. One brother is elder to him and the another brother is younger to him. The elder brother of the husband has already married however younger brother is unmarried. She has not gone to her maternal house since last eight years and she is residing in her in-laws' place only. Father's name of Jan Mohammad is Yasin. There was no enmity or altercation with her husband and Yasin. Brother of Jan Mohammad is Gulfam. Gulfam has never beaten her husband. The house of the accused Jan Mohammad is adjoining to her house and there is a passage in between. In this passage there is a drainage. Yasin has objected them to flow the water in the said drain. Since then, they have not flown the water on the said drainage. Some water during bath flow in the drainage and for that reason sometime there is some altercation between them. The field of Fatey Lohar is towards the ridge where her husband has shown the maize. Towards the hill side there is residences of the Scheduled Caste and about two kiyaris away from the said residence, the field of Fatey Lohar is there. On the query made by the court she has explained the field of Fatey Lohar is about 40 kiyaris away from the residential area. When her husband has gone in the morning then it was sun-rising. He has taken the food. Her husband used to go to the fields everyday and used to come back in the noon and thereafter he used not to go. On the day when the accused persons have committed insult upon her and on that day her husband has not returned in the noon and her husband has taken food in the morning while going to the field. The field on which the accused persons have committed the bad act upon her, from there Fatey Lohar's field is about 30 kiyaris away.

21. She further states that Jan Mohammad has came out from the same field where he has committed bad act to her. When the Jan Mohammad came out and obstructed she has not shouted because he has caught hold of her hand and also her mouth. Mangey was also there when Jan Mohammad has caught hold of her. Jan Mohammad and Mangey met her on the east side of the field. When the accused persons were caught hold of her, she was on the midway, on the other side of the passage there is a field of Shakoora Pradhan. In all the fields there was maize grown. The accused persons have ran away from the spot when she came out of the field and shouted for help. When she has reached the house while crying, her husband has reached the house. On the day when she has disclosed the incident to her husband, they didn't go to the police station, however they have gone next day. In the night, they stayed in the house and consulted each other, as they have assaulted upon their daughter-in-law (???), therefore they should be named in the F.I.R. Therefore, all the family members, Fayyaz, Meharban and her husband has consulted each other, and Qasim and Ajba were also called for consultation. When they were going to the police station, sun had not risen. Police persons have interrogated her, at the police station as well in the village on third day, the salwar was handed over to the police on the day when she has gone to the police station.

22. PW2 is the scribe of the written report and stated that when Israel came there for getting the report scribed, it was around 7:00-7:30 or 8:00 in the morning. He has not given any statement to police officer, nor he has interrogated him. PW3 is the husband of the prosecutrix. In initial statement recorded on 13.04.1987, including the examination-in-chief and the cross-examination, he has supported the prosecution case as was narrated by the prosecutrix. He has also supported that he has lodged the F.I.R. having got scribed from PW2. All the suggestions that the F.I.R. was lodged, in consultation, at the behest of the village Pradhan Shakoora, such suggestion was categorically denied by this witness on 13.04.1987. However in subsequent cross-examination

conducted on 17.04.1987, this witness has admitted that the report was lodged in consultation with said Shakoora.

23. PW-3 has explained that when in the night his wife has narrated the incident to him, due to the delay in the night, he could not go to the police station. Next day morning he reached the police station and lodged F.I.R. In the cross-examination, this witness has stated that on 25.03.1987 also, he came to the court for his deposition. Thereafter, Ayub Ali, Shami, Yasin, and Israel, who are his cousin brothers, have surrounded him and had asked him to settle the dispute and due to which he could not depose on that day and they had asked him to settle the dispute. Therefore, upon their instructions he has to submit an affidavit. The advocate who has recorded his statement on oath has read over the same, and thereafter he has put his thumb impression on the said affidavit.

24. In the cross-examination, this witness has further stated that on the date of incident, he had gone in the morning at 8 AM to the field along with his brother. After taking the food, he has not carried the food along. In those days, he used to take food in the morning and do not use to take lunch in the noon and after returning from the field in the evening, he used to take the food. On that date also, he has returned as usual in the evening. When he reached home, at first his wife has narrated the story, and next day morning he has lodged report at police station. After lodging the report he has returned. When further cross-examination was conducted on 17.04.1987, this witness has stated that after lodging the report, he went to his village and his wife had gone for medical examination at Meerut and thereafter, the Investigation Officer has met him after about two days. He was called at the house of the village Pradhan and other witnesses were also called there and thereafter he submits that his statement was not recorded by the Investigation Officer. However, he states that he has got written all the incident as was narrated by his wife in the report.

25. In further cross-examination he admits that there was a dispute with regard to cutting of the grass between his wife with the accused and he came to know about the same later on after registration of the F.I.R. He further submits he has not witnessed that altercation. He further states that his wife has stated that in the morning at 8:00 AM there was altercation with regard to cutting of the grass and the said incident came to his knowledge on the same date. The field in which the incident has taken place belongs to Mohammad Umar, Shami Sher, and father of Mangey Barkhu. He further stated that he has later on discovered that the report is false and due to some dispute with regard to cutting of grass, the report was lodged. Village pradhan and various other persons of the village had instigated him. The accused used to quarrel with your wife daily, therefore, you should lodge the F.I.R. that the accused persons have committed the rape upon her. On the query made by the court, he has stated that he know what is true and what is false and whatever statement he has given on the previous date, was given relying upon the narration of the story by his wife, and relying upon the same, the report was lodged. On 13.04.1987, the statement which was made by him that he has not lodged the false case on instructions of the village Pradhan is a true statement.

26. From the perusal of the entire evidence available on record it is apparent that the incident of rape as narrated by the prosecutrix has taken place on 13.08.1985 in the evening around 6 o?clock. The prosecutrix has disclosed the incident with minute detail. How the incident has taken place, how both the accused persons have committed rape upon her by pulling out her salwar. While considering the delay in lodging the F.I.R. it would be relevant to take note that the F.I.R.

was lodged next day morning at 6.05 AM. Obviously, after the incident it would have taken some time to the prosecutrix to reach her house and thereafter when her husband came there, she has narrated the incident. Thereafter, as has been stated by the prosecutrix herself that there was discussion between the husband and her brothers, whether to report the case against the accused persons or not as the same involves the reputation of the prosecutrix as well as the entire family. Thereafter, they have decided, they have shown their courage and decided to lodge the F.I.R. on the next day morning without any further delay.

27. Therefore, in the considered opinion of this Court, the delay of about 12 hours which is in the given circumstances a very natural one, as in the late night there were discussions whether to go ahead with lodging the report or not and subsequently once they have decided to lodge the report, immediately in the early morning they have lodged the report after getting the same scribed from PW-2. Therefore, the delay in lodging the F.I.R. in the instant case would not be of any consequence of which benefit can be granted to the accused persons. So far as the medical report do not confirm the rape having been committed upon the prosecutrix is concerned, it is apparent from the said medical examination report and the statement of witnesses available on record that the prosecutrix was a married lady and was habitual to the sexual intercourse. In such circumstances, any definite opinion with regard to rape cannot be given and accordingly, from the medical report no inference can be drawn either side and merely because no definite opinion has been given by the medical officer examining the prosecutrix, it cannot be concluded that no rape had been committed upon her. In such circumstances, close scrutiny of the prosecutrix deposition is required which has already been done here in above. The prosecutrix has given the great detail of the incident of the rape committed by the accused appellants, both the accused persons in a pair together, Jan Mohammad has obstructed her way and thereafter both of them have pulled her towards the maize field where they have removed the salwar and put the legs of the victim on their shoulders and thereafter committed rape upon her. From the investigation stage itself, there was attempt by the defence side to win over the witnesses, which is apparent from the record itself. Though the charge-sheet was filed in the instant case, however, during the trial it is apparent from the deposition of PW-3 that a successful attempt was made by the defence side by forcing the PW-3 as well as his brothers and other witnesses too, file an affidavit in the instant case denying the story of the prosecution.

28. In his deposition, PW-3 has categorically admitted that the aforesaid affidavits were filed by the said witnesses under the pressure created by the defense side to settle the dispute on 25.03.1987. Subsequently, on 13.04.1987 the PW-3 has categorically supported the prosecution case. However, again it appears that there is an attempt by the defence side to win over this witness and in further cross-examination the PW-3 has deposed that he later on learned that the prosecution story as narrated by his wife was false and there was some dispute with regard to cutting of grass between the prosecutrix as well as the accused persons. Thus, it is nothing but pressure created by the defense which has forced the PW-3 who had tried to dilute the prosecution case. However, so far as the deposition of the PW-1 is concerned, that is uncontroverted and fully reliable and the first part of the statement of PW-3 also supports and corroborates the statement of PW-1. However, later on as has been apparent from the record that under the pressure created by the defence side he had tried to dilute the story of the prosecution, though unsuccessfully as in the course a query made by the court he has categorically admitted that the statement which he has recorded on 13.04.1987 is a

true statement. In the cases of rape, ordinarily there is no direct evidence except that of the prosecutrix. In catena of judgments, the Apex Court has held that the conviction in the cases of rape can be upheld if the deposition of the prosecutrix is uncontroverted and inspires the confidence of the court.

29. In the instant case, there is nothing on record which can create any shadow of doubt on the statement made by the prosecutrix, which has given each and every minute detail with regard to the incident as has been committed by the accused persons, which inspires the confidence of the court. In such circumstances, this Court does not find any illegality in the conviction and sentence awarded to the appellants herein. Accordingly, the instant appeal fails and is ***dismissed***.

30. Appellants have already been apprehended in terms of the last order passed by this Court issuing non-bailable warrants against the appellants and are stated to be confined in jail from 17th January 2026. Let them undergo the remaining part of the sentence in accordance with law.

31. The original Trial Court record along with the copy of the instant judgment be sent back to the trial court to be consigned.

(2026) 2 ILRA 987
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 05.02.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal No. 1079 of 2016
Alongwith other cases

Anil **...Appellant**
Versus
State Of U.P. **...Respondent**

Issue for Consideration

Matter pertains to "whether the trial court has erred in its compliance with S. 313 of the CrPC during the trial procedure." (Para 19)

Headnotes

Code of Criminal Procedure, 1973 - S. 313 - Examination of the accused - Non-compliance - Effect of failure to put material incriminating circumstances to the accused - It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively, and separately. (Para 23)

Fair Trial - Constitutional Guarantee - A fair trial is a guarantee under Article 21 of the Constitution of India, requiring the accused be given an opportunity to dispel prosecution claims in their own words. (Para 20)

Criminal Trial - S. 313 Cr.P.C. - Non-compliance - "primary contention rests on non-compliance with S. 313 of the CrPC." (Para 19)

Object of S. 313 Cr.P.C. - "to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances" (Para 22)
Effect of non-compliance - "failure to put material circumstances to the accused amounts to a serious irregularity." (Para 23.4)
Prejudice to accused - "Any circumstance not put to the accused cannot be used against him." (Para 25)
Present case - Omission by Trial Court - "failed to put specific and material incriminating circumstances to the accused" (Para 30)
Conviction based on unput circumstances - "resulted in prejudice to the appellants." (Para 32)
Indian Evidence Act,1872 - S.106 - Applicability - "can arise only after the prosecution discharges its primary burden" (Para 33)
Remedy - Remand - "the same is curable remanding the matter to the trial court" (Para 34)
Held: All the accused persons were asked general questions omnibus denial - cannot be expected to make any statement of defense against the grounds they are unaware of - trial court failed to put specific and material incriminating circumstances particularly: (i) administration of poison (ii) post-mortem finding of ligature mark - mandatory for the trial court to confront the accused - relied upon the aforesaid circumstances to record conviction resulted in prejudice - burden on the accused can arise only after the prosecution discharges its primary burden - defect curable remanding the matter to the trial court - judgment and order are set aside - Directions:

- "Record fresh statements specifically putting all incriminating circumstances"
- "Afforded an opportunity to lead defence evidence"
- "Decide the matter afresh in accordance with law" (Para 29 - 36) (E-7)

Case Law Cited

State of Orissa v. Babaji Charan Mohanti **(2003) 10 SCC 57;** *Nagendra Shah v. State of Bihar* **(2021) 10 SCC 725;** *Anil v. State of U.P.,* **2022 SCC OnLine All 812;** *Indira Kunwar v. State of Chhattisgarh,* **2023 SCC OnLine SC 1364;** *Nababuddin @ Mallu @ Abhimanyu v. State of Haryana,* **2023 SCC OnLine SC 1534;** *Sujit Biswas v. State of Assam,* **(2013) 12 SCC 406;** *Maheshwar Tigga v. State of Jharkhand,* **(2020) 10 SCC 108;** *Sanatan Naskar v. State of W.B* **(2010) 8 SCC 249;** *Raj Kumar v. State (NCT of Delhi),* **(2023) 17 SCC 95;** *Aejaz Ahmad Sheikh v. State of U.P.,* **2025 SCC OnLine SC 913;** *Sovaran Singh Prajapati v State of U.P* **2025 SCC OnLine SC 351;** *Zahira Habibullah Sheikh v State of Gujarat* **(2006) 3 SCC 374.**

List of Acts

Indian Penal Code,1860; Code of Criminal Procedure,1973; Indian Evidence Act,1872; Dowry Prohibition Act,1961; Constitution of India

List of Keywords

fair trial; S. 313 CrPC; incriminating circumstances; prejudice; circumstantial evidence; ligature mark; poisoning; burden of proof; remand; trial court; compliance; Article 21; defence opportunity; evidence; irregularity.

Case Arising From

APPELLATE JURISDICTION: Appeal against "judgment and order dated 08.09.2015 passed by the learned Additional Sessions Judge, Ambedkar Nagar, in Sessions Trial No. 179/2008"

Appearances for Parties

Advs. for the Appellant:
Shri Anand Dubey
Advs. for the Respondents:
Shri Vijay Prakash Dwivedi, learned AGA

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard, Shri Anand Dubey, learned counsel for the appellant, and Shri Vijay Prakash Dwivedi, learned AGA for the State.

2. The present criminal appeal has been preferred against the judgment and order dated 08.09.2015 passed by the learned Additional Sessions Judge, Ambedkar Nagar, in Sessions Trial No. 179/2008, State Versus Anil & others, whereby the appellants namely Anil, Nand Lal, Govardhan, Gena, and Sheela were convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and a fine of ₹50,000; in default of payment of the fine, they are to undergo a further six months' imprisonment. Additionally, under Sections 201/34 of the Indian Penal Code, they were sentenced to five years' rigorous imprisonment and a fine of ₹10,000, and in default of payment of the fine, to further undergo three months' rigorous imprisonment, with all sentences running concurrently.

FACTUAL MATRIX

3. The prosecution case, in brief, is that the deceased Bhuila @ Sushila wife of appellant-accused Anil, died an unnatural death inside her matrimonial home. She was married about ten years prior to her death (aged 21 at the time of death) to the accused and a year before her death, her Gauna ceremony was performed by her parents. Allegedly during the Gauna ceremony the appellants accused Anil, Nand Lal and Govardhan had demanded Hero Honda motorcycle and had refused to perform the ceremony but the informant Ram Rajbhar, father of the deceased requested the accused persons and somehow completed the vidai ceremony. When the deceased used to visit her paternal home, she had informed her parents of the cruelty and dowry demand meted to her however her parents would console her and send her back to her matrimonial home. On 11.06. 2008, the informant was informed by telephone that his daughter was killed by the accused persons Anil- husband of the deceased, Nand Lal- brother in law of the deceased, Govardhan- brother in law of the deceased, Gena- mother in law of the deceased and Sheela- sister in law of the deceased by strangulating her. When the informant and his wife along with their son reached the place of incident, the dead body of the deceased was lying on the cot. The inquest of the deceased was done on 11.06.2008 at 10:30 A.M. and the same concluded on 12:30 P.M. According to the inquest report, no injury mark was observed except a mark on the neck of the deceased. According to the opinion of the panch, the deceased was killed by the accused persons for demand of dowry. The post mortem of the deceased was done on 11.06.2008 at about 4:00 P.M. According to the post mortem report in the internal examination a red contusion mark was observed on the side of the left eye and a post mortem horizontal ligature mark was observed on the neck of the deceased but thyroid bone and trachea were found intact. No definite opinion regarding death was given and viscera was preserved.

4. On the basis of the evidence collected by the Investigating Officer (here-in-after referred as IO) and the complaint of the informant a charge-sheet was filed under sections 498A/304B Indian Penal Code & 3/4 Dowry Prohibition Act. On 01.10.2008, the learned trial court proceeded to frame charges against the accused under section 302/201. At the trial stage, prosecution produced six witnesses to prove its case namely PW1- Shri Ram Rajbhar (father of the deceased), PW2-

Sumitra (mother of the deceased), PW3 Krishan Kumar Singh, PW4 Ram Krishan Magan, PW5 Dr. Vijay Tiwari, and PW6- CM. Virendra Kumar Gautam. The defence produced one witness namely DW1 Chaituram.

5. PW1 deposed before the trial court that the accused persons have killed the deceased on the pretext of not getting motorcycle as dowry however in his cross examination, he has stated that no demand for dowry was made by the accused persons and further stated that he does not remember that Nand Lal came to his house to give information regarding the death of the deceased. He further stated that when he reached the place of incident the police of P.S. Sammanpur, Akbarpur and accused persons were present there.

6. PW2 deposed that for demand of motorcycle her daughter was killed by the accused persons. When she reached the place of incident, she saw vomit under the cot, which had not been cleaned, and the deceased's body was soiled with faeces. In her Cross examination she admitted the fact that Nand Lal has a motorcycle and at the time of marriage no demand of dowry was made.

7. PW-3 stated that the Panchnama of deceased was made in his presence. In his cross examination he stated that except an injury mark on the neck of the deceased no other injury was seen by him.

8. PW-4 before the trial court stated that the reason for death of the deceased was illicit relationship and she had been married for about 10-15 years as such, he amended charges to section-302/201 I.P.C. In his cross examination he stated that he did not get any evidence to the effect that the accused persons were demanding motorcycle as a dowry. He further said that the deceased had illicit relationship with someone in her parental home and this fact was told by the family members of the deceased. He further stated that the informant has not given any statement that the deceased was beaten by the accused persons prior to her death.

9. Dr. Vijay Tiwari was examined as PW-5 before the trial court, stated that a ligature mark around the neck 25 x1 C.M. was found. A contusion mark was also found on the left eye of the deceased. He further stated that the hyoid bone was not fractured and the injury on the neck was post-mortem as such the cause of death could not be ascertained and viscera was preserved. In his cross examination, he stated that the contusion on the left eye was near the eyebrow and the same may be caused while falling on some hard object. He further stated that the death had not been caused due to any injury and the marks on the neck could not come without strangulation. The Constable Virendra Kumar Gautam was examined as PW-6 before the trial court and he proved chik FIR.

10. After the conclusion of the prosecution witnesses' testimony, the statements of the accused persons under Section 313 of the Cr.P.C. were recorded. The main question put to all the accused was whether, on June 11, 2008, at approximately 06:00 A.M., they had strangulated the deceased with a rope, thereby causing her death, and subsequently attempted to hide the body.

11. The defence produced Chaitu Ram as DW-1. He stated before the trial court that the incident took place seven years ago in the month of June. He testified that Anil Kumar and Gena

reside in front of his house and that, at the time of the deceased's death, they had gone to the fields for the weeding of peppermint. He further stated that appellant Nand Lal has resided in Machhali Gaon for the last twenty years and appellant Govardhan has resided in Kurri for eight years with his family; both Nand Lal and Govardhan have lived separately from appellants Anil and Gena for several years.

12. After appreciating the evidence on record, the Trial Court proceeded to convict the accused persons under Sections 302/34 and 201/34 on the basis of circumstantial evidence, including medical evidence indicating alleged poisoning and the presence of a ligature mark on the neck of the deceased. Aggrieved thereby, the appellants have preferred the present appeal.

SUBMISSIONS OF PARTIES

13. The learned counsel for the appellant argued that no evidence regarding the demand for dowry was found and, accordingly, no charges under Sections 3/4 of the Dowry Prohibition Act were framed. It was contended that PW-1 and PW-2 had lied about the demand for dowry in order to add gravity to the prosecution's case. The prosecution has failed to prove the motive of the accused. In support of this submission, the counsel referred to the judgment in S**tate of Orissa v. Babaji Charan Mohanti and Another (2003) 10 SCC 57.**

14. The learned counsel for the appellant has argued that PW 1 has deliberately concealed the fact that appellant Nand Lal had gone to the house of PW 1 to inform him regarding the death of the deceased so as to show the conduct of the appellants as doubtful. Whereas also no allegation has been levelled by the prosecution witnesses regarding the hiding of the body by the accused persons.

15. The learned counsel for the appellant argued that the learned Trial Court wrongly applied Section 106 of the Indian Evidence Act to convict the appellant. The Apex Court, in **Nagendra Shah v. State of Bihar (2021) 10 SCC 725**, held that Section 106 of the Indian Evidence Act applies to cases where the prosecution has succeeded in establishing facts from which a reasonable inference can be drawn regarding the existence of certain other facts within the exclusive knowledge of the accused. The Apex Court further held that an accused cannot be convicted solely on the basis of an autopsy report. In this regard, the learned counsel for the appellant also cited the judgment in **Anil v. State of U.P., 2022 SCC OnLine All 812.**

16. It was further argued that the Trial Court did not put any questions to the appellant under Section 313 of the Code of Criminal Procedure regarding the administration of poison to the deceased, nor regarding the ligature marks on her neck. Once such questions are not put to the appellants, it cannot be expected to them to provide an explanation or a defense regarding such facts of the case. In support of his argument, the learned counsel cited the following cases: **Indira Kunwar v. State of Chhattisgarh, 2023 SCC OnLine SC 1364; Nababuddin @ Mallu @ Abhimanyu v. State of Haryana, 2023 SCC OnLine SC 1534; Sujit Biswas v. State of Assam, (2013) 12 SCC 406; and Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108.**

17. It was further argued that the learned trial court convicted the appellants Nand Lal, Govardhan, and Sheela, despite the fact that they lived separately from the deceased.

18. The counsel for the respondent submitted that the trial court's judgment is a reasoned one and that no prejudice has been caused to the appellants. All incriminating material was put forth to the accused-appellants during their examination in compliance with Section 313 of the CrPC.

ANALYSIS

19. We have considered the submissions. A perusal of the appeal reveals that, among other grounds, the primary contention rests on non-compliance with Section 313 of the CrPC. At this stage, it would not be appropriate to deliberate upon the conviction and sentence of the appellants on merits. The only question that falls for our consideration is whether the trial court has erred in its compliance with Section 313 of the CrPC during the trial procedure.

20. A fair trial is a guarantee under Article 21 of the Constitution of India. One of the non-negotiable requirements of a fair trial is the opportunity given to the accused to be heard and to prove his innocence by dispelling the claims of the prosecution raised against him, on his own and in his own words.

21. In reference to the non-compliance with Section 313 of the CrPC, the law is clear; there is a catena of judgments, apart from the ones relied upon by the appellants, that has deliberated on this issue. Even so, we may refer to certain pronouncements for the sake of completeness.

22. In ***Sanatan Naskar v. State of W.B (2010) 8 SCC 249,*** the Apex Court, regarding the scope of the examination under Section 313 CrPC follows:

"*21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. ... 22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. ...*"

23. In **Raj Kumar v. State (NCT of Delhi), (2023) 17 SCC 95,** as subsequently approved by a three-judge Bench in **Aejaz Ahmad Sheikh v. State of U.P. and Another, 2025 SCC OnLine SC 913**, the Apex Court laid down the following factors:

"22. The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313 CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

24. In the recent case of ***Sovaran Singh Prajapati v State of U.P 2025 SCC OnLine SC 351*** the Supreme Court has while summing up the law laid down in the case of ***Zahira Habibullah Sheikh v State of Gujurat 2006 3 SCC 374*** laid down the following

"30.1 A perusal and consideration of the aforesaid decisions reveal the following principles as governing the application of Section 311 Cr.P.C. :

(a) The Section is divided into two parts, the first being directory with the use of the word 'may' and the latter being mandatory with the use of the word 'shall'.

(b) The power of the Court is couched in the widest terms possible with no express limitation thereon.

(c) The exercise of such power is not only the prerogative but also the duty of the Court, in connection with a witness who may be considered absolutely necessary, in the interest of justice.

(d) This power is to be used both for the benefit of the prosecution and the defence. To summon a witness because it serves the case of one of the parties and not the other, would be improper.

(e) This power can be exercised at any stage of proceedings, i.e. enquiry, trial or any other.

(f) Power is to be exercised judiciously since wider the power, greater the requirement of the application of a judicial mind.

(g) If a witness so-called under this power, gives evidence against the complainant, the latter should be given an opportunity to crossexamination. This power arises not under Section 311 but under the Indian Evidence Act, 1872.

(h) A witness cannot be recalled by the use of this power to simply fill up a lacuna in the case of the prosecution"

25. The object of Section 313 Cr.P.C. is to enable the accused to explain any circumstance appearing in the evidence against him and to ensure compliance with the principle of natural justice (audi alteram partem). Any circumstance not put to the accused cannot be used against him.

26. The Hon'ble Supreme Court has consistently held that failure to put material incriminating circumstances to the accused amounts to a serious irregularity and causes prejudice, particularly in cases based on circumstantial evidence.

27. Having duly considered the position of law and principles as above, on a careful scrutiny of the record, we may now examine the statements of the appellants recorded under section 313 CrPC. The statements recorded under section 313 of the accused persons is as below:

Appellant no. 1

Name - Anil Kumar Age - 26 years Father's name - Late Bhagirathi

1. Question - According to the prosecution story, on 11.06.2008 at around 6:00 AM at village Tandwa Gopalpur, Police Station Sammanpur, District Ambedkar Nagar, you, along with other co-accused, murdered the complainant's daughter, Bhuila @ Sushila, who was married to the accused Anil, by strangling her with a rope, and after committing the murder, you concealed the deceased's body with the intention of destroying evidence. What do you have to say in this regard?

Answer - This is false.

2. Question - You have heard the statement of prosecution witness PW-1 Shriram Rajbhar, who has proved the complaint Exhibit K-1 and his signature on the inquest report Exhibit K-2. What do you have to say in this regard?

Answer - He has falsely testified.

3. Question - Have you heard the statement of witness PW-2 Sumitra? What do you have to say in this regard?

Answer - She has given false testimony due to enmity.

4. Question - Have you heard the statement of witness PW-3 Krishna Kumar Singh, Naib Tehsildar, who has proved police documents Exhibit K-3 to Exhibit K-6?

Answer - He is a formal witness. He has given false evidence.

5. Question - Have you heard the statement of witness PW-4 Ram Krishna Magan, who has proved the site plan Exhibit K-7 and the charge sheet Exhibit K-8?

Answer - He is a formal witness. He has falsely testified.

6. Question - Have you heard the statement of witness P.W. 5 Dr. Vijay Tiwari, who conducted the post-mortem examination of the deceased Sushila @ Bhuila, whose post-mortem report has been proved as Exhibit K-9? What do you have to say in this regard?

Answer - I don't know.

7. Question - Have you heard the statement of witness P.W. 6 Constable No. 582 Virendra Kumar, who has certified the carbon copy of the Chik GD report No. 10, which is in the handwriting and bears the signature of Constable Jamuna Prasad, as Exhibit K-11? What do you have to say in this regard?

Answer - I don't know.

8. Question - Have you heard the statement of witness P.W. 6 Inspector Ram Kumar Chaudhary, who has proved the charge sheet Exhibit K-6 and the site plan of the incident Exhibit K-7? What do you have to say in this regard?

Answer - He is a formal witness. He has given a false statement.

9. Question - Why did the above witnesses give their testimonies? What do you have to say in this regard?

Answer - Due to enmity.

10. Question - Why was this case filed against you?

Answer - Due to enmity.

11. Question - Do you want to produce any defense evidence?

Answer - Yes.

12. Question - Do you have anything else to say in your defense?

Answer - The deceased had an illicit relationship with someone in her village, due to which she wanted to stay at her parents' house. Even before this, she had consumed poison at her parents' house before her Gauna ceremony. The complainants forcibly sent her with the appellant, and being upset by this, she committed suicide. The complainants have falsely implicated me under pressure from the patidar.

28. The appellant no. 2 Nandlal, appellant no. 3 Govardhan, appellant no. 4 Gena Devi and appellant no. 5 Sheela have been asked the same questions as appellant no. 1 Anil to which their replies are identical except question 12, which has been answered by the appellants as follows:

Appellant no. 2

Name - Nandlal Age - 38 years Father's name - Late Bhagirathi

12. Question - Do you have anything else to say in your defence?

Answer - I have been living in Sammanpur market with my wife in a house I built since 1994. When I went to the complainant's house after receiving information about the incident, I was beaten up. My motorcycle was snatched away. I have been falsely implicated because I am the brother-in-law of the deceased.

Appellant no. 3

Name - Govardhan Age - 45 years Father's name - Late Bhagirathi

12. Question - Do you have anything else to say in your defense?

Answer - I had been living separately from my parents in my own house for 8 years before the incident. I have no connection with the incident. He was falsely implicated simply because he was the eldest brother.

Appellant no. 4

Name - Gena Devi Age - 70 years Husband's name - Late Bhagirathi

12. Question - Do you have anything else to say in your defense?

Answer - Both my elder sons lived separately. I lived with the deceased. The deceased committed suicide herself. I sent the information to her parents' house through my son Nandlal. Upon receiving the information, her family members came to our house and, instigated by our relatives, falsely implicated me because I was her mother-in-law.

Appellant no. 5

Name - Sheela, Age - 43 years, Husband's name ' Govardhan

12. Question - Do you have anything else to say in your defense?

Answer - I have been living separately from my in-laws for 8 years before the incident. I have been falsely implicated because I am the sister-in-law.

29. The statements extracted above reveal that all the accused persons were asked general questions and all appellants have given an omnibus denial to allegations made against them in the questions put forth by the learned trial court. Question no. 12 where all the appellants have been asked to speak anything in their defense, all have given their respective statements. However in reference to the grounds that were undertaken by the prosecution for the conviction of the appellants no questions have been put forth. In reference to question no. 12 all the appellants cannot be expected to make any statement of defense against the grounds they are unaware of.

30. Therefore, It is evident that the learned trial court failed to put specific and material incriminating circumstances to the accused, particularly:

i. The allegation relating to administration of poison to the deceased; and

ii. The post-mortem finding of ligature mark on the neck of the deceased.

31. These circumstances form the foundation of the prosecution case. Once the prosecution relied upon them to establish homicidal death, it was mandatory for the trial court to confront the accused with the same while recording their statements under Section 313 Cr.P.C.

32. In the present case, despite the omission, the learned trial court relied upon the aforesaid circumstances to record conviction, which has resulted in prejudice to the appellants.

33. Though the prosecution sought to rely upon Section 106 of the Indian Evidence Act on the ground that the incident occurred inside the house, such burden on the accused can arise only after the prosecution discharges its primary burden and the incriminating circumstances are properly put to the accused under Section 313 Cr.P.C.

34. Considering the nature of the defect, this Court is of the view that the same is curable and the ends of justice would be served by remanding the matter to the trial court for compliance of Section 313 Cr.P.C.

35. Accordingly, the appeals are allowed to the limited extent indicated herein. The judgment and order dated 08.09.2015 passed by the learned trial court are set aside.

36. The matter is remanded back to the Trial Court with the following directions:

i. The Trial Court shall record fresh statements of the accused under Section 313 Cr.P.C., specifically putting all incriminating circumstances appearing in the evidence, including those relating to alleged poisoning and post-mortem ligature mark.

ii. The accused shall be afforded an opportunity to lead defence evidence, if they so choose.

iii. Thereafter, the trial court shall decide the matter afresh in accordance with law, uninfluenced by the earlier judgment.

37. Considering the pendency of the appeals, we direct the concerned trial court to expedite the proceedings and do the needful within three months from the date of communication of this judgment. The appellants namely Anil- the present appellant, **Nand Lal-** appellant in Criminal Ap**peal No.1388 of 2015, Govardhan- appellant in Criminal Appeal No.1384 of 2015,** Gena- appellant in Criminal Appeal No.439 of 2016 and **Smt. Sheela-** appellant in Criminal Appeal No.1121 of 2015 be released on bail unless they are required to be detained in connection with any other case and they will appear before the trial court in person and will participate in the proceedings on the date fixed by the trial court, failing which the trial court shall be at liberty to cancel their bail and take them into custody.

(2026) 2 ILRA 998
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 18.02.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE PRASHANT MISHRA-I, J.

Criminal Appeal No. 1188 of 1989

Khunni Lal **...Appellant**
Versus
State **...Respondent**

Issue for consideration

Matter pertains to principal of Parity in case of more than one accused.

Headnotes

Indian Penal Code, 1860 - Sec. 302 and 34- Murder -Conviction of one accused and acquittal of two others on same set of evidence -sustainability prosecution witnesses giving contrary versions- prominent eye-witnesses not examined- reason for their non-examination not explained, and F.I.R. rendered suspicious-Held, when there is similar or identical evidence of eye-witnesses against accused persons by assigning same or similar role-court cannot convict one accused and acquit the other- both accused will be governed by principles of parity -suspicion cannot at all take place of proof-Judgment and order of conviction suffers from infirmity - set aside- **Appeal allowed.** (E-9)

Case Law Cited

1. Javed Shaukat Ali Qureshi vs. State of Gujarat, (2023) 9 SCC 164
2. Ram Singh vs. State of Uttar Pradesh, (2024) 4 SCC 208

List of Acts

The Indian Penal Code, 1860

List of Keywords

Principles of parity; two accused; similar role; same set of evidence

Appearances of parties

Counsel for Appellant(s) : Amar Saran, Sikandar B Kochar Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Prashant Mishra-I, J.)

1. Heard Mr. Sikandar B Kochar, learned counsel for the appellant, Mr. Amit Sinha, learned Additional Government Advocate representing the State and perused the materials on record.

2. The instant criminal appeal has been preferred by appellant, namely, Khunni Lal, against the judgment and order dated 17.05.1989 passed by learned Additional District and Sessions Judge, Kannauj, Farrukhabad in Sessions Trial No. 219 of 1987, arising out of Case Crime No. 56 of 1987, under Section 302 I.P.C., Police Station Thathiya Sub-District Kannauj, District Farrukhabad, whereby the appellant has been convicted and sentenced to imprisonment for life, under Section 302 I.P.C.

3. As per the prosecution case, in brief, the accused persons, namely, Khunni Lal, Bhagwan Din and Jagdish belong to the family of complainant Ram Singh and they are co-sharers of half of the house and land of the complainant. Accused Khunni Lal is a Lekhpal and Bhagwan Din is an inspector in the canal department in district Kanpur. The accused persons built their house by encroaching the land of the complainant. On 09.05.1987, at around 6 PM, when the accused persons were cutting the eastern platform (chabutra) of the complainant, his father objected, then the accused persons started abusing. At the same time, the complainant's younger brother Mauji Lal also reached there. He also objected and brought his father to his doorstep and the villagers pacified them. After an hour, at around 7 pm, accused Khunni Lal armed with a big knife, Bhagwan Din armed with a pistol and Jagdish armed with a spear arrived there. At that time, informant's brother, Mauji Lal, was smoking outside the shed. Complainant ran and grabbed Jagdish's spear. At that very moment, Bhagwan Din and Jagdish grabbed both the hands of Mauji Lal, and Khunni Lal stabbed Mauji Lal in the left side of his neck. Mauji lal died on the spot. Complainant, his brother Bechelal, his father Keshari Lal, Mauji Lal's wife, Chhammi Lal, and other villagers witnessed the

said incident. The accused persons fled away with knife and pistol extending fire shots. Report of the said incident got lodged on the next day.

4. The police conducted panchayatnama of the body of the deceased and seized a broken spade and blood-soaked soil from the place of occurrence. After the investigation, a charge sheet was submitted against the aforesaid accused persons.

5. The accused persons, namely, Khunni Lal, Bhagwan Din and Jagdish were charged with commission of offence under Section 302/34 I.P.C. They denied the charges and sought trial.

6. To prove the prosecution case, the prosecution examined PW-1 Ram Singh, PW-2 Chhammi Lal, PW-3 Bhagwati, PW-4 Head Constable Dinesh Pal Singh, PW-5 Dr. V.K. Bhatiya, PW-6 Rajendra Singh Solanki (S.I., investigating officer).

7. Statements of the accused persons were recorded under Section 313 Cr.P.C., wherein they claimed their innocence and said that they have been falsely implicated in this case. The accused persons furnished two defence witnesses in defence.

8. In documentary evidence, written report (exhibit-Ka.1), F.I.R. (exhibit-Ka.2), chick copy (exhibit-Ka.3), postmortem report (exhibit-Ka.4), site plan (exhibit-Ka.5), site plan (exhibit-Ka.6), *panchayatnama* (exhibit-Ka.7), arakshi receipt (exhibit-Ka.8) photo nash (exhibit-Ka.9), police station report (exhibit-Ka.10), police station report (exhibit-Ka.11), letter to CMO (exhibit-Ka.12), recovery memo of plain soil (exhibit-Ka.13), recovery memo of blood stained soil (exhibit-Ka.14), recovery memo of blood stained *'tehmad'* (exhibit-Ka.15), recovery memo of Javelin etc. (exhibit-Ka.16), charge-sheet '*mool'(*exhibit-Ka.17) were filed.

9. Application to Superintendent of Police (exhibit-Kha.1), Telegram (Taar) to S.S.P (exhibit-Kha.2), copy of Telegram *(Taar)* (exhibit-Kha.3) and copy of Telegram *(Taar)* (exhibit-Kha.4) produced and proved by DW-1.

10. The trial court after considering the evidence on record acquitted the co-accused, namely Bhagwan Din and Jagdish and convicted and sentenced the appellant-Khunni Lal as aforesaid.

11. Learned counsel for the appellant argued that there is manipulation of date in the F.I.R., it appears that figure '10' has been manipulated as '11' that goes to create doubt. The prominent witnesses Bechelal and Kesari Lal, who are allegedly the eye-witnesses of the incident have not been examined by the prosecution. One more witness-Jalil was also not examined. The testimony of PW-1, Ram Singh is contrary to the F.I.R., which was lodged by him only. PW-1 has specifically denied that he did not see the appellant assaulting Mauji Lal with a knife because it was dark in the night. He has also stated that Chhammi Lal and other people came there after the incident, whereas in the F.I.R., he states that Khunni Lal assaulted his brother with a knife on the left side of the neck. Bhagwan Din had country made pistol (tamancha) and Jagdish was having spear in his hand at the time of incident. He states that he rapidly caught hold of the spear which was in the hand of Jagdish and in such act the spear broke down. So this version in the F.I.R. is absolutely contrary to the testimony of PW-1 recorded in the learned trial court. PW-3 Bhagwati

Devi who is the wife of the deceased Mauji Lal also deposed as if she was the eye-witness of the incident, but during the course of evidence, she has admitted that when her husband raised alarm, she could not come out from the thatched hut. Learned trial court has committed gross mistake in acquitting two accused persons and convicting the appellant on the same set of evidence led before the trial court. The interpolation in the F.I.R. also shows that F.I.R. was lodged as a result of afterthought due to some enmity. It was also argued that there was no F.I.R. in existence at 9:30 P.M. The written report, inquest etc. were prepared next morning at the police station. The inquest shows to be conducted on 10.05.1987. This also creates doubt on the version as regards the alleged incident. Hence the appeal deserves to be allowed.

12. On the other hand, learned A.G.A. for the State vehemently opposed the argument of the learned counsel for the appellant and stated that the appellant with his brother Bhagwan Din and nephew Jagdish were having dispute with the informant and his family members regarding construction of *Chabutra.* On 09.05.1987, at about 6:00 P.M., father of the informant opposed the appellant from constructing the Chabutra then the appellant started hurling abuse. At the same time, the brother of informant-Mauji Lal (deceased) reached there and objected the appellant and they brought their father to the house of Mauji Lal. After an hour at about 7 P.M., appellant-Khunni Lal armed with knife, Bhagwan Din with a country made pistol and Jagdish with spear came there and assaulted Mauji Lal. Bhagwan Din and Jagdish caught hold of Mauji Lal and Khunni Lal, assaulted with his knife on the neck. Mauji Lal sustained fatal injuries which resulted in his death. The eye-witness account to the incident has clearly corroborated the incident. Postmortem report of the deceased also shows that he sustained incised wound on the left side of the neck and contusions on the chest and right shoulder. The learned trial court while evaluating the evidence on record found accused-Khunni Lal guilty and convicted him. On the other hand, it was found that co-accused Bhagwan Din and Jagdish were innocent, hence they were acquitted of charges. Therefore, no interference is required by this Court and appeal deserves to be dismissed.

13. After hearing the rival submissions and going through the materials on record, we find that PW-1, Ram Singh is the informant of the case who has lodged the F.I.R. against Khunni Lal, Bhagwan Din and Jagdish, as per the prosecution case stated above. PW-1, Ram Singh, in his testimony recorded before the trial court specifically stated that at around 6:00 P.M. in the evening he was present in his house, all the three accused persons were constructing their house by cutting down his Chabutra. His father Keshari objected to this. The accused persons started abusing him. When PW-1 reached there, Mauji Lal and Beche Lal also came. All of them tried to stop the accused persons from abusing his father Keshari Lal. All of them escorted his father to the house of Mauji Lal. Ram Singh along with his father and two real brothers, namely, Mauji Lal and Beche Lal were sitting at Mauji Lal's house where at about 7 P.M., Jagdish armed with spear, Khunni Lal armed with a knife and Bhagwan Din with a country made pistol arrived there. Accused persons tried to attack Mauji Lal when PW-1 caught hold of the spear in the hand of Jagdish which broke down. Soon after Bhagwan Din and Jagdish caught hold of Mauji Lal, and Khunni Lal assaulted Mauji Lal on the left side of his neck. Mauji Lal fell down and died. He has also specifically stated that he along with Beche Lal, Ganga Ram and Jalil along with Keshari saw the whole incident. This witness has given specific role of assault to Khunni Lal, assigned the role of firing to Bhagwan Din in his examination-in-chief. He also stated that he dictated the written report to one Putti Lal and

has proved the written report (exhibit-Ka-1). Role of catching hold has been assigned to other co-accused jagdish.

14. It is pertinent to mention here that the scribe of the F.I.R. Putti Lal has not been examined by the prosecution or else he had deposed that whatever Ram Singh stated, he reduced it in writing and then was read over to him.

15. Next besides PW-1 Ram Singh, his father Keshari Lal, Beche Lal, Ganga Ram and Jalil also witnessed the incident as per testimony on oath recorded before the learned trial court, but Beche Lal, Ganga Ram, Jalil and Keshari were not examined by the prosecution and the reason of their non-examination has not been explained.

16. On the other hand in his cross-examination PW-1 Ram Singh on page No. 3 has stated very clearly that he could not see assaulting with knife because it was dark of night. At one place in his statement he clearly says that he saw the incident and in his cross-examination he denies that because it was dark of night he could not see the assault with knife.

17. The prominent witnesses, who have been named as eye-witnesses to the incident, namely, Beche Lal, Ganga Ram, Jalil and Keshari, have not been examined. The reason of their non-examination is best known to the prosecution. Another most important fact relating to incident is that on page No. 4 of the cross-examination, PW-1 has stated that he could not see Khunni Lal at the place of occurrence as it was dark in the night. These two versions of the witness are altogether contrary. It has also been said that he along with Beche Lal went to the police station. Beche Lal is said to accompany him from place of occurrence to the police station, but he has not been examined. On page No. 5 of the cross-examination this fact has been reiterated by the witness PW-1 that he did not see Khunni Lal assaulting with knife or Bhagwan Din and Jagdish catching hold of Mauji Lal. Next he also says that earlier he had a scuffle with the accused persons and therefore, he opined that the incident might have been caused by them. Opinion of a witness is of no value as it is not based on credible piece of evidence.

18. Another eye-witness again who had been examined by the prosecution is PW-2 Chhammi Lal and PW-3 Bhagwati Devi. Chhammi Lal is an eye-witness to the incident as per the F.I.R. lodged by the complainant PW-1 Ram Singh. PW-2 has also stated the same story as has been stated by the complainant of the case, PW-1. PW-1 has also stated that Chhammi Lal is resident of his village. PW-2 admits in his cross-examination that he borrowed Rs. 1000/- from accused Khunni Lal for purchasing a buffalo and he has denied the fact that he had a scuffle with Khunni Lal on account of interest payable on the debt. The informant has although named PW-2, Chhammi Lal as witness in the F.I.R., but in his testimony at page No. 3 he has stated that at the time of occurrence only the members of the family were present. None of resident villager was there, whereas Chhammi Lal in his statement has tried to explain the incident as if it all happened in his presence and view. Hence here also a big doubt comes into light which shadows the prosecution case.

19. PW-1 and PW-2 both have given statement before the court that on the place of occurrence Bhagwati Devi was also present. She is said to be the wife of Mauji Lal. Bhagwati Devi has been

examined as PW-3. In her cross-examination, she has stated that she was sitting in a thatched hut and cleaning her house. She was inside the house when her husband raised alarm even then she did not come out from her house. She also said that when she came out of the hut she saw the accused persons running away from there after the incident. These two versions are also contrary to each other. At one point of time she was saying that she did not come out of the hut even after the alarm of the deceased-Mauji Lal her husband, and her father-in-law Keshari. How did she see the assailants running, from what distance she saw because it is very obvious that when the assailants ran away she might have seen them running from behind.

20. It is also remarkable to note that thumb impressions of exhibit Ka-1 (report), Panchayatnama and few other prosecution papers appear to be written in the same ink. Even the defence witness No. 2 (writing expert) examined before the learned trial court has deposed that the thumb impression on the report, inquest and other police papers are in the same ink. It may also indicate a situation where all these papers were prepared at one and the same time. F.I.R. is said to have been registered on 09.05.1987 at 9:30 P.M. whereas inquest conducted bears the date 10.05.1987 at 5:30 A.M. PW-3 Bhagwati Devi has also in her testimony admitted that police came there at 5:30 A.M. in the morning. Why this inquest was conducted on 10.05.1987, 5:30 A.M. also remains unexplained and makes a possibility that F.I.R. was not in existence at the time shown in it i.e. 9:30 P.M. When the witnesses depose contrary to the prosecution version and when it finds no corroboration, it goes to affect the prosecution version negatively and renders F.I.R. suspicious. Further as per PW-1 informant, earlier a scuffle took place with the accused persons and therefore, he opined that the incident might have been caused by them reflects that F.I.R. was lodged on the ground of suspicion. Suspicion cannot at all take place of proof, howsoever strong it may be.

21. In the instant case, Dr. V.K. Bhatiya-PW-5 conducted the postmortem on the body of the deceased on 11.05.1987 at 3:30 P.M. and found the following injuries:

(i) Incised wound of size 7 cm x 1.5 cm on the lateral side of the neck and back.

(ii) Contusion 9 cm x 4 cm downward the right side of the chest.

(iii) Contusion 4 cm x 2 cm upward the right shoulder.

22. In his cross-examination, PW-5 has stated that dry soil was found at certain parts of the body of the deceased. He has also opined that injury Nos. 2 and 3 may be caused by some hard and blunt object and also death might have taken place somewhere in the midnight of 09.05.1987.

23. It is true that there were injuries found on the body of the deceased, but this is not sufficient to entail conviction as prosecution owes a legal obligation to prove that those injuries found on the body of the deceased were inflicted by the accused persons and this has to be proved by the prosecution beyond all reasonable doubts, in which prosecution has not succeeded.

24. It is also noteworthy to mention here that in the instant case there were three accused persons, namely, Khunni Lal, Bhagwan Din and Jagdish. Evidence led by the prosecution witnesses defines the specific role of each of them. All the three accused persons were tried together under

Section 302 read with Section 34 I.P.C. Hon'ble Apex Court, in ***Javed Shaukat Ali Qureshi vs. State of Gujarat, (2023) 9 SCC 164*** and in ***Ram Singh vs. State of Uttar Pradesh***, ***(2024) 4 SCC 208***, has laid down the principle that when there is similar or identical evidence of eye-witnesses against two accused by scribing the same or similar role, the Court cannot convict one accused and acquit the other. It was also held that in such a case both the accused will be governed by the principles of parity, which means that the criminal court should decide like cases alike. Thus the Hon'ble Apex Court on carefully analyzing the evidence on record gave the benefit of doubt to the accused persons.

25. In the instant case before the learned trial court there are three accused, one is convicted and two others are acquitted on the same set of evidence.

26. In view of the above, we are of the opinion that the judgment and order of conviction recorded by the learned trial court dated 17.05.1989 suffers from infirmity and is liable to be set aside.

27. Hence, the judgment and order of the trial court convicting and sentencing the appellant for life imprisonment for the offence under Section 302 I.P.C. is **set aside** for the reasons mentioned above.

28. Accordingly, the instant appeal is hereby **allowed.**

29. The appellant shall be set free, if not wanted in any other case.

30. Office is directed to return the trial court record as expeditiously as possible and notify this judgment to the trial court too.

(2026) 2 ILRA 1004
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 1279 of 1987

Jaggu Kol & Anr. **...Appellants**
Versus
State Of U.P. **...Respondent**

Issue for consideration

Matter pertains to prosecution case failed to prove its case beyond reasonable doubt.

Headnotes

Indian Penal Code, 1860 - Ss. 302, 302/34 and 394 - Circumstantial evidence -There is no direct evidence on record to connect the accused with the commission of crime -no eye witness - PW-1 and PW-2 had not seen as to who fired pistol shot -recovered pistol was not sent to ballistic expert for comparison with the fired cartridges recovered from the spot- was not established that fatal shot was fired from the same pistol which was recovered - Held, evidence adduced-not worth to be relied upon-prosecution failed to prove its case "beyond reasonable doubt" -Judgment and order set aside - Appellants acquitted- **Appeal allowed.**(E-9)

Case Law Cited

1. C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193
2. Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172
3. Sattatiya v. State of Maharashtra, (2008) 3 SCC 210
4. State of Goa v. Pandurang Mohite, (2008) 16 SCC 714
5. Laxman Pradad alias Laxman Vs. State of Madhya Pradesh,
6. R. Sreenivasa Vs. State of Karnataka,
7. Sukhwant Singh vs. State of Punjab
8. Pankaj vs. State of Rajasthan, (2016) 16 SCC 192
9. Goverdhan and Another vs. State of Chhattisgarh Goverdhan and Another vs. State of Chhattisgarh, (2025) 3 SCC 378
10. Jitendra Kumar Mishra @ Jittu vs. State of Madhya Pradesh, 2024 INSC 20

List of Acts

1. Indian penal Code, 1860
2. Indian Evidence Act

List of Keywords

No eye witness; beyond reasonable doubt; ballistic expert

Appearances of parties

Counsel for Appellant(s) : Ashish Kumar, Rajesh Kumar Vishwakarma, S.p. Singh Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. The instant Criminal Appeal has been preferred by the accused-appellants- Jaggu Kol and Shankar against a judgment and order dated 31.03.1987 passed by Additional Sessions Judge, Mirzapur in Sessions Trial No. 251 of 1986 arising out of Case Crime No. 151 of 1986, under Section 302 I.P.C., Police Station Lalganj, District Mirzapur, convicting and sentencing the appellants as under:-

Accused-appellant Jaggu Kol

(a) Imprisonment for life for the offence under Section 302 read with 34 I.P.C.

(b) Rigorous imprisonment of five years' and a fine of Rs. 1,000/- for the offence under Section 394 I.P.C. and in default of payment of fine, he shall further undergo for rigorous imprisonment for a period of one year.

(a) Imprisonment for life for the offence under Section 302 I.P.C.

(b) Rigorous imprisonment for a period of five years' and a fine of Rs. 1,000/- for the offence under Section 394 I.P.C. and in default of payment of fine, he shall further undergo for rigorous imprisonment for a period of one year.

However, all the sentences awarded to both the appellants have been directed to run concurrently.

Brief Facts

2. In nutshell, the case of the prosecution as set up in the first information report is that a written report was filed by Kanhaiya Lal Kol son of Lalai Kol, resident of Village Godar Kala, Police Station Lalganj, District Mirzapur stating inter-alia that on 07.08.1986 he was returning home via road going from Duwar Kalan to Dadri. As soon as he reached the eastern road of his village at about 04:30 P.M., he saw that three persons namely Radhe Kol, Jaggu Kol and Shankar Kol were standing and talking among themselves. Thereafter, he proceeded to north of the Dhesur tree situated on the western side of the road. After that he took the footpath (pakdandi) and proceeded towards his village. As soon as he reached the eastern side near the pond, he heard a sound of firing. He immediately returned back and saw that Jaggu Kol and Shankar Kol have shot the injured Radhe Kol near the eastern side of the road. On hearing the sound of firing, Premlal, Chhotkau Kurmi and Ludhar Kol reached at the spot and they saw that Jaggu Kol and Shankar Kol were dragging Radhe Kol (who was in an injured condition). Seeing them, the accused persons left Radhe Kol near the bush and ran away towards the north side of the forest. When they approached to Radhe Kol, they saw that he had a gunshot wound on his left shoulder and was bleeding profusely. He groaned, hiccuped and died. The aforesaid written report was marked Ext.Ka.1.

3. On the basis of aforesaid written report filed by Kanhaiya Lal Kol (hereinafter referred to as 'informant'), the First Information Report was lodged at Case Crime No. 151 of 1986, under Section 302 I.P.C., Police Station Lalganj, District Mirzapur, which was marked as Ext.Ka.9. The said information has been endorsed in G.D. vide report no. 5 by Constable Moharir Chandrika Sharma, which was marked as Ext.Ka.10.

4. After registration of the F.I.R., the law set into motion and investigation of the case was entrusted to S.H.O. Rampratap Arya (PW-6). He in his deposition has stated that on 08.08.1986, he was posted as Station House Officer at Police Station Lalganj. He recorded the statement of the informant. Thereafter he reached at the place of occurrence at 07:30 am and found the dead body of Radhe Kol (hereinafter referred to as 'deceased') lying near the bushes. The deceased was wearing kurta-pajama. Upon search of his clothes, a sum of Rs. 200/- was recovered from the right pocket of his kurta. A sack about 50 steps north of the dead body was found containing 10 kilograms of paddy and wood. He took him in his possession, marked them as Ext.Ka.5 and handed over to Rangila Lal (uncle of the deceased). He took the dead body in his possession and conducted the inquest proceedings, which was marked as Ext.Ka.6. He prepared photo lash, challan lash, letter to R.I., letter for post-mortem and took the clothes of the deceased, which was marked as Ext.Ka.11 to Ext.Ka.15. He sealed the dead body and prepared sample seal, which was marked as Ext.Ka.16. Thereafter he handed over the dead body of the deceased in a sealed cover to Constable Ram Dev and Sant Prasad for post-mortem. He inspected the spot and prepared the site-plan, which was

marked as Ext.Ka.17. Blood stained soil and plain soil were took into possession, seized and marked as Ext.Ka.2. An empty cartridge was found lying towards the north of the dead body, which was marked as Ext.ka.3. He also recorded the statement of witnesses namely Premlal and Rangilal. Search of the accused was conducted but they were not found. On 09.08.1986, he received an information that the accused persons were present at the tri-junction road to village Nardagahna. He, along with other police personnel, reached at the said place, the accused seeing them attempted to flee but were apprehended. Upon interrogation, accused Shankar told that he had a country-made pistol which was used in the commission of crime and could get it recovered. Accused Jaggu disclosed that he could get the bicycle of the deceased recovered. Thereafter, accused Shankar led us to his house situated in the southern side of the village. He opened the lock of the southern room, removed mud from the eastern wall and took out one country-made pistol and cartridge, which were wrapped in a paper. The said pistol and cartridge were sealed, recovery memo was prepared and the same was marked as Ext.Ka.7. Thereafter accused Jaggu led us to his house, where bicycle was recovered. He had also prepared a site-plan of the place of recovery, which was marked as Ext.Ka.18.

5. After culmination of investigation, the investigating officer submitted charge-sheet against the accused appellants, namely, Jaggu Kol and Shankar @ Sheo Shankar, which was marked as Ext.Ka.20.

6. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as Sessions Trial No. 251 of 1986. Learned Additional Sessions Judge, Mirzapur vide order dated 09.12.1986 framed charges against the accused appellant Jaggu Kol for the offence under Section 302 r/w Section 34 I.P.C. and Section 394 I.P.C. whereas accused-appellant Shankar for the offence under Section 302 and 394 I.P.C. The aforesaid charges were read over and explained to them in Hindi, whereby they pleaded not guilty and claimed to be tried.

7. To bring home the guilt of the accused-appellants beyond the hilt, the prosecution has examined as many as six prosecution witnesses, out of whom Premlal Tiwari (PW-1), Kanhaiya (PW-2), Rangilal (PW-4) and Ramlakhan (PW-5) are witnesses of fact whereas Dr. Chandra Prakash (PW-3) and S.H.O. Rampratap Arya (PW-6) are formal witnesses.

8. Premlal Tiwari (PW-1) in his deposition has stated that on 07.08.1986 at about 04:30 PM after attending the call of nature, he heard a sound of a gunshot followed by Kanhaiya Kol's cries and he followed it's direction. Chhotkau Kunvi, who was shooting birds in his field, also reached there. Laudhar Kol had also arrived on his bicycle. Upon reaching there, they saw that accused-appellants Jaggu Kol and Shankar were assaulting a man and dragging him into the bushes. Jaggu was holding his hands whereas Shankar was holding his feet. As soon as they raised an alarm, the accused persons hid the deceased into the bush and ran away from the place of incident on a bicycle. They have not chases the accused persons as they were having pistol (katta). Thereafter, they reached to the injured person, who groaned, hiccuped and died. Blood was oozing from his left shoulder. Laudher Kol, upon seeing the deceased, started crying and said 'he is my nephew Radhe'. Jaggu and Shankar are residents of village Nadighana. Jaggu's in-law's house is in his village. Both the accused persons are friends.

9. Kanhaiya (PW-2/informant) in his deposition has stated that on the day of incident when he was returning to his house, he saw that Shankar, Jaggu and Radhe were talking to each other. He knew Radhe as he was from Village Kota, four-five miles from his village. Seeing them talking to each other, he headed towards his village and after some time, he heard a sound of gunshot from the north-east direction. Hearing the sound of gunshot, he immediately ran towards the direction of gunshot and saw that Shankar and Jaggu were dragging Radhe to the east side of the road. Thereafter, he along with Premlal Tiwari, Laudhar Kol and Chhotkau reached there. Seeing them, the accused persons ran away from the place of incident on two bicycles which were parked there. They have not chased the accused persons as they were carrying pistol. Thereafter they went to the deceased who groaned, hiccuped and died. Thereafter, he went to the village Majra to call Pradhan. After the written report was prepared, he along with Kheladi Vishwakarma, Lalata Kohar, Sukhdev and Punjabi Kol went to Lalganj police station and gave the same to the Inspector.

10. Dr. Chandra Prakash (PW-3) in his deposition has stated that on 09.08.1986, he was posted Senior Orthopedic at District Hospital, Mirzapur. At about 04:00 PM, he he conducted the post-mortem on the cadaver of the deceased. As per post-mortem, following ante-mortem injuries were found:-

'Gunshot wound 2.0cm x 2.5cm x cavity deep on the upper and anterior part of the left shoulder joint. Wound was directly medially and downwards. Margins are inverted and charred. The surrounding skin in an area of 1.0cm round the wound is also blacked and charred. On cut the underlying tissue and muscle lacerated and rib fractured. The lung left upper lobe was badly lacerated and the wadding caps and pellets metallic 27 found in the upper lobe of left lung cavity of left side full of clotted blood about 400 ml.'

The deceased was aged about 25 years and had died two days' before. Rigor-mortis passed off from both upper and lower limbs. Blisters was present all over body. Hairs of his head are falling out easily. Green discolouration of of skin at some place.

On internal examination, it was found that the first rib of left side was fractured. Pleura was lacerated on the left side. The left lungs was lacerated and metallic pellets twenty-seven in number and wadding cap one in number were found in upper lobe of left lung. Clotted blood was present in left lobe. The stomach contained digested rice and dal. The small intestine contained gasses and fecal matters.

As per the opinion of doctor, the cause of death of the deceased-Radhe was 'shock and haemorrhage as a result of ante-mortem injury'.

11. Rangilal (PW-4) in his deposition has stated that at the midnight of the day of incident, uncle (mama) of the deceased had informed him about the incident. He was informed that some miscreants had killed Radhe (deceased) and thrown his dead body in the forest. He also stated that about two days ago, Radhe left on a bicycle for his sister's house in Jamohara. He was also a witness of inquest proceedings and the investigating officer had handed over the same to him.

12. Ram Lakhan (PW-5) in his deposition has stated that while he along with Chandu Lal were in a search of paddy seeds, the police office of police station Lalganj along with a constable, who were holding two mens, stopped them and asked for to accompany them as these two accused can recover some goods. One of the accused took us to his house located in the south of Nadgahna Village. The room was locked from the outside. The accused dig a hole on the eastern side of the wall with his hands and took out a pistol and a live cartridge wrapped in a plastic sheet. Thereafter another accused Jaggu took us to his house where as bicycle was recovered.

13. The evidence of S.H.O. Rampratap Arya (PW-6) has already been discussed above.

14. After the closure of prosecution evidence, the statements of the accused-appellants namely Jaggu Kol and Shankar @ Sheo Shankar have been recorded under Section 313 Cr.P.C., who denied the charges levelled against them.

15. Learned Additional Sessions Judge, Mirzapur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

16. Hence, the instant appeal.

Arguments on behalf of Accused-Appellants

17. Mr. Rajesh Kumar Vishwakarma, learned counsel appearing on behalf of the appellant submitted that the prosecution has miserably failed to prove the motive for committing the murder of the deceased.

18. It is next submitted that the alleged incident took place on 07.08.1986 at 04:30 PM whereas the First Information Report of the said incident was lodged on 08.08.1986 at about 04:00 AM, after delay of about 12 hours without any plausible explanation.

19. It is also submitted that from the perusal of evidence of Premlal Tiwari (PW-1) and Kanhaiya (PW-2/informant), it is clear that they are not the eye-witnesses of the incident in question as they have not seen that who had fired the deceased, as such, their testimonies falsifies the prosecution story.

20. So far as the recovered weapon (pistol/katta) and cartridge is concerned, it cannot be said that the alleged fire was made by from the same pistol, which has been recovered, as the investigating officer has deliberately did not get the ballistic report of the same to establish the fact that whether the recovered weapon was used in the commission of crime or not, hence, the prosecution story cannot be relied upon. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of **Sukhwant Singh vs. State of Punjab1.**

21. There is no evidence on record or any circumstantial evidence on the basis of which it can be said that there was a common intention to both the appellants to commit the murder of the deceased-Radhe as there is no implication of Section 34 I.P.C.

22. It is lastly submitted that the accused-appellants were arrested on 09.08.1986 and were granted bail on 07.11.1989. They have incarcerated in jail for more than three years' for an offence that prosecution could not even prove. As of today, the appellants are old aged person and are unable to perform their routine work independently. The prosecution has failed to bring home the guilt of the appellants beyond reasonable doubt.

Arguments on behalf of Respondents-State

23. *Per-contra*, Mr. S.K. Ojha, learned Additional Government Advocate-Ist vehemently opposed the aforesaid contentions of learned counsel for the appellants and submitted that the prosecution has proved its case beyond reasonable doubt, which is also evident from the depositions of Premlal Tiwari (PW-1) and Kanhaiya (PW-2/informant).

24. It is next submitted that there is no contradiction in the statement of Premlal (PW-1) and Kanhaiya (PW-2). It is further submitted that the opinion of the doctor is also matches with the prosecution story.

25. It is lastly submitted that since the prosecution has proved its case beyond reasonable doubt and complete the entire chain of evidence, the trial court has rightly convicted the accused appellants. There is no error in the impugned judgment and order, therefore, the instant criminal appeal is devoid of merit and is liable to be dismissed.

Analysis and Conclusion

26. Heard Mr. Rajesh Kumr Vishwakarma, learned counsel for the appellant, Mr. S.K. Ojha, learned Additional Government Advocate-Ist for the State of U.P. and perused the documents on record.

27. In this case, the occurrence had taken place on 07.08.1986 at about 04:30 PM, but the F.I.R. was lodged on 08.08.1986 at 04:00 AM i.e. about 12 hours after the occurrence. Premlal Tiwari (PW-1) and Kanhaiya (PW-2) have explained the delay in preparing the report at 01:00 PM. Thereafter, Kanhaiya (PW-2) went to police station in the night as stated by him. The way to police station passes through jungle and river. It was night and therefore, he would have taken atleast three hours in covering the distance of 10 miles in the night.

28. PW-1, Premlal Tiwari stated and admitted that he had not seen as to who fired pistol shot. PW-2 Kanhaiya Lal states that when he reached near lake, he heard sound of fire and rushed towards the spot where he observed the accused taking the deceased towards bushes. He had also not seen the occurrence as who filed pistol shot to the deceased. There is no direct evidence on record to connect the accused with the commission of crime.

29. It is well settled that where there is no direct evidence connecting the accused-appellant with the commission of the offence and no witness had seen the accused-appellant committing the murder of the deceased, the case of the prosecution rests entirely on circumstantial evidence. In such circumstances, the law mandates that each incriminating circumstance relied upon must be

firmly established and the chain of circumstances must be so complete as to unerringly point towards the guilt of the accused and exclude every possible hypothesis consistent with his innocence. Suspicion, however strong, cannot take the place of proof, and if the circumstances proved do not form a continuous and cogent chain leading only to the conclusion that the accused-appellant is alone the author of the crime, the benefit of doubt must necessarily enure to the appellant.

30. In **Sharad Birdhichand Sarda Vs. State of Maharashtra2**, the Supreme Court has framed five golden principles for the circumstantial evidence, which are as under;

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of conclusive nature and tendency

(iv) They should exclude every possible hypothesis except the one to be proved and,

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

31. In **State of U.P. Vs. Ashok Kumar Srivastava3,** it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

32. In the case of **Hanumant Govind Nargundkar v. State of M.P.4,** the Supreme Court has observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ...."

33. In the case of **Padala Veera Reddy v. State of A.P.5,** the Supreme Court has opined as under:

"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

34. In the case of **C. Chenga Reddy & Ors. v. State of A.P.6**, the Supreme Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

35. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P.**7, the Supreme Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.'

36. In the case of **Sattatiya v. State of Maharashtra8**, the Supreme Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--Bharat v. State of M.P., (2003) 3 SCC 106. "

37. In the case of **State of Goa v. Pandurang Mohite9**, the Supreme Court has reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

38. The decision in **Sharad Birdichand Sarda (Supra)** has recently been followed by the Supreme Court in catena of judgement including **Laxman Pradad alias Laxman Vs. State of Madhya Pradesh10**, and **R. Sreenivasa Vs. State of Karnataka11.**

39. An *'unbroken chain of safe custody'* for the recovered weapon and sample packets must be proved by the prosecution. Failure to do so leads to the acquittal of the accused.

40. The Supreme Court in the case of S**ukhwant Singh vs. State of Punjab12,** has observed as under:

'There is yet another infirmity in this case. We find that whereas an empty had been recovered by PW6, ASI Raghubir Singh from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty and the seized pistol to the ballistic expert for the examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before us. It hardly needs to be emphasised that in cases where injuries are caused by fire arms, the opinion of the Ballistic Expert. is of a considerable importance where both the fire arm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert

opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.'

41. The Supreme Court in the case of **Pankaj vs. State of Rajasthan13**, has held that 'when the genesis and the manner of *the incident is doubtful, the accused cannot be convicted*.' It also referred to **Bhagwan Sahai vs. State of Rajasthan14,** which states that once the prosecution is found to have suppressed the origin of the occurrence, the only proper course is to grant the benefit of doubt.

42. In the case of **State of U.P. vs. Kishore Gopal Das15**, the Supreme Court has succinctly explained the concept 'reasonable doubt', which is as under:

"""...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 legitimisation of trivialities would make a mockery of administration of criminal justice.'

43. In the case of **Ramakant Rai vs. Madan Rai and Others16,** the Supreme Court has held as under:

'24. 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 over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons 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.'

44. The aforesaid judgment has recently been followed by the Supreme Court in the case of **Goverdhan and Another vs. State of Chhattisgarh17** wherein, the Court has held as under:-

'20. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

21. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them

under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

22. It will be relevant to discuss, at this juncture, what is meant by 'reasonable doubt'. It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or amerely possible doubt, but a fair doubt based upon reason and common sense.'

45. The Supreme Court in the case of Ji**tendra Kumar Mishra @ Jittu vs. State of Madhya Pradesh18,** has held as under :

'We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons.'

46. The recovered pistol (Ex.Ka.7) was not sent to ballistic expert for comparison with the fired cartridges recovered from the spot, therefore, it is not established that fatal shot was fired from the same pistol which was recovered. The recovery of the said pistol on the pointing out of accused Shankar @ Sheo Shankar after a day of occurrence is doubtful. The evidence adduced by the prosecution regarding the manner of occurrence and complicity of accused as well as recovery are not worth to be relied upon. None of the witness had seen any accused person firing gunshot upon the deceased. PW-2 Kanhaiya had only seen the accused persons talking with the deceased person and after few minutes, the other witnesses heard the sound of firing and rushed to the spot immediately, therefore, there is no eye witness of the occurrence and the entire case of the prosecution is based upon circumstantial evidence.

47. When we evaluate the testimony of Premlal Tiwari (PW-1) and Kanhaiya (PW-2/informant) carefully and with due caution, as is required in the facts of the case, we find that their testimony do not inspire our confidence to sustain the conviction. The evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home guilt of the appellants. We, therefore, conclude that prosecution has failed to prove it's case 'beyond reasonable doubt' against the appellants.

48. This Court has decided the present criminal appeal on its merits and held as above. Even otherwise, it deserves to be noticed that occurrence in the present case is more than four decades old. The appellants have remained in jail for more than three years.

49. Accordingly, the judgment and order dated 31.03.1987 passed by Additional Sessions Judge, Mirzapur is hereby set aside. The appellants are acquitted of all the charges levelled against him.

50. Consequently, for all the foregoing reasons, the instant criminal appeal is **allowed.**

51. The appellants'Jaggu Kol and Shankar @ Sheo Shankar are already on bail. His bail bonds shall stand discharged.

52. The trial court record be sent back.

(2026) 2 ILRA 1016
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1330 of 1989

Kishan Lal & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to ingredients of Section 302 read with Section 34 IPC.

Headnotes

Indian Penal Code-Section 302 - murder - PW-1 and PW-2 have turned hostile - not supported the prosecution case - only eye-witness of the alleged incident is the informant- the evidence of the sole is wholly reliable - the postmortem report clearly establishes that the deceased sustained thirteen injuries on vital parts of the body - strong motive of the accused-appellants to commit the murder - acted with pre-planning, premeditation, and actively participated in the commission of alleged crime - ingredients of Section 34 of Indian Penal Code are fully established .**Appeal dismissed.** (E-9)

Case Law Cited

1. Ashok Kumar v. State of Punjab; AIR 1977 Supreme Court 109
2. Babulal Bhagwan Khandare v. State of Maharashtra; AIR 2005 Supreme Court 1460
3. Virendra Singh v. State of M.P.; (2010) 8 SCC 407

List of Acts

1. Indian Penal Code
2. Code of Criminal Procedure

List of Keywords

Murder; sole eyewitness; turned hostile; thirteen injuries on vital parts; strong motive; pre-planning; premeditation; common intention.

Appearances of parties

Counsel for Appellant(s) : Raghuvansh Misra, Rahul Misra
Counsel for Respondent(s) : D.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. The present criminal appeal has been filed by the accused-appellants, namely, Kishan Lal S/o Bhola Nath, Bhola Nath S/o Sewa Ram and Veerpal S/o Rameshwar against the judgment and order of conviction and sentence dated 16.05.1989 passed by the learned Vth Additional District and Sessions Judge, Pilibhit in Sessions Trial No. 33 of 1988 (Kishan Lal and Others v. State of U.P.) arising out of Case Crime No. 338 of 1987, under Section 302 read with Section 34 I.P.C., Police Station- Bisalpur, District- Pilibhit.

2. By the impugned judgment and order of conviction and sentence dated 16.05.1989, the learned Vth Additional District and Sessions Judge, Pilibhit held the accused-appellants guilty and convicted them under Section 302 read with Section 34 I.P.C., sentencing each of them to undergo imprisonment for life. Aggrieved by the judgment and order dated 16.05.1989, the accused-appellants have preferred the present criminal appeal before this Court.

3. From the written report (Exhibit Ka-1), the prosecution case is that on the date of the incident, i.e. 23.10.1987, in the morning hours, the informant Ram Dayal (PW-5), along with his elder brother, Indal was returning on a bicycle after meeting Mool Chand, the Gram Pradhan of Village Gujranpur, which is situated 1/2 km away in the north direction from the village of informant. Indal was riding the bicycle, while the informant Ram Dayal (PW-5) was seated on the carrier. At about 10:00 a.m., when they reached the sugarcane field of Ramchandra Lal at Kulawa, the accused persons suddenly emerged from the sugarcane field. Accused Kishan Lal S/o Bhola Nath was armed with a sword; Bhola Nath S/o Sewa Ram, was armed with a kanta; and Veerpal S/o Rameshwar Dayal, was also carrying a kanta in his right hand. The accused Bhola Nath assaulted Indal with the kanta, proclaiming that they were taking revenge that day. The informant Ram Dayal (PW-5), after jumping from the bicycle, ran away raising alarm that his brother was being killed. Thereafter, all the three accused persons, acting with common intention and in furtherance of a pre-concerted plan, assaulted Indal with kanta and sword with the intention to cause his death. As a result of the said assault, Indal died on the spot and his head was severed from his body. Hearing the cries of the informant, Omkar and Ramlal, residents of the village, rushed to the spot and witnessed the accused persons committing the murder of Indal, brother of the informant. When they raised alarm and challenged the accused persons, they after leaving the dead body at the spot, fled towards the northern direction. It is further stated in the written report that Omkar S/o Bhola Nath was murdered in the year 1981, in which Indal, brother of the informant Ram Dayal was named as an accused. He faced trial in the said case and was convicted and sentenced to four years' imprisonment. His appeal was pending and he was on bail. On account of the said previous enmity, the accused persons committed the murder of brother of the informant.

4. After lodging of the written report (Exhibit Ka-1), a First Information Report (Exhibit Ka-13) was registered at Police Station Bisalpur against the named accused persons, namely, Kishan Lal S/o Bhola Nath, Bhola Nath S/o Sewa Ram and Veerpal S/o Rameshwar, as Case Crime No. 338 of 1987, under Section 302 IPC, on the date of the incident itself at about 2:00 p.m. After registration of the FIR, the investigation was entrusted to S.I. Tejpal Singh (PW-6), who took up the investigation and proceeded in accordance with law. The Investigating Officer inspected the place of occurrence and prepared the site plan. He recovered blood stained soil as well as simple

soil from the place of occurrence, sealed the same, and prepared the recovery memo (Exhibit Ka-2). He also took into custody one bicycle and a pair of slippers lying at the place of occurrence and prepared a recovery memo (Exhibit Ka-3). Further, from the body of deceased, the Investigating Officer recovered a blood- stained trouser and a white kurta, which were duly sealed and taken into possession, and the relevant recovery memo was prepared as Exhibit Ka-4. The Investigating Officer also conducted the inquest proceedings (panchayatnama) of the dead body of deceased and prepared the inquest report (Exhibit Ka-5). Thereafter, the dead body was sent for post-mortem examination. Subsequently, the Investigating Officer S.I. Tejpal Singh (PW-6) recorded the statements of the informant Ram Dayal (PW-5) and other eyewitnesses of the occurrence under Section 161 Cr.P.C. After completing all the formalities and procedures of investigation, the Investigating Officer S.I. Tejpal Singh (PW-6) submitted the charge-sheet against the accused persons, namely, Kishan Lal, Bhola Nath and Veerpal under Section 302 IPC before the Court of the concerned Magistrate.

5. Since the offence was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial. The learned Trial Court framed charges against the accused-appellants on 24.02.1989 under Section 302 read with Section 34 IPC, to which the accused-appellants pleaded not guilty and claimed trial.

6. In order to prove its case against the accused-appellants, the prosecution examined Ramlal (PW-1), Omkar (PW-2), Salik Ram (PW-3), Mool Chand (PW-4), the informant Ram Dayal (PW-5), the Investigating Officer S.I. Tejpal Singh (PW-6) and Dr. S.K. Agrawal (PW-7).

7. Apart from the oral evidence of the aforesaid witnesses, the prosecution also relied upon the documentary evidence, such as, the written report (Exhibit Ka-1), the recovery memo of blood-stained and plain soil (Exhibit Ka-2), the recovery memo of bicycle, slippers and H.M.T. watch (Exhibit Ka-3), the recovery memo of blood stained clothes of the deceased (Exhibit Ka-4), the inquest report (Exhibit Ka-5), the charge-sheet (Exhibit Ka-12) and the post-mortem report (Exhibit Ka-15).

8. After conclusion of the prosecution evidence, the statements of the accused-appellants were recorded under Section 313 Cr.P.C., wherein they denied the prosecution case and stated that they had been falsely implicated in the present case on account of previous enmity. It was further stated that the prosecution witnesses had deposed falsely against them due to such enmity. The accused-appellants, however, did not adduce any defence witness in support of their case.

9. After hearing the arguments of both sides and upon appreciation and evaluation of the evidence on record, the learned Trial Court found the accused-appellants, namely, Kishan Lal, Bhola Nath and Veerpal guilty of the offence and convicted them under Section 302 read with Section 34 IPC to undergo imprisonment for life.

10. Vide order dated 15.12.2025 passed by this Court, the appeal in respect of appellant nos. 1 and 2, namely, Kishan Lal and Bhola Nath, stood abated on account of their death. Consequently, the appeal now survives only on behalf of appellant no.3, Veerpal and is being adjudicated, accordingly.

11. We have heard the arguments advanced by learned counsel for the surviving appellant no.3 and the learned A.G.A. for the State. We have also gone through the entire evidence available on record and have also perused the impugned judgment and order of conviction and sentence dated 16.05.1989 passed by the learned Trial Court.

12. Learned counsel for appellant no. 3- Veerpal, the sole surviving appellant, contended that the so-called eyewitnesses of the occurrence, namely, Ramlal (PW-1) and Omkar (PW-2) have turned hostile and have not supported the prosecution case. It was argued that only the informant Ram Dayal (PW-5), who is the brother of the deceased, has supported the prosecution version. However, his presence at the place of occurrence on 23.10.1987 is highly doubtful and suspicious. It has also been argued by the learned counsel for appellant no. 3 that the prosecution has wholly failed to prove the existence of a pre-plan, premeditation, and joint participation by all the accused-appellants in the commission of the alleged crime, in light of the ingredients of Section 34 IPC. Learned counsel for the appellant no.3 further argued that the named eyewitnesses mentioned in the written report, namely, Ramlal (PW-1) and Omkar (PW-2) have not supported the prosecution case during trial, and therefore the conviction of the accused is based solely on the interested and solitary testimony of the informant Ram Dayal (PW-5), which is unsafe to rely upon in the facts and circumstances of the present case. It was thus submitted that the learned Trial Court has illegally and erroneously convicted the accused-appellants by placing reliance on doubtful and unreliable evidence, ignoring the settled principles governing appreciation of evidence. Consequently, the judgement and order of conviction and sentence dated 16.05.1989 is against the weight of evidence on record and is liable to be set aside and the instant criminal appeal deserves to be allowed.

13. Per contra, learned A.G.A. for the State submitted that although the eyewitnesses Ram Lal (PW-1) and Omkar (PW-2) have turned hostile and have not supported the prosecution case, the informant Ram Dayal (PW-5), who is the brother of the deceased, has fully and consistently supported the prosecution version in his testimony. The learned A.G.A. further submitted that it is a settled principle of law that a conviction can safely be based on the testimony of a solitary witness, provided his evidence is found to be credible and trustworthy. Further, the learned Trial Court, in a proper and legal perspective, placed reliance upon the testimony of Ram Dayal (PW-5), who is the solitary eyewitness in the present case, and on the basis of his reliable evidence rightly held the accused-appellant guilty of the offence. It was vehemently argued by learned A.G.A. that the judgment and order of conviction and sentence dated 16.05.1989 passed by the learned Trial Court is fully justified on the basis of the evidence available on record and does not suffer from any misappreciation and mis-evaluation of the prosecution evidence. The Trial Court has, in accordance with law and on proper appreciation of the evidence, rightly convicted the accused-appellant for the commission of the alleged offence. Thus, prosecution has fully proved its case beyond all reasonable doubt. Consequently, it was submitted that the instant criminal appeal filed by the accused-appellant lacks merit, and the same is liable to be dismissed.

14. In view of the arguments advanced by the learned counsel for sole surviving accused-appellant no.3, Veerpal and the counter submissions made by the learned A.G.A. for the State, we have perused the written report (Exhibit Ka-1) and the entire evidence on record. From perusal of

the First Information Report, it is apparent that the incident is alleged to have occurred on 23.10.1987 at about 10:00 a.m.

15. From perusal of the post-mortem report (Exhibit Ka-15), and the testimony of Dr. S.K. Agrawal (PW-7), who conducted the post-mortem examination of the deceased Indal, it is revealed that the following injuries were found on the body of deceased:

'1. An incised wound measuring 15 cm ' 5 cm, bone deep, situated on the front side of the chest at the root of the neck. The C-7 and C-8 vertebrae were severed at the level of bone, and the chest was found separated from the neck.

2. Two incised wounds, each measuring 4 cm ' 1 cm, bone deep.

3. An incised wound measuring 3 cm ' 1 cm, bone deep, situated slightly above the left ear.

4. An incised wound measuring 2 cm ' ' cm, bone deep, located on the middle front portion of the head.

5. An incised wound measuring 5 cm ' 1 cm, bone deep, extending from the middle of the head towards the left side, involving the left eye and left cheek.

6. Two incised wounds, each measuring 3 cm ' 1 cm, bone deep, present on the left wrist, over the upper part of the wrist bone. The wrist bone was found cut.

7. An incised wound measuring 5 cm ' ' cm, bone deep, present on the back of the left palm.

8. Two incised wounds, each measuring 3 cm ' 1 cm, bone deep, present on the back of the left forearm, towards the outer side.

9. An incised wound measuring 4 cm ' 1 cm, bone deep, present on the left shoulder.

10. An incised wound measuring 3 cm ' 1 cm, bone deep, present on the back of the right palm.

11. An incised wound measuring 2 cm ' 1 cm, bone deep, present on the front side of the right palm.

12. An incised wound measuring 4 cm ' 1 cm, bone deep, present on the back of the right hand and fingers.

13. An incised wound measuring 2 cm ' 1 cm, bone deep, present between the toes of the right foot.'

16. From the testimony of Dr. S.K. Agrawal (PW-7) and from the postmortem report (Exhibit Ka-15), it is evident that the cause of death of the deceased was shock and hemorrhage resulting from ante-mortem injuries. The postmortem report clearly establishes that the deceased sustained thirteen injuries on vital parts of the body. Thus, it stands proved that the deceased was brutally murdered.

17. According to the prosecution case as set out in the FIR, the informant Ram Dayal (PW-5) was seated on the carrier of the bicycle, while the deceased was riding the bicycle. When the accused-appellants allegedly assaulted the deceased, the informant is stated to have got down from the bicycle and fled towards the southern direction. It is also mentioned in the FIR that apart from the informant Ram Dayal (PW-5), Ramlal (PW-1) and Omkar (PW-2) had also witnessed the commission of alleged offence by the accused persons.

18. However, upon appreciation of the evidence of Ramlal (PW-1) and Omkar (PW-2), it is evident that both these prosecution witnesses did not support the prosecution case before the Trial Court and were declared hostile. They also denied the statements allegedly made by them under Section 161 Cr.P.C. before the Investigating Officer.

19. From the testimony of PW-1 and PW-2, the only fact that stands established is that on the date of the incident they had seen the dead body of the deceased lying at the place of occurrence. Both these witnesses categorically stated that they had not seen the actual commission of the offence by any of the accused person.

20. Thus, from the evidence of the aforesaid witnesses, it is proved only to the extent that the deceased was murdered on the said date, time and place and deceased's body with severed head, was found at the place of occurrence.

21. Prosecution witness Salik Ram (PW-3) has categorically testified that after the occurrence of the incident, he scribed the tehriri on the dictation of informant Ram Dayal (PW-5). He further deposed that after scribing the said report, he endorsed his own signatures as well as the signatures of Ram Dayal (PW-5) on it. This witness has also stated that he did not go to the police station. From a conjoint reading of the testimony of prosecution witness Salik Ram (PW-3), it is clearly established that Salik Ram (PW-3) is the scriber of the tehriri, i.e., the written report marked as 'Exhibit Ka-1'. The said written report (Exhibit Ka-1) was written by Salik Ram (PW-3) as dictated by the informant Ram Dayal (PW-5).

22. Prosecution witness Mool Chand (PW-4) has proved the recovery memo of blood-stained soil, plain soil marked as 'Exhibit Ka-2'. He has further proved the recovery memo of a bicycle, slippers, and an HMT wristwatch recovered from the place of occurrence, marked as 'Exhibit Ka-3'. This witness has also proved the recovery memo of the clothes of the deceased, marked as 'Exhibit Ka-4'. Apart from the above, prosecution witness Mool Chand (PW-4) has proved the panchayatnama of the deceased, marked as 'Exhibit Ka-5'. This witness has stated in his evidence that the deceased Indal Prasad was his relative. From the statement of this witness Mool Chand (PW-4), it is also clear that at about 11:00- 11:30 a.m., he reached at the place of occurrence. At that time, police were preparing recovery memo, Exhibit Ka-2, Exhibit Ka-3, Exhibit Ka-4 and

Exhibit Ka-5. At that time, Daroga Ji was also questioning that who had enmity with whom. PW-4 has further deposed that the proceedings of the Panchayatnama were conducted in his presence and that the same was prepared before him. The witness has testified the aforesaid facts.

23. It is evident that the prosecution witnesses, namely, Ramlal (PW-1) and Omkar (PW-2), whose names find place in the written report (Exhibit Ka-1) as eye-witnesses of the alleged incident, have turned hostile before the Trial Court and have not supported the prosecution case. Salik Ram (PW-3) is a formal witness who scribed the written report (Exhibit Ka-1) on the dictation of the informant, Ram Dayal (PW-5). Mool Chand (PW-4) is a witness only with regard to the recovery and the preparation of the recovery memo and the Panchayatnama, and he has proved Exhibit Ka-2, Exhibit Ka-3, Exhibit Ka-4, and Exhibit Ka-5.

24. Thus, in the present case, the only eye-witness of the alleged incident is the informant, Ram Dayal (PW-5). He is the star witness of the prosecution, who claims to have witnessed the commission of alleged crime by all the accused-appellants with his own eyes on the date of incident, i.e., 23.10.1987. His version is also reflected in the written report (Exhibit Ka-1).

25. From a perusal of examination-in-chief of informant, Ram Dayal (PW-5), it transpires that at the time of alleged incident he was present along with his elder brother, the deceased Indal Prasad. He deposed that he and his brother Indal had gone on a bicycle to meet Mool Chand, the Gram Pradhan of village Gujranpur. While returning from the meeting, at about 10:00 a.m., when they reached near the Tila situated close to the canal (nahar), the accused persons, namely, Veerpal, Kishan Lal and Bhola Nath, suddenly emerged from a sugarcane field. According to him, Veerpal and Bhola Nath were armed with kanta, whereas Kishan Lal was armed with a sword. The accused persons, after emerging from the sugarcane field, brutally assaulted the deceased and severed his head from his body. He saw the severed head of his brother and thereafter, the accused fled from the spot. The witness stated that when he raised alarm and ran some distance, Ramlal and Omkar, who were passing near the canal, reached the spot. Ramlal and Omkar attempted to intervene, however, before they could prevent the assault, the accused persons had already severed the head of the deceased and fled. From the evidence of this witness, it is also apparent that the deceased was riding a bicycle before the alleged incident, and his slippers and wristwatch remained lying at the place of occurrence.

26. In his cross-examination, the informant Ram Dayal (PW-5) stated that he along with his brother, Indal Prasad went at around 7:00 a.m. to the house of Mool Chand, the village Pradhan. He said that when the accused came out of the sugarcane field, he got down from his bicycle and ran away shouting, but he could not remember which direction he ran.

27. From the cross-examination of the witness, it has also emerged that there had been enmity between the accused persons and my brother ever since a murder case was lodged against my brother, Indal Prasad. In that earlier case, my brother, Indal, had been convicted and sentenced to four years' imprisonment. At the time of the alleged incident, the appeal against that conviction was pending, and my brother was out on bail.

28. On perusal of the written report (Exhibit Ka-1), it is apparent that in 1981, Omkar S/o Bhola Nath, was murdered, and my brother Indal had been named in that case. He had undergone trial and served part of the sentence. In view of these circumstances, it appears that the murder of the brother of the informant was committed by the accused persons due to the existing enmity arising from the earlier case.

29. From the perusal of the written report (Exhibit Ka-1), it is evident that there existed a bitter enmity between the deceased, Indal Prasad, and the accused persons. The cause of this enmity was the murder of Omkar S/o Bhola Nath, in which the deceased, Indal Prasad, had been named as an accused. Indal Prasad was tried, convicted, and sentenced to four years' imprisonment. At the time of the alleged incident, he was on bail, and the appeal against his conviction was pending. These circumstances indicate a strong motive on the part of the accused-appellants to commit the murder of Indal Prasad, who was returning home with his brother, the informant Ram Dayal (PW-5), on a bicycle. The existence of this heated and revengeful enmity is further corroborated by the cross-examination of the accused-appellants. Accordingly, the facts of long-standing enmity and revengeful intention of the accused-appellants are clearly established from the evidence of the informant Ram Dayal (PW-5), as deposed in Court.

30. Although the other prosecution witnesses, such as, Ramlal (PW-1) and Omkar (PW-2), have not supported the prosecution story, but when their evidence is considered in the light of the written report (Exhibit Ka-1), the evidence of the prosecution witness Ram Dayal (PW-5) is found to be fully reliable and relevant. We cannot reject the evidence of the informant Ram Dayal (PW-5) only on the ground that the evidence of this sole eyewitness has not been supported by other prosecution witnesses, such as, Ramlal (PW-1) and Omkar (PW-2). The evidence of the informant Ram Dayal (PW-5) is further supported and corroborated by the postmortem report (Exhibit Ka-15) and the evidence of Dr. S.K. Agarwal (PW-7), who conducted the postmortem examination of the deceased, Indal Prasad.

31. From the perusal of the postmortem report (Exhibit Ka-15) prepared by Dr. S.K. Agarwal (PW-7), it is found that thirteen grievous injuries were sustained on the vital parts of the deceased's body. According to Dr. S.K. Agarwal, all these injuries were caused by a sword, kanta, or some other heavy sharp-edged weapon. The informant, Ram Dayal (PW-5), in his written report (Exhibit Ka-1) as well as in his evidence before the Court, stated that the accused-appellant Kishan Lal was armed with a sword, while the accused-appellants Bhola Nath and Veerpal were armed with kanta.

32. From a perusal of the number, nature, and location of the injuries, it is evident that all three accused-appellants were present at the place of occurrence and jointly assaulted the deceased, Indal Prasad, with a sword and kanta, thereby causing thirteen grievous injuries to the vital parts of his body. The nature and size of the injuries, as well as the weapons used, indicate that the accused-appellants were motivated by revenge, as the deceased, Indal Prasad, had been named and convicted in connection with the murder case of Omkar S/o accused-appellant Bhola Nath. This establishes a strong motive for the accused-appellants to commit the murder of Indal Prasad as an act of revenge for the earlier incident. Accordingly, the fact of motive against the accused-appellants, which prompted them to commit the alleged crime, has been fully established by the prosecution.

33. As far as the testimony of the sole eyewitness, informant Ram Dayal (PW-5), is concerned, upon perusal and analysis of the entire evidence, it is found that there is no material or major contradiction in his testimony that could render his deposition doubtful or suspicious. In other words, the evidence of the sole eyewitness, Ram Dayal (PW-5), is wholly reliable. Further, the evidence of Ram Dayal (PW-5) inspires confidence, as the fact of motive against the accused-appellants for the commission of the alleged crime has been established through his testimony.

34. The presence of the sole eyewitness, informant Ram Dayal (PW-5), is further corroborated by his testimony in Court as well as by the written report (Exhibit Ka-1). It is a natural and human tendency that the family members of a victim would not exonerate the real culprit or falsely implicate an innocent person in connection with the crime. Family members of the victim are generally inclined to ensure that the actual perpetrator is held accountable for the commission of the crime.

35. From the evidence of the sole eyewitness, informant Ram Dayal (PW-5), and the written report (Exhibit Ka-1), it is evident that all the accused-appellants, with a strong motive, hatched a premeditated plan. They were waiting for a suitable opportunity and when they found Indal Prasad, alone with his brother, the informant Ram Dayal (PW-5), they, in furtherance of their premeditated plan, jointly assaulted Indal Prasad with sword and kanta, thereby causing his murder.

36. The number, nature, and location of the injuries, as well as the nature of the weapons used in the commission of the alleged crime, establish that all three accused-appellants equally participated in the offence. Therefore, from the foregoing facts, it is evident that the accused-appellants acted with pre-planning, premeditation, and actively participated in the commission of alleged crime.

37. The Hon'ble Supreme Court in the case of ***Ashok Kumar v. State of Punjab;*** AIR 1977 Supreme Court 109 has held on Section 34 IPC that:

"the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

38. In the case of Ba***bulal Bhagwan Khandare v. State of Maharashtra;*** AIR 2005 Supreme Court 1460, the Hon'ble Supreme Court in paragraph nos. 20 & 23 has held that:

"20. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the

proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34 be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.

23. The Section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34 , when an accused is convicted under' Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them."

39. In the case of ***Virendra Singh v. State of M.P.***; (2010) 8 SCC 407, the Hon'ble Supreme Court in paragraph nos. 15, 16 and 17 has held that:

"15. Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had the common intention to commit the offence. The words "common intention" implies a pre-arranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the pre-arranged plan. Common intention comes into force prior to the commission of the act in point of time, which need not be a long gap. Under this section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of the crime showing a pre- arranged plan and prior concert. The common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.

16. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and critically examine the entire evidence on record. The common intention can be spelt out only from the evidence on record.

17. Section 34 is not a substantive offence. It is imperative that before a man can be held liable for acts done by another, under the provisions of this section, it must be established that there was common intention in the sense of a pre-arranged plan between the two and the person

sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply."

40. Upon re-examination of the evidence in light of the Hon'ble Supreme Court's case laws as referred above, it is evident from the prosecution evidence that all the accused-appellants were motivated by a strong desire to avenge the murder of Omkar, son of accused-appellant Bhola Nath, acted pursuant to a pre-planned and pre-meditated design. They were concealing themselves in a sugarcane field adjoining a canal in wait for the deceased, Indal Prasad. When the deceased passed through the place of occurrence, all the accused-appellants, acting in furtherance of the common intention, attacked him with swords and kanta, inflicting grievous injuries on vital parts of his body and ultimately severing his head from his body. Thus, the prosecution evidence clearly establishes that the surviving appellant, Veerpal, along with the other appellants (now deceased), acted pursuant to a pre-planned and premeditated design, and that each of them actively participated in the commission of the alleged crime. The ingredients of Section 34 of Indian Penal Code are fully established, making all accused liable for the commission of alleged crime. The defence arguments lack merit in light of the evidence and also in light of the aforesaid decisions of Hon'ble Supreme Court.

41. From a perusal of the findings and reasoning given by the learned Trial Court in the judgment and order of conviction and sentence dated 16.05.1989, it is apparent that the learned Trial Court duly considered the question of motive and, after appreciating the evidence, found a strong motive against all the accused-appellants for the commission of alleged crime. The learned Trial Court recorded its findings based on the prosecution evidence, which, upon examination, are wholly in accordance with the evidence and the law.

42. The learned Trial Court placed full reliance on the evidence of informant, Ram Dayal (PW-5), and on the basis of his testimony and the motive as stated in the written report (Exhibit Ka-1), concluded that all the accused-appellants had a strong motive to commit the alleged crime. From the perusal of the Trial Court's reasoning, it is evident that the prosecution witnesses were discussed in a proper and legally sound manner, in accordance with settled principles of law. Accordingly, the findings and reasoning given by the learned Trial Court are found to be affirmable by this Court.

43. Thus, from the above discussions, we find no force or merit in the arguments advanced by the learned counsel for the surviving appellant, Veerpal. We further hold that the learned Trial Court has rightly appreciated the evidence adduced by the prosecution and correctly found the surviving appellant, Veerpal, along with the other appellants (now deceased), guilty under Section 302 read with Section 34 IPC. We do not find any illegality or infirmity in the Trial Court's appreciation of evidence.

44. The impugned judgment of conviction and sentence dated 16.05.1989, passed by the learned Trial Court under Sections 302 read with Section 34 IPC, is fully supported by the evidence available on record. The evidence conclusively establishes the participation of the surviving appellant, Veerpal, in the alleged crime with premeditation and prior planning, along with the other appellants (now deceased).

45. Thus, from the above discussions, it is evident that the essential ingredients of Section 34 of the IPC, namely, pre-planning, premeditation and participation, stand fully established and proved against the surviving accused-appellant, Veerpal. Since the prosecution evidence has conclusively proved the existence of pre-plan, premeditation and active participation on the part of the accused-appellant, Veerpal, he is consequently liable to be convicted for the offence and charge levelled against him by the prosecution.

46. Accordingly, the present criminal appeal lacks merit and is hereby rejected.

47. The accused-appellant, Veerpal, is presently on bail. His personal bond stands cancelled, and his sureties are discharged from their liabilities. He is directed to surrender before the Chief Judicial Magistrate, Pilibhit, within one month from today, to undergo the remaining sentence awarded by the Trial Court vide order dated 16.05.1989.

48. In the event the accused-appellant, Veerpal, fails to surrender before the Chief Judicial Magistrate, Pilibhit, within the stipulated period of one month, the Chief Judicial Magistrate, shall issue a non-bailable warrant to secure his arrest. Upon arrest, he shall be sent to jail to serve the remaining sentence in accordance with the Trial Court's order dated 16.05.1989.

49. The Chief Judicial Magistrate, Pilibhit, is directed to intimate this Court regarding compliance of this order.

50. Let a copy of this judgment be sent to the learned Trial Court along with the Trial Court record forthwith.

(2026) 2 ILRA 1027
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.02.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 1458 of 1984

Ramphal & Ors. **...Appellants**
Versus
State Of U.P. **...Respondent**

Issue for consideration

Matter pertains to whether conviction of dacoity be made if less than five accused.

Headnotes

Indian Penal Code, 1860 - Ss. 391, 395 & 397- Dacoity - Conviction of less than five accused -Validity- Appreciation of evidence -Held, where after discharge and acquittal the number of accused facing trial was less than five -and even the charge was framed against four persons-conviction under S. 395 IPC is not sustainable; further, conviction of accused under S. 397 IPC despite acquittal under S. 25 Arms Act- and

inconsistencies in evidence, including non-examination of star witnesses- unreliable independent witness-doubtful recovery and identification-absence of injuries despite alleged cross-firing- prosecution case doubtful-Conviction set aside and accused acquitted -**Appeal allowed.** (E-9)

Case Law Cited

1. Ram Lakhan Vs. State of Uttar Pradesh, (1983) 2 SCC 65
2. Jackaran Singh Vs. State of Punjab, AIR 1995 SC 2345
3. Dilawar Singh Vs. State of Delhi, (2007) 12 SCC 641
4. Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh, (2024) 2 SCC 666

List of Acts

1. Arms Act, 1959
2. Indian Penal Code, 1860

List of Keywords

Dacoity; inconsistencies in evidence; non-examination of star witnesses.

Appearances of parties

Counsel for Appellant(s) : Kamta Prasad, Shashank Kumar, Vinod Kumar Yadav, Virendra Singh Parmar
Counsel for Respondent(s) : A.G.A.

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

1. Heard Sri Mahesh Prasad Yadav, Sri Kamta Prasad, learned counsel appearing for appellant and learned A.G.A. for the State.

2. The present criminal appeal has been preferred by two appellants, namely, Ramphal s/o Sukh Ram and Dhuram s/o Baij Nath, under Section 374 CrPC, as they have been found guilty for offence under Section 395 IPC for which both the accused were directed to undergo rigorous imprisonment for a term of ten years. The accused-appellant Ramphal is further found guilty for offence under Section 397 IPC and sentenced to undergo rigorous imprisonment for three years. For the accused Ramphal, both the sentences were directed to run concurrently. This conviction and sentence has been recorded by the trial court (Special Sessions Judge, Jhansi) by judgment and sentence dated 24.04.1984 in Sessions Trial No.43 of 1977 (State Vs. Hindupat and others), arose out of Case Crime No.10 of 1975 and Case Crime No.11 of 1975 for offences under Sections 395, 397, 307 IPC and Section 25 of Arms Act, respectively, Police Station Garotha, District Jhansi.

3. The prosecution case is such that a police party consisting HC Jayatram A.P., C.A.P. Nathuram, C.A.P. Thakur Prasad and Constable Ram Kishan, who were posted for dacoity guard duty at village Tharro, when got a tip off at 11:30 a.m. on 19.01.1975 from Hardass, a village watchman of village Para that 8 to 9 miscreants extorting the passersby near Pearghata at Jhansi. Believing the tip off, the police party has taken Kalka Singh Thakur and Harju Gadaria from village Tharro and also taken the police persons from out post Kakarbai, namely, H.C. 759 C.P. Krishan Pal, C 456 Ram Awdhar, C 507 Mahabir Singh C and 898 Brindavan. They also took Nepal Singh, whom they met in the way to the place of incident Pearghata. The police persons reached the place of incident and saw that 9 persons were extorting passersby. They were seen equipped with one rifle, two SBBL gun, two country made pistols, three axes and one lathi and were spotted making personal search of two persons namely, Lakhan Singh of village Dhanora and Baldev Prasad

Khare, a forest guard. The police party intercepted, one of the miscreants has raised alarm that the police has arrived, on which the miscreants have challenged the police persons and cross-firing begun. After indiscriminate firing on each other, the firing was stopped from the side of accused and two of the accused, namely, Ramphal and Dhuram have surrendered. Rest accused had sprinted away. The incident is of 19th January,1975 occurred at 12:30 p.m. The F.I.R. was registered the next date on 20th January,1975, at 12:15 p.m.

4. The memo of arrest and recovery (Exhibit Ka-1) disclosed that the two accused-appellants, namely, Dhuram s/o Baij Nath and Ramphal s/o Sukh Ram have surrendered before the police party and in their disclosure statements, the name of seven other accused has been mentioned in the memo, they are Hindupat Lodhi, Ramratan, Moolchand Nai, Tijua Teli, Halkua Chamar, Sukhainya Chamar, Ajuddi Chamar, who were stated to be present at the place of incident committing dacoity. It is further disclosed in the memo that Nandram Yadav of village Goti had called them to commit dacoity. From the personal search of Ramphal, the country made pistol 12 bore, two live and five empty cartridges as well as the booty was recovered; whereas from the personal search of Dhuram, jewellery and watch as booty had been recovered.

5. During the investigation, the identification parade of four accused, namely, Ramratan, Hindupat Lodhi, Ramphal and Dhuram has been carried out.

6. After the investigation, the charge sheet is submitted against six accused, namely, Hindupat Lodhi, Ramratan, Ramphal, Dhuram, Sukhainya Chamar and Tijua Teli.

7. It is mentioned in the judgment that Sukhainya Chamar and Tijua Teli, both had been discharged.

8. By the impugned judgment, accused Hindupat Lodhi and Ramratan were not found guilty of offence under Section 395 IPC and they have been acquitted. Accused Ramphal was also not found guilty for offence under Section 25 of Arms Act. Hence, acquitted for the said offence.

9. The learned counsel for the appellant has submitted that there is delay in lodging the F.I.R. The accused, who are only four in numbers, after discharge of two accused out of six, could not be charged for the offence of dacoity. Further submits that the police witnesses were interested witnesses, who have falsely implicated the accused-appellants, because the accused-appellants were sitting in a dhaba and enjoying their tea, when some police persons came there and asked them to leave, on which, there was altercation between the accused-appellants and the police persons, due to which the police persons have falsely implicated the accused-appellants in a false case of dacoity. Further submits that despite firing, no one has suffered any gun shot injury. Though, the accused Ramphal was beaten by the police persons and was injured, but his injuries were shown to be caused due to accidental slip in cross firing. Further submits that the two of the star witnesses, namely, Lakhan Singh and Baldev Prasad Khare, have not been examined in the court, who were spotted being extorted by the accused during the dacoity. The learned counsel has relied on the case of ***Ram Lakhan Vs. State of Uttar Pradesh1*** on the point of trial of less than five accused for offence under Section 395 IPC; the case of J***ackaran Singh Vs. State of Punjab2*** on

the point of recovery; and the case of ***Dilawar Singh Vs. State of Delhi3***, on the point of conviction under Section 397 I.P.C.

10. **Per contra**, learned A.G.A. for State submits that the charge sheet is submitted against six persons. It is the judicial process that the two accused have been discharged and two were acquitted. As such, the trial of offence of dacoity was rightly initiated against the accused. He further submits that the accused-appellant were committing dacoity, who have been identified by the persons of the vicinity and from their possession, the ornaments and watches have been recovered, which were identified by the owners of the articles. He further submits that the prosecution has produced 6 witnesses, namely, P.W.-1 Jayatram Singh, who is the informant and was leading the police party; P.W.-2 Nepal Singh, who is an independent witnesses; P.W.-3 Angad Singh the Investigating Officer; P.W.-4 Meghraj, P.W.-5 Parmeshwari, who have identified their articles recovered from accused; and P.W.-6 Kuldeep Singh, the witness of arrest of Hindupat. The prosecution witnesses have not only proved the documentary evidences, which are the memo of recovery, F.I.R., site plan, memo of identification of accused and booty, but have also proved the material Exhibit Ka.1 to 20, which have been recovered from the accused-appellants. Further submits that the accused-appellants has not led any defence evidence. As such, submits that the appeal deserves to be dismissed.

11. This Court has taken into consideration the rival submissions made by the parties and perused the record.

12. The points of concern in the present appeal are:-

12.1 Whether less than five miscreants could be convicted for the offence of dacoity under Section 395 of Indian Penal Code?

12.2 Whether the single accused-appellant, Ramphal could be convicted under Section 397 of Indian Penal Code for the offence of attempt to cause death or grievous hurt, while committing dacoity although the trial court has acquitted the accused-appellant Ramphal for offence under Section 25 of Arms Act, which implies that Ramphal was not carrying any weapon, which may cause death or grievous hurt?

12.3 Whether the trial court has rightly appreciated the evidence adduced by the prosecution and convicted the two accused-appellants, while acquitted two accused?

13. The points of concern taken hereinabove have been dealt with concomitantly, because the matter is not only about the conviction of two accused-appellants for dacoity, but also about the appreciation of evidence by the trial court.

14. Section 391 of Indian Penal Code, provides the definition of dacoity, reiterates underneath:-

"When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and

persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

The above definition has its genesis from the word robbery defined under Section 390 of Indian Penal Code, which provides that all robbery are either theft or extortion. The definition is provided underneath:-

"390. Robbery."In all robbery there is either theft or extortion.

When theft is robbery."Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery."Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation."The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint. "

15. The prosecution case deals with extortion committed by robbers, who are more than five in numbers. As per prosecution, the number of robbers was nine, against whom the F.I.R. has been lodged.

16. The robbery has allegedly been committed at 12:30 p.m. on 19.01.1975, reflected from Exhibit Ka-2, the first information report lodged by P.W.-1 Jayatram Singh.

17. The initial investigation was conducted by P.W.-3 Angad Singh, who was the first Investigating Officer and prepared the site plan Exhibit Ka-3, he has not conducted subsequent investigation, as the investigation has been transferred to S.O. The prosecution has not produced other Investigating Officer(s), who had conducted subsequent investigation and submitted the charge sheet.

18. The impugned judgment reveals that Sukhainya Chamar and Tijua Teli were discharged by the trial court. This shows that the number of accused, who had to face trial, then became four.

19. On 19.06.1981, two separate charges have been framed against four accused. The accused-appellant Ramphal has been charged for offence under Sections 395, 397 IPC and Section 25(1)(a) of Arms Act, whereas the other accused Dhuram and the two acquitted accused were charged for offence under Section 395 IPC This shows that at the time charge of dacoity and attempt to cause death or grievous hurt while committing dacoity has been framed against four persons.

20. In the case of ***Ram Lakhan (Supra),*** Hon"ble the Supreme Court while allowing the appeal against conviction of the appellant for offence under Section 395 IPC considered that the accused-appellants, who are convicted for dacoity were less than five. The relevant paragraph is reiterated underneath:-

"In this appeal the appellant has been convicted under Section 395, IPC, 1860 and sentenced to 7 years' rigorous imprisonment. In our opinion this appeal must succeed on a short point. It appears from the FIR that only nine persons viz. 1. Ramroop Kurmi, 2. Ramdhoop Kurmi, 3. Rambodh Kurmi, 4. Ram Noker Kurmi, 5. Sampuran Kurmi, 6. Rambachan Kurmi, 7. Ram Lakhan Kurmi, 8. Ram Ujagir Kurmi, and 9. Ram Pyare Kurmi have participated in the dacoity which is alleged to have been committed in the course of which ornaments, grains and other property were looted away. The trial court had acquitted five persons and convicted four. But on appeal the High Court acquitted the remaining three persons and convicted Ram Lakhan the present appellant. The position now is that out of nine persons named in the FIR who are alleged to have participated in the dacoity Ram Lakhan is alone left. Before an offence under Section 395 can be made out there must be an assembly of five or more persons. On the findings of the courts below it is manifest that only one person is now left. In these circumstances therefore the appellant cannot be convicted for an offence under Section 395. The High Court has not found that Ram Lakhan was guilty of any overt act so as to bring his case within any other minor offence. For these reasons therefore the conviction and sentence imposed on the appellant are set aside and he is acquitted of offence charged under Section 395. The appeal is accordingly allowed. The accused is on bail. His bail-bonds are cancelled."

21. In the present case even the charge is framed for dacoity against less than five accused. Therefore, the appeal deserves to be allowed on this ground alone, but the evidence adduced requires further consideration to see whether the accused-appellant could be convicted for minor offence.

22. So far as, the role of accused-appellant Ramphal, for offence of attempt to cause death or grievous hurt by using deadly weapon, is concerned, the trial judge has not convicted the accused-appellant Ramphal for offence under Section 25 of Arms Act on the ground that the prosecution sanction is not a proper sanction to prosecute the accused-appellant for the offence of Arms Act. Hence, acquitted the accused-appellant Ramphal for the offence under Section 25(1)(a) of Arms Act, but during appreciation of evidence, the trial judge has specifically made observation that the accused-appellant Ramphal was carrying a country made pistol, which has been proved by P.W.-1 Jayatram Singh and P.W.-2 Nepal Singh, an independent witness, who was made the witness of recovery of the accused-appellant Ramphal and Dhuram. P.W.-2 Nepal Singh is projected as a public witness, who is an ex-Army man and was taken by the police party, while he was on the way leading to Kotra from Dhanora via Pearghata was made an independent witness. In his examination-in-chief, he has stated specifically that he met the police persons at 11:00 a.m. on the date of incident. He has also stated that in the way, he met two Hawaldars, six constables, Kalika and Harju. He submits that by that time, when he met the police party, the police party was proceeding to arrest the miscreants at Pearghata and he has accompanied them on their request. The trial judge has not taken into consideration a vital point that the tip off was made to the police by one Hardass, who is village watchman of village Para at about 11:30 a.m. stating that 8 to 9

miscreants were robbing the passersby near Pearghata. The time of giving the tip off is specifically mentioned in memo of recovery Exhibit Kha-1 proved by P.W.-1 Jayatram Singh. It is the cross-examination of P.W.-1 Jayatram Singh and P.W.-2 Nepal Singh, which reveals that the place of incident, which is Pearghata, situated at a distance from where the tip off is given. The time of intimation and the time of meeting of Nepal Singh with the police party is inconsistent to each other and shows that Nepal Singh as framed witness., it is also because P.W.-2 stated in cross-examination that there is another way to reach Kotra from Dhanora, via Barmain and Pratappura, on which route Pearghata does not come in way. There is no plausible reply that why this witness has chosen a longer route to reach his house.

23. The prosecution has produced two witnesses, namely, P.W.-4 Meghraj and P.W.-5 Parmeshwari, both are students. They have also stated in their statements that the incident occurred at 11:00 a.m., when their belongings have been looted. They are the witnesses, who have identified their belongings, recovered from the accused. The pant, shirt and socks of Meghraj was identified by him, which is recovered from the accused Ramphal. He has also identified accused Hindupat and Ramphal during the test identification parade carried out at the jail, but the trial judge has acquitted Hindupat and convicted Ramphal. There is nothing in the prosecution case to show that the particulars of pant, shirt and socks mentioned in the memo of recovery, but the same has been identified by the P.W.-4, Meghraj. How the clothes have been identified; what was the colour of the clothes and the size of the clothes is nowhere reflected in the police papers. This shows a sham identification parade of the accused-appellant and the material.

24. Moreover, P.W.-6 Kuldeep Singh, who was made a witness of arrest of Hindupat has turned hostile and denied the arrest in his presence. Moreover, the prosecution has not produced two star independent witnesses, namely, Lakhan Singh and Baldev Prasad Khare, who have been projected as the victims, who have been searched by the accused while committing dacoity and the police has reached there, rescued the two victims and arrested the accused. The victim Lakhan Singh is of village Dhanora and victim Baldev Prasad Khare, is the forest guard. No reason has been attributed for not producing these two star witnesses by the prosecution during the trial. Moreover, in the cross firing between the accused and police persons, neither side suffered gun shot injuries.

25. Even victims from whom their belongings have been looted, did not suffer any injury.

26. It could not be out of place to mention that the site plan of the place of incident of dacoity shows that there is forest on both the sides of road. Out of 9 miscreants, only two accused-appellants have themselves surrendered and have not sprinted away along with the other miscreants, shows substance in the defence taken by the accused-appellants in their statements under Section 313 CrPC, that they were enjoying tea at a hotel and had an altercation with police person due to which they have been framed in a false case of dacoity.

27. In the case of ***Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh4*** Hon"ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one

expressed by trial court, can be taken. The appellate could should not shy away in giving benefit of doubt to the accused.

28. Therefore, the appellants cannot be held guilty for offence of dacoity or any other minor offence and liable to be acquitted for the offence of dacoity and attempt to cause death or grievous hurt, while committing dacoity, as the trial court has incorrectly adduced evidence. Thus, the judgment of conviction dated 24.04.1984 in Sessions Trial No.43 of 1977 (State Vs. Hindupat and others), arose out of Case Crime No.10 of 1975 for offences under Sections 395, 397 IPC, Police Station Garotha, District Jhansi, is set aside.

29. The appeal is **allowed**. The accused-appellants Ramphal and Dhuram are acquitted of offence under Sections 395, 397 IPC. Appellants are on bail. Their bail bonds are discharged. The material Exhibit Nos. 1 to 20, shall be disposed of as per law.

30. Record be remitted back forthwith alongwith the copy of judgment.

(2026) 2 ILRA 1034
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Appeal No. 1550 of 2021

Surajpal **...Appellant**
Versus
State Of U.P. **...Respondent**

Issue for consideration

Matter pertains to offences punishable under Sections 376-D.

Headnotes

Indian Penal Code-Sections 376-D, 506; Protection of Children from Sexual Offences Act, 2012-Section 6 - occurrence was witnessed by younger daughter of the complainant- but she was not examined as a witness - ocular version of the prosecutrix-victim not supported from the medical evidence including the FSL report - no any mark of injury - hymen of the prosecutrix was old torn and healed - clothes worn by the prosecutrix were not collected - evidence adduced by the prosecution itself throws serious doubts - charges against the accused have not been proved beyond shadow of a doubt - false implication -**Appeals allowed.** (E-9)

Case Law Cited

Nil.

List of Acts

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

3. Code of Criminal Procedure

List of Keywords

Ocular version; medical evidence; no mark of injury; old torn and healed; torn clothes were not collected; serious doubts; not proved beyond shadow of a doubt; false implication.

Appearances of parties

Counsel for Appellant(s) : Rajeev Sawhney, Veerendra Singh, Vipin Gangwar
Counsel for Respondent(s) : G.A., Girja Shanker Sen, Krishna Dutt Awasthi.

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Appellants namely, Surajpal and Udai Pal are aggrieved against the judgment of conviction and order of sentence dated 16.12.2020 passed by Additional Sessions Judge, Bareilly in Criminal Case No. 249 of 2020, arising out of Case Crime No. 217 of 2015, registered at Police Station Aonla, District Bareilly, whereby they have been convicted under Sections 376-D, 506 I.P.C., and sentenced to twenty years rigorous imprisonment under Section 376-D I.P.C. alongwith fine of Rs.25,000/- each; three years imprisonment under Section 506 I.P.C. along with fine of Rs.1,000/- each, and in the event of default, they have been ordered to undergo further imprisonment of three months, and fifteen days, respectively. The sentences have been ordered to run concurrently.

2. The subject F.I.R. was registered on the basis of a written complaint dated 9.6.2015 submitted by Dharmpal to Station House Officer Aonla, District Bareilly, who alleged that he is a resident of village Panvariya, Police Station Aonla, District Bareilly. On 8.6.2015 at around 5 p.m., his daughter was bringing fodder from the village, and on the way co-villagers namely, Surajpal s/o Dilsukh and Udai Pal s/o Kannhiya Lal being drunk had pulled his daughter with bad intentions in the fields of Rakesh. They both had forcibly torn the clothes of his daughter and raped her. When complainant's daughter cried and attempted to get herself released, Surajpal gagged her mouth with a cloth and after raping her, they both left his daughter naked in the fields, and also threatened her, if, she would disclose it to anyone, the consequences would be adverse. His daughter wearing torn clothes reached home and narrated the incident to him. The complainant described the age of the victim as 14 years and requested for registering a case. Broadly, on these allegations, F.I.R. bearing Case Crime No. 217 of 2015 was registered against the accused persons for alleged commission of offences punishable under Sections 376(2)(g), 506 I.P.C. and Section 4 Protection of Children from Sexual Offences Act, 2012.

3. After registration of the F.I.R., the investigation in the case was conducted by Investigating Officer namely, Anoop Singh Rathi, Sub Inspector, who recorded the statements of complainant-Dharmpal, his wife-Jeera Devi, prosecutrix and Rakesh. During investigation, the victim's medical report dated 11.6.2015 was collected and site plan was also prepared. The statements of other formal witnesses were also recorded and finally the charge sheet was filed against the accused persons under Section 173(2) Cr.P.C. thereby sending them to face prosecution for commission of offences punishable under Sections 376-D, 506 I.P.C. and Section 6 Protection of Children from Sexual Offences Act, 2012.

4. Thereafter, the case was committed to the Special Court and vide order dated 11.5.2016 the charges against the accused persons were framed for alleged commission of offences punishable under Sections 376, 506 I.P.C. and Section 6 Protection of Children from Sexual Offences Act, 2012. The appellants-accused pleaded not guilty and claimed trial

5. The prosecution in order to prove the guilt of the accused persons had examined seven witnesses namely, Dharmpal (P.W.-1), Victim (P.W.-2), Jeera Devi-mother of victim (P.W.-3), Dr. Shilpi Kesarwani (P.W.-4), Constable Ranveer Singh (P.W.-5), Dr. S.S. Chauhan (P.W.-6) and Investigating Officer Anoop Singh Rathi (P.W.-7). Besides, the prosecution also adduced documentary evidence i.e. written complaint (Exb.Ka-1), statement of victim under Section 164 Cr.P.C. (Exb.Ka-2), medical report (Exb.Ka-3), supplementary medical report (Exb.Ka-4), pathology report (Exb.Ka-5), FSL (Exb. Ka-6), check report (Exb.Ka-7), G.D. entry (Exb.Ka-8), age certificate (Exb.Ka-9), Site Plan (Exb.Ka-10), Charge Sheet (Exb.Ka-11).

6. After completion of the prosecution evidence, the separate statements of accused-appellants were recorded under Section 313 Cr.P.C. on 1.2.2020, who denied the prosecution evidence. However, no defence evidence was adduced by the accused persons. Later, vide order dated 19.10.2020 the charge under Section 376 I.P.C. was altered and substituted with Section 376-D I.P.C.

7. Upon analyzing the prosecution case, evidence and other material on record, the trial court proceeded to convict the appellants-accused under Sections 376-D, 506 I.P.C. and Section 6 Protection of Children from Sexual Offences Act, 2012 and awarded substantive sentence of twenty years rigorous imprisonment. Aggrieved against the judgment of conviction and order of sentence dated 16.12.2020, the appellants preferred these separate appeals.

8. Mr. Rahul Saxena, learned counsel for the appellants assisted by Mr. Vipin Gangwar, Advocate has argued that the alleged occurrence dated 8.6.2015 is proved by three witnesses, who are prosecutrix and her parents, but their testimones contain major discrepancies and the same have been ignored by the trial court while convicting the appellants. Learned counsel submits that according to witnesses, P.W.-1, P.W.-3 (parents of the prosecutrix) and P.W.-2 (prosecutrix), the occurrence was witnessed by younger daughter of the complainant, but she was not examined as a witness. Learned counsel submits that ocular version of the prosecutrix-victim does not find any support from the medical evidence including the FSL report, therefore, under such circumstances it cannot be said that the prosecution has proved the charges against the accused-appellants beyond doubt.

9. Learned counsel for the appellants emphasized that the wife of complainant's nephew namely, Pappu had eloped with appellant-Surajpal, therefore, because of this enmity, the complainant falsely implicated Surajpal and his nephew Udai Pal. According to Mr. Rahul Saxena, learned counsel, the material witness prosecutrix (P.W.-2) admitted in her cross-examination that wife of Pappu (complainant's nephew) had eloped with Surajpal. Besides, learned counsel for the appellants has argued that though according to the prosecution witnesses, the clothes worn by the prosecutrix were torn by the accused persons, but during investigation, no such evidence was collected or produced before the trial court. Learned counsel for the appellants continued to point

out the discrepancies in the prosecution case and finally submitted that the impugned judgment of conviction dated 16.12.2020 has been passed by the trial court by brushing aside the defects in the prosecution case. He prays that the impugned judgment of conviction as well as order of sentence dated 16.12.2020 be set aside, and the appellants be acquitted.

10. On the other hand, Mr. H.P. Gupta, learned A.G.A. assisted by Mr. Sanjeev Kumar Maurya, learned counsel for the complainant has argued that the offence committed by the accused-appellants is serious and the material witness P.W.-2 (prosecutrix) clearly testified to name both the accused persons as well as their involvement in commission of crime against her. Learned counsel for the complainant has argued that the deposition of P.W.-1 and P.W.-3 (parents of prosecutrix) has also supported the prosecution case and merely, because younger sister of the prosecutrix was not examined as a witness, this alone would not be sufficient to doubt the prosecution version. Learned counsel for the complainant has referred to the testimony of P.W.-4 Dr. Shilpi Kersarwani and argued that she proved the medical examination report dated 11.6.2015 (Exb.Ka-3) and according to this witness, she found the evidence of sexual intercourse with the prosecutrix as her hymen was torn. Similarly, learned A.G.A. has also argued on the similar lines to contend that according to P.W.-6 Dr. S.S. Chauhan, the age of the prosecutrix was approximately 16 years, therefore, her testimony alone is enough to hold the accused guilty of the alleged offences committed against her. Lastly, learned counsel for the respondents submitted that the trial court has carefully analyzed the prosecution evidence in a proper manner and rightly drew the conclusion that the prosecution has proved the charges against the accused beyond doubt, therefore, according to learned counsel, the impugned judgment of conviction as well as order of sentence dated 16.12.2020 do not call for any interference by this Court in exercise of appellate jurisdiction. They prayed that both the appeals be dismissed.

11. Learned counsel for the parties have been heard and with their assistance, case file and the trial court record has been perused carefully.

12. According to the complainant-P.W.-1, when his 14 years old minor daughter (prosecutrix) after collecting fodder was returning back home, the accused persons namely, Surajpal and Udai Pal waylaid and dragged her in the fields of Rakesh and raped her in a pit. The alleged occurrence dated 8.6.2015 was reported to the police on 9.6.2015 by P.W.-1 through written complaint, and the entire case of the prosecution rests on the testimony of three witnesses i.e. complainant (P.W.-1), prosecutrix (P.W.-2) and mother of prosecutrix (P.W.-3). According to these material witnesses, the occurrence took place at 5 p.m. in an open place and Dr. Shilpi Kesarwani was examined as P.W.-4, who had medically examined the prosecutrix and proved the medical report (Exb.Ka-3). Mr. Ranveer Singh (P.W.-5) is a formal witness, who had registered the F.I.R. whereas Dr. S.S. Chauhan (P.W.-6) gave medical opinion (Exb. Ka-9) about the age of the prosecutrix as approximately 16 years. Mr. Anoop Singh Rathi (P.W.-7) is the investigating officer, who conducted the investigation and collected evidence during investigation and finally submitted the charge sheet (Exb.Ka-11) against the accused persons.

13. The entire case of the prosecution is to be tested on the strength of the material witnesses P.W.-1, P.W.-2 and P.W.-3, and amongst them, the prosecutrix (P.W.-2) is the prime witness against whom the alleged crime was committed. A perusal of the deposition of P.W.-2 would show

that she was accompanied by her younger sister-Shyamwati when the accused committed the crime, and according to the deposition of prosecutrix, the accused persons before committing rape had tied her sister. Thus, the sister of the prosecutrix was an eye witness, but strangely neither she was associated in investigation nor was later summoned as a prosecution witness to lend strength to the version of her elder sister (P.W.-2). The evidence on record including the testimony of investigating officer does not offer any explanation for not relying upon the material eye witness-Shyamwati.

14. Further, according to prosecutrix (P.W.-2), the clothes (Salwar, Kameej and Dupatta) worn by her were torn by accused persons before she was raped by both the accused. The prosecutrix in her deposition clearly mentioned that as a result of commission of crime by Surajpal, she had suffered injuries on her chest and back resulting in bleeding also, who further stated that the rape by Udai Pal too resulted in more injuries of similar nature to her. At this juncture, this Court deems it appropriate to analyze the medical evidence adduced by the prosecution to ascertain, if, it supports the prosecution case, but a reading of the medical examination report dated 11.6.2015 (Exb. Ka-3) does not indicate any mark of injury suffered by prosecutrix (P.W.-2). That apart, it also reveals that the hymen of the prosecutrix was old torn and healed.

15. A perusal of the evidence of Dr. Shilpa Kesarwani (P.W.-4) makes it abundantly clear that the prosecutrix had not suffered any injury as deposed by her. Thus, the contradiction between ocular version and the medical evidence also raises doubt in the prosecution case.

16. Most importantly, the clothes worn by the prosecutrix on the day of occurrence, which were torn by the accused persons were not collected by the Investigating Officer during investigation. According to prosecutrix (P.W.-2), she had left the torn clothes at the place of occurrence, who went back home naked and on the way, she was seen by approximately ten to twenty persons. As per the deposition of P.W.-1, the house of the prosecutrix is situated at a distance of 125 meters from the place of occurrence, therefore, it does not appeal to prudence that if, actually her younger sister accompanied her, she would not make any effort to cover the naked body of her elder sister.

17. The witnesses (P.W.-1 and P.W.-3) are at a variance with the version of prosecutrix as far as the clothes of the prosecutrix are concerned, who deposed before the trial court that she returned home wearing torn clothes. The investigating officer stated that the torn clothes of the prosecutrix were not handed over to him despite asked by him, therefore, this major discrepancy in the prosecution case also questions the truthfulness of the prosecution case.

18. The parents of the prosecutrix, who were examined as P.W.-1 and P.W.-3 are not the eye witness of the occurrence as they came to learn about the incident from the victim. Obviously, the place of occurrence was also not known to the complainant, but strangely the site plan (Exb.Ka-10) was prepared by Investigating Officer when he visited the spot with complainant (P.W.-1), and it is nowhere stated by him that he had earlier seen the place of occurrence with her daughter or her daughter had explained him about the place of occurrence. Besides, a careful look at the site plan (Exb.Ka-10) clarifies that point-B wherefrom the prosecutrix was pulled by accused persons is situated on a Kaccha thoroughfare connecting with the main road, and was taken to point-A-the pit

where rape was committed. It is also mentioned in the site plan that the distance between two points B and A is ten steps, and as per P.W.-3 the people would often roam around near Kaccha thoroughfare, therefore, it is not believable that the crime committed by accused went unnoticed. Although, it is the case of the prosecution as well as prosecutrix that her younger sister was accompanying her when accused persons committed the crime, but the site plan does not at all indicate the spot where the younger sister was tied by the accused persons before committing the crime.

19. Thus, in view of the above discussions, this Court has no hesitation in holding that the evidence adduced by the prosecution itself throws serious doubts on this case and the charges against the accused have not been proved beyond shadow of a doubt. At this juncture, this Court finds that the defence set up by the accused that the complainant falsely implicated them in the case, because Surajpal had eloped with Pooja, wife of Pappu (complainant's nephew) seems probable as the suggestion in respect of elopement is admitted by prosecutrix in her cross-examination.

20. Now while examining the prosecution case conversely, it also becomes clear that the prosecution evidence on record is not at all inconsistent to the innocence of the accused persons. A perusal of the impugned judgment of conviction and order of sentence dated 16.12.2020 would show that the trial court has failed to appreciate the prosecution evidence in a proper manner by ignoring the material discrepancies in the prosecution case, therefore, it would be unsafe to maintain the conviction of the appellant.

21. Resultantly, the appeals succeed and the impugned judgment of conviction and order of sentence dated 16.12.2020 are hereby set aside, and the appellants Surajpal and Udai Pal are acquitted of all the charges. The accused-appellants are in jail, who shall be set free immediately, if, not required in any other offence/case.

22. The appeals are allowed. Record and proceedings be sent back to the trial court forthwith.

(2026) 2 ILRA 1039
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE CHAWAN PRAKASH, J.

Criminal Appeal No. 1565 of 1987

Achhaibarrs & Ors. **...Appellants**
Versus
State Of U.P. **...Respondent**

Issue for consideration

Effect of defects in investigation on the Trial and final judgment.

Headnotes

Indian Penal Code-sec. 302- gruesome murder - postmortem report-nine injuries- clot in the skull-evidence of PW-2, PW-3 and PW correctly marshalled and assessed by the learned Trial Court. Held, for certain defects in investigation, the accused cannot be acquitted- prosecution has successfully proved its case beyond all reasonable doubt. **Appeal dismissed.** (E-9)

Case Law Cited

1. State of Rajasthan Vs. Kalki (1981)2 SCC 752
2. State represented by Inspector of Police Vs. Saravanam and another, (2008) 17 SCC 587
3. State of U.P. Vs. M.K. Anthony, (1985)1 SCC 505
4. Shivaji Vs. State of Maharashtra, AIR 1973 SC 2622
5. Edakkandi Dineshan alias P. Dineshan and others Vs. State of Kerala, (2025) 3 SCC 273
6. Krishnappa Vs State of Karnataka (2012) 11 SCC237
7. Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel (2018)7 SCC 743
8. Krishnappa Vs State of Karnataka (2012)11 SCC 237
9. Nitya Nand Vs. State of U.P. (2024)9 SCR 37

List of Acts

Indian Penal Code, 1860

List of Keywords

Member of an unlawful assembly; vicarious liability; gruesome murder; Severity of injuries; brutality of the attacks.

Appearances of parties

Counsel for Appellant(s) : Jaiprakash Narain Raj, Kamleshwar Singh, Pramod Shukla Counsel for Respondent(s) :A.G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. This criminal appeal has been filed against a judgment dated 27.05.1987 and order dated 01.6.1987 passed by the learned Sessions Judge, Basti in ST No. 184 of 1985, under Sections 147, 148 and 302/149 IPC, police station Bakhira, district Basti, whereby the learned Sessions Judge convicted and sentenced all the appellants namely Achhaibar (Ram Achhaibar), Phoolman, Sanwarey, Rajendra and Ram Dass to imprisonment for life under Section 302 read with Section 149 IPC. Accused Achhaibar, Ram Dass, Phoolman and Sanwarey were further convicted under Section 147 IPC and sentenced to one year"s rigorous imprisonment, whereas accused Rajendra was convicted and sentenced to two years rigorous imprisonment under Section 148 IPC.

2. However, all the sentences were directed to run concurrently.

Brief Facts

3. The facts that formed the bedrock of the present appeal, in short compass, are that a written report was given by the first informant Smt. Murta, wife of Bideshi Kurmi, resident of village Gajauli at the police station Bakhira at 09:30 hrs on 07.04.1985 mentioning therein that in the previous night, her husband after taking meals slept in the Khalihan in his portion of the land

(Chak). By the side of Chak, she also slept under a Chhappar. Her daughters were in her dwelling house in the village. Her Chak is adjacent to the west of Abadi. She and accused-Acchaibar resided in the same house on separate portion on account of private partition. Accused-Rajendra, son of Ram Dass alias Lalla resided in the adjacent house. The FIR further alleges that Chhappar of her house was pulled down for being repaired and replaced. At that time, there had been some altercations between her husband on one side and Acchaibar and his two sons Sanwarey and Phoolman on the other. Supporting the accused persons, Rajendra and his father Lalla also came there, abused and threatened her husband of dire consequences. Today at about 03:00-03:30 AM all the aforementioned accused persons came to her husband at Khalihan and started assaulting him by lathi and knife. On the painful cries of her husband, she woke up, rushed to the spot and raised an alarm for rescue. Naresh, son of Banshraj and Ram Shankar, son of Ganga , who were in the nearby field and Khalihan and some other persons of the village reached the spot. On arrival and challenged by the witnesses, the accused persons left the place abusing and extending threats. Accused-Rajendra was armed with knife whereas accused-Achhaibar, Sanwarey, Phoolman and Ram Dass were armed with lathis. Due to fear, they could be chased and they managed to escape. The accused were seen and recognized by the witnesses in the moonlit night. Leaving the dead body on the spot, she submitted written report at the police station Ext. Ka-2.

4. On the basis of the aforesaid report, a case was registered at case crime No. 57 of 1985, under sections 147, 148, 149 and 302 IPC, police station Bakhira, district Basti, Ext. Ka-3, which was entered in GD vide report No. 12 at 09:30 hours by Head Moharrir PW-5, Ram Jatan Chaudhary.

5. After the registration of the first information report, the law set into motion and investigation of the case was entrusted to PW-8, SI Vijai Pratap Singh. He reached the place of occurrence at 11:05 AM and found the dead body of Bideshi (hereinafter referred to as "the deceased) lying in his Chak in village Gajauli towards west. In that Chak a portion of the land was a Khalihan and in that Khalihan there was kooty (straw). The dead body was lying on that kooty. The wife of the deceased, who is the first informant of the case, was also there by the side of the dead body along with Chaukidar Ram Raj. He took the dead body in his possession and conducted inquest, Ext. Ka-8. He also prepared photo Lash and Challan Lash, Ext. Ka 9 and 10. He also prepared letter to CMO for postmortem. Thereafter the investigating officer handed over the dead body in sealed cover to Constables Rajendra Pratap Yadav and Sangram Prasad along with relevant documents including copy of the FIR and sample seal. On the pointing out of the first informant Smt. Murta and the witnesses, he inspected the spot and prepared site plan, Ext. Ka 14. He found blood on the spot on the heap of fresh kooty of wheat. He took sample of it and ordinary kooty (straw), put them in sealed cover and prepared memos thereof as marked as Ext. Ka-15. He also found blood on Kathri. He took a piece of bloodstained Kathri and quilt, put them in sealed cover and prepared memo Ext. Ka-16 and sent all these bloodstained articles to the Forensic Science Laboratory, Agra. He also recorded the statement of the first informant at the place of occurrence.

6. On 08.04.1985, the investigation of the case was taken over by the Station House Officer, SO Jai Prakash Mishra.

7. PW-7, Station House Officer Jai Prakash Mishra recorded the statements of witnesses Naresh and Ram Shankar etc. On 08.4.1985 On the information of the informer, he arrested the accused Achhaibar by the side of brick kiln of Sami Ullah. The accused was having fresh blood stains on his Dhoti and Banyan. He had blood stains on his lathi also. He took all these articles into custody and prepared memo Ext. Ka.5. Those articles, i.e. Dhoti, Bandi and piece of lathi are Ext. 1, 2 and 3. On 10.04.1985, he reported the matter to the Court for initiating proceedings under Section 82/83 against rest of the accused. On 12.04.1985, he raided the place of accused persons, but they could not be arrested. On 13.04.1985, he arrested accused-Rajendra, who confessed to his crime and agreed to get the weapon of assault recovered. Thereafter, he was brought to his house by the police where he took out the knife from Khaprail and handed over the same to the police, Ext. Ka-61. The shirt which was worn by the accused Rajendra was also having blood stains. He took into custody the same and prepared memo thereof Ext. Ka-5 and sent it to the Forensic Science Laboratory, Agra.

8. After culmination of investigation, the investigating officer submitted charge sheet against the accused Achhaibar, Sanwarey, Phoolman, Rajendra and Ram Dass.

9. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 184 of 1985. Learned Sessions Judge, Basti framed the charge against the accused Achhaibar, Sanwarey, Phoolman, Rajendra and Ram Dass under Sections 147 and 302 read with section 149 IPC. Accused Rajendra was further charged under Section 148 IPC. The charges were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

10. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as eight witnesses of facts, out of whom PW-2, Smt Murta (the first informant of the case), PW-3 Shankar, PW-4 Ram Naresh and PW-6 Iqbal Husain are the witnesses of facts, whereas PW-1, Dr. P.N. Bansal, who conducted autopsy on the cadaver of the deceased, PW-5, Head Constable 69 Ram Jatan Chaudhary, Chik writer of the FIR, PW-7, SHO Jai Prakash Mishra, the second investigating officer and PW-8, SI Vijay Pratap Singh, who started the investigation, were formal witnesses.

11. PW-1, Dr. P.N. Bansal conducted autopsy on the cadaver of the deceased at 04:00 PM on 08.04.1985, which was brought by Constables Rajendra Prasad Yadav and Sangram Prasad in a sealed condition. On external examination, doctor found the age of the deceased about 55 years. Between the time of death and conducting postmortem examination is about 36 hours. The deceased was a man of average build. Rigor mortis had passed of the upper and lower limbs of the body. Doctor found the following ante-mortem injuries.

1. Lacerated wound 6 cm x 4 cm x bone deep left side face about 3 cm lateral to chin, underneath mandible broken into multiple pieces.

2. Lacerated wound 4 cm x 3 cm x bone deep at the lower lip tooth underneath broken and coming out, underneath mandible broken into multiple pieces.

3. Lacerated wound 4 cm x 3 cm x bone deep upper lip, underneath tooth coming out and upper joint broken into pieces.

4. Punctured wound 4 cm x 1 cm bone deep right side face near the root of the nose, underneath bone broken.

5. Punctured wound 4 cm x 2 cm x bone deep left side forehead on left eyebrow, underneath orbit. Parietal bone fractured into pieces.

6. Lacerated wound 4 cm x 2 cm into bone deep right side forehead 2 cm above the root of nose, underneath bone broken into multiple pieces.

7. Punctured wound 4 cm x 3 cm x bone deep right side forehead, right eyebrow orbit and parietal bone broken into multiple pieces.

8. Multiple abraded contusions 15 cm x 10 cm right side face downwards 4 cm below the eye and just below the right ear.

9. Multiple abraded contusion 20 cn x 12 cm left side face just below the left ear and 5 cm below the left eye.

12. On internal examination, doctor found blood clot in the skull. Membranes congested and lacerated. Blood clot present, brain congested, lacerated and blood clot present, mouth, teeth and tongue broken, stomach contained semi digested rice food material. In the opinion of the doctor, the deceased died as a result of shock and hemorrhage on account of ante mortem injuries. In the opinion of the doctor, injuries No. 4, 5 and 7 could have been caused by sharp edged weapon. Remaining injuries could have been caused by giving lathi blow by back side (Hura) of lathi or some other blunt object. He also opined that deceased died after 4-5 hours of taking food.

13. PW-2, Smt Murta, who is the first informant and wife of the deceased, in her examination-in-chief, which was recorded on 02.07.1986, stated that Sheo Saran, Surajbali and Jai Karan are real brothers. Bideshi is the son of Sheo Saran whereas Achhaibar is the son of Surajbali. Achhaibar"s sons are Phoolman and Sanwarey. Jai Karan"s son is Ram Dass and Ram Dass"s son is Rajendra. PW-2, Smt Murtha has further stated that she has only one son and two daughters. She has ancestral house in the village. In that house she along with her family (including the deceased), Surajbali and Jai Karan along with their family reside in separate portion. Two days prior to the murder of her husband, the roof of portion of the house of the deceased was pulled down for being thatched again. At that time there had been some altercation between the accused persons and the deceased, thereupon the accused threatened the deceased of dire consequences. The accused persons do not want to give share to the deceased in the house. At a distance of about two bighas towards the west, she had a Chak of three bighas. In that Chak, she had made a Madai, which does not have any door. More than a year before the date of occurrence, the deceased after doing work, slept on Khalihan. Inside the Chappar, she was also sleeping. This witnesses further stated that she along with her husband-deceased worked in Khalihan up to mid-night and thereafter they slept after taking food. It was a moonlit night. Deceased had taken rice, pulse and Chokha of Aalu. At about

2:00 AM, accused persons Lalla alias Ram Dass, Phoolman, Sanwarey, Achhaibar and Rajendra came there. Rajendra was armed with knife and rest of the accused persons were having lathis. Achhaibar overpowered her husband and sat over his chest, Rajendra assaulted him with knife whereas Sanwarey, Phoolman and Lalla assaulted with the back (end side) of lathis. On an alarm being raised by her, witnesses Shankar and Naresh rushed to the spot. On seeing the witnesses coming towards the place of occurrence, the accused persons after killing her husband fled away. Her husband died at the spot. In the early morning, village Pradhan, Chaukidar and several persons of the village came there. She got the report of the offence written by Iqbal Husain, Pradhan, who read over the same to her, on which she put her thump impression and sent the same to the police station through Shankar.

14. PW-3, Shankar, in his examination-in-chief, which was recorded on 08.07.1986, deposed that his house is at a distance of about 25 kaththas towards east from the Khalihan of the deceased. Between his house and the Khalihan of the deceased, there is no house. About 1-1/2 years back at about 3:00 AM, he was lying in his Khalihan, which is situated in front of his house and is at a distance of 35 Kathas from the Khalihan of the deceased. On hearing the shrieks of Smt. Murta that they were killing, he rushed to the Khalihan of the deceased . He was about 3 Kaththas from that place and saw the accused-Rajendra with knife and Achhaibar, Sanwarey, Phoolman and Ram Dass with back (end side) of lathis were assaulting the deceased. It was a moonlit night. The wife of the deceased was crying. Ram Naresh had also reached there. By the time they had reached the place two kaththas from the place of occurrence, the accused persons after killing the deceased fled away towards north. He was having a torch and was flashing it. Then, in the early morning when the persons of the village collected there, wife of the deceased got the report of the incident scribed by Pradhan, which was handed over to this witness for giving it to the police station. Accused and the deceased were living in the same building. They are residing separately on the basis of private partition. Three days" prior to the occurrence, the deceased had pulled down a portion of his roof (Khaprail) for being repaired. On that date accused persons had abused and threatened the deceased of dire consequences. He was present there at that time. By the time, when he reached near the deceased, he was dead.

15. PW-4, Ram Naresh, in his examination-in-chief, which was recorded on 09.07.1986, deposed that deceased was killed about 1-1/2 years ago. It was the season of harvesting and the month of Chaitra. He was sleeping in the field in the night. On that date, he had harvested crop and for the protection of that crop, he was sleeping there. At about 3:30 AM, wife of the deceased raised alarm "Bachao Bachao". He had not slept by that time. He responded to the call and went to the spot. On reaching there, he saw the deceased lying in his Khalihan on Kooty and wheat and accused Rajendra by knife, Ram Dass, Phoolman, Sanwarey and Achhaibar with the back (end side) of lathis were assaulting the deceased. It was a moonlit night. Shankar had also reached the spot. When he reached the place and was at a distance of about 1-1/2 kaththas from the deceased, the accused after killing the deceased fled away. He had a torch in his hand. He wanted to chase them, but on account of fear of knife and lathis, he did not chase them. After the accused left the place of occurrence, he saw that the deceased had died. The field in which he was sleeping at that time is at a distance of 20-25 Kaththas towards south-west from the place of occurrence.

16. PW-5, Head Constable Ram Jatan Chaudhary, in his examination-in-chief deposed that on 07.04.1985, he was posted as Head Muharrir at police station Bakhira. On that date he had prepared Chik FIR, Ext. Ka-3 on the report brought by Shankar lal, which was entered in GD vide report No. 12 at 09:30 hours.

17. PW-6, Iqbal Husain in his examination-in-chief, which was recorded on 18.07.1986, deposed that he is the Gram Pradhan of Gajrauli. The village where he lives and village Gajrauli come under the same Gram Sabha. In the morning of 07.04.1985, on the dictation of Smt. Murta, wife of the deceased, he wrote and read over the report, on which after putting her signature, she had given it to Shankar for being handed over at the police station. Daroga Ji (police inspector) came to village and conducted inquest, on which he also put his signature. The Police Inspector also collected bloodstained wheat Kutty, simple Kutty, bloodstained kathri, Rajai (quilt) and Taat and made memos thereof, on which this witness also put his signature.

18. The evidences of PW-8, SI Vijay Pratap Singh, who conducted initial investigation and PW-7, SO Jai Prakash Mishra, who conducted remaining investigation and submitted charge sheet, have already been discussed above.

19. After the closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. in which all the accused persons have denied the charges and stated that witnesses are deposing against them due to enmity. However, they claimed to be tried.

20. Accused-Achhaibar further stated that he was arrested from his house and police took his shirt. Lathi was not recovered from him. He also stated that when he was arrested, police had sprinkled nail polish on his shirt.

21. Accused in his defence has also produced one Raja Ram as DW-1.

22. DW-1, Raja Ram, in his examination-in-chief has deposed that he lives in village Gajrauli. Accused and the first informant also live in the same village. Police has not recovered any knife from the accused. Police came to the village and took his thumb impression on a blank paper.

23. Learned Sessions Judge, Basti after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

24. Hence, this appeal.

25. Pursuant to the order of the Court 09.09.2025, appeal filed on behalf of appellant Nos. 1, 4 and 5 namely Achhaibar (Ram Achhaibar), Rajendra and Ram Dass stand abated, whereas vide dated 13.01.2025, appeal on behalf of Appellant No. 2, Phoolman stand abated.

26. Now, this Court is deciding the appeal on behalf of appellant No. 3, Sanwarey.

Submissions on behahlf of the appellants

27. Learned counsel for the appellants submits that there are material contradictions in the statements of the witnesses.

28. Learned counsel for the appellant further submits that PW-3 Shankar and PW-4, Ram Naresh deposed that they were having torch, but no memo was prepared by the investigating officer.

. Learned counsel for the appellants also submits that Investigation is tainted inasmuch as the investigating officer in his deposition submits that when he arrested the accused Rajendra, blood was found on his clothes, whereas in the report of the Forensic Science Laboratory, Agra no blood was found on his shirt, which belied the whole prosecution story.

30. Learned counsel for the appellant lastly submits that accused-Rajendra was assigned the role of causing injuries with knife whereas the present appellant was assigned lathi and most of the injuries were caused by knife and, therefore, the appellant cannot be held responsible for the injuries resulting in the death of the deceased.

31. The incident took place in the night and there was insufficient light to recognize the accused.

Submissions on behalf on the State

32. On the other hand, learned Additional Government Advocate submits that the contradictions pointed out by the learned counsel for the appellant is very trivial in nature. Learned Additional Government Advocate further submits that non-making of memo of the torch, which PWs 3 and 4 were having at the time when they reached at the spot is the lapse on the part of the investigating officer, the benefit of the same cannot be extended to the accused.

33. He also pointed out that the appellant was armed with lathi and most of the injuries were caused by lathis. He also submits that since, it was the moonlit night, the accused could be easily identified by the witnesses.

34. Heard Sri jai Prakash Narain Raj, learned counsel appearing on behalf of the appellant, Sri S.N. Tewari, learned AGA appearing on behalf of the State and perused the evidences on record.

Analysis and Conclusion

35. The first contention of learned counsel for the appellant is with regard to contradictions in the statement of PW-2 Smt Murta and PW-3, Shankar and PW-4 Ram Naresh. The contradictions pointed out by the learned counsel for the appellant is that PW-1, Smt. Murta in her deposition has stated that accused Achhaibar sat on the chest of the deceased and accused Rajendra was assaulting the deceased with knife, Sanwarey, Phoolman and Lalla with the back (end side) of lathis, whereas PW-3 Shankar and PW-4 in their deposition have not stated that on hearing the shrieks of Smt. Murta, when they rushed to the spot, they saw that accused-Rajendra was assaulting the deceased with knife, whereas accused Achhaibar, Sanwarey, Phoolman and Ram Dass were assaulting the

deceased with lathis. We have perused the deposition of PW-1, Smt Murta and PW-3, Shankar and PW-4, Ram Naresh. PW-1, Smt Murta in her deposition stated that accused Achhaibar sat on the chest of the deceased, but that does not mean that he was only sitting on the chest of the deceased, but what she wants to depose is that the deceased was overpowered by the accused-Achhaibar and this Court failed to notice any contradictions in their deposition.

36. Moreover, in the depositions of witnesses there may always be some normal discrepancies. These discrepancies are due to lapse of time and mental disposition such as shock and horror at the time of the occurrence. Material discrepancies are those which are not normal and go to the root of the prosecution case and not expected of a normal person. Therefore, such a minor contradiction pointed out by the learned counsel for the appellant is of no help to the appellant. Further the discrepancies pointed out by the learned counsel for the appellant is very trivial in nature, which does not, in any way, affect the foundation of the prosecution case.

37. In **State of Rajasthan Vs. Kalki (1981)2 SCC 752**, High Court of Rajasthan acquitted the accused on the grounds that PW-1 was highly interested witness because she is the wife of the deceased and that there was discrepancies in her statement. Against the order of High Court, State of Rajasthan preferred a Criminal Appeal. Hon'ble Supreme Court set aside the order of the High Court and convicted the accused. The Court in paragraphs 5, 6 and 7 held as under:

5. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

6. The second ground on which the High Court refused to place reliance on the evidence of P.W. 1 was that there were "material discrepancies". As indicated above we have perused the evidence of P.W. 1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not

expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1.

7. Learned counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice."

38. In **State represented by Inspector of Police Vs. Saravanam and another, (2008) 17 SCC 587, H**on'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

39. In **State of U.P. Vs. M.K. Anthony, (1985)1 SCC 505**, Hon'ble Supreme Court held as under:

"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 scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs 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. 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. 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. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

40. Further, we find that PW-2, Smt. Murta, who is the first informant of the case is illiterate and rustic villager as is evident from her deposition that got the report scribed by PW-6, Iqbal Husain and put her thumb impression thereon. Therefore, such a trivial contradictions is of no help to the appellant.

41. Hon'ble Supreme Court in **Shivaji Vs. State of Maharashtra, AIR 1973 SC 2622,** held thus:

"The scene of murder is rural, the witnesses to the case are rustic and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumption about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of various witnesses, we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishment in essential parts cannot mitigate against the veracity of the core of the testimony provided there is impress of truth and conformity of probability in the substantial fabric of testimony delivered."

42. Second argument of learned counsel for the appellant is concerned that PW-3 Shankar and PW-4, Ram Naresh deposed that they were having torch, but no memo was prepared by the investigating officer, it has no leg to stand inasmuch as if the accused had used a torchlight or if the victim had a torchlight with him during the occurrence, or the witnesses had stated that they saw the accused or the occurrence in the torchlight, there would be force in insisting that the investigating officer should have seized it as the same could be used as a material object during trial. In the present case, PW-3, Shankar and PW-4 Ram Naresh have only stated that they were having torch and at no point of time they have stated that in the torchlight they saw the accused. Therefore, non-seizure and non-making of memo cannot be considered as lapse on the part of the investigating officer.

43. Next argument of learned counsel for the appellant is that the investigation was tainted. It is to be mentioned that in the present case, as per report of the Forensic Science Laboratory, Agra dated 13.08.1986, no blood was found on on the Baniyan of accused Achhaibar and on the shirt of accused Rajendra. In his statement under Section 313 Cr.P.C. accused Achhaibar has stated that nail polish was sprinkled over his clothes. This fact has not been put to the investigating officer in his cross examination. Merely because, the Forensic Science Laboratory has opined that on the Baniyan of the accused-Achhaibar no blood was found, it cannot be said that the investigation was tainted particularly when the material on record shows that there had been some sorts of stains on the clothes of Achhaibar at the time of his arrest. Prosecution called those spots on the clothes as bloodstained whereas the accused-Achhaibar stated that nail polish was sprinkled over his clothes by the police at the time of his arrest.

44. Further, Dhoti of the accused, which was taken into possession by the investigating officer and was sent for chemical examination, benzidine test was found positive. Moreover, knife and part of lathi, on benzidine test were found positive. As the versions of the eyewitnesses in specially naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to bring home the guilt of the accused persons. When the testimony of PW-2, Smt.

Murta, PW-3, Shankar and PW-4 Ram Naresh is seen cumulative, their versions can be seen to be corroborating each other. Therefore, it cannot be said that the investigation was tainted.

45. It is settled proposition of law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions of the Hon'ble Supreme Court.

46. In **C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 563** the following discussion and conclusion are relevant which are as follows:

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

47. In **Dayal Singh v State of Uttaranchal,** (2012)8 SCC 263 while reiterating the principles rendered in **C. Muniappan (supra),** the Apex Court held thus:

"Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. ..."

In Gajoo v State of Uttrakhand4, while reiterating the same principle again, the Apex Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

48. In **Edakkandi Dineshan alias P. Dineshan and *others Vs. State of Kerala,*** (2025) 3 SCC 273**,** Hon'ble Supreme Court after considering a catenal of judg;ement on the point held as under:

"Hence, the principle of law is crystal cler that on account of defective investigation the benefit will ot inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the

version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons."

49. The last limb of argument of learned counsel for the appellant is that accused-Rajendra was assigned the role of causing injuries with knife whereas the present appellant along with others accused were assigned lathi and most of the injuries were caused by knife and, therefore, the appellant cannot be held responsible for the injuries caused by lathis. This argument of learned counsel for the appellant is totally mis-conceived and has no leg to stand.

50. In the postmortem report nine injuries were noted by the doctor. On internal examination, doctor found clot in the skull. Membranes congested and lacerated. Blood clot present, brain congested, lacerated and blood clot present, mouth, teeth and tongue broken. Doctor specifically opined that except Injury Nos. 4, 5 and 7, rest of the injuries have been caused by giving lathi blow or by some blunt object.

51. Furthermore, the appellant has been roped in this case by virtue of Sections 148 and 149 IPC. He was a part of the unlawful assembly which had the common object of eliminating Bideshi (deceased) by means of criminal force and, therefore, being a member of the unlawful assembly, he was also guilty of the offence committed in prosecution of the common object, i.e. the offence under Section 302 IPC.

52. At this juncture, we would briefly survey the relevant legal provision.

Section 141 IPC defines unlawful assembly. It says that an assembly of five or more persons is designated as unlawful assembly, if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.

Section 148 IPC deals with rioting armed with deadly weapon. It says that whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description fora term which may extend to three years, or with fine, or with both.

Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC further says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

53. Thus, it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302/149 IPC.

54. In **Krishnappa Vs State of Karnataka (2012) 11 SCC237**, Hon'ble Supreme Court held thus:

"It is now well settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not."

55. Hon'ble Supreme Court in ***Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel (2018)7 SCC 743,*** reiterated the decision that Section 149 does not create separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. The Court further held as under:

"In cases where a large number of accused constituting an unlawful assembly are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 IPC is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justified. The mere presence of an accused in such an unlawful assembly is sufficient to render him vicariously liable under Section 149 IC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime."

56. The aforesaid decisions in **Krishnappa Vs State of Karnataka (2012)11** SCC 237 and **Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel (Supra)** have been followed by Hon'ble Supreme Court in **Nitya Nand Vs. State of U.P. (2024)9 SCR 37.**

57. So far as the last limb of argument of learned counsel for the appellant that the incident took place in the night and there was insufficient light to recognize the accused, is concerned, it may be noted that PW-2, Smt. Murta, in her examination-in-chief has clearly stated that it was a moonlit night. Further PW-3 Shankar in his cross-examination has stated that he was able to see the accused without torchlight. PW-4, Ram Naresh in his cross examination has stated that when he reached near the place of occurrence, he saw that accused were assaulting the deceased. Moreover, PW-2, Smt. Murta, the first informant, PW-3, Shankar and PW-4, Ram Naresh and all the accused persons are either relatives or living in the same village and they were familiar to each other. Since, the witnesses were familiar to the accused, there was no difficulty for them to identify the accused.

58. Hon'ble Supreme Court in **Anwar Hussain Vs. State of UP,** AIR1981 SC 2071 held as under:

"Even if there is insufficient light, a witness can identify a person, with whom he is fairly acquainted or is in intimate terms. From his voice, features etc. Therefore, there is nothing to discard the evidence of PW-8 so far as his claim to have recognised the appellant is concerned."

59. In **Dalbir Singh Vs. State of Haryana, (2008) 11 SCC 425,** it was observed by the Hon'ble Apex Court that it would be possible for a witness to identify an assailant in insufficient light from his voice, gait, features etc. with whom he was fairly acquainted or was in intimate terms.

60. In view of the above, the contention of learned counsel for the appellant that there was insufficient light to recognize the appellant has no leg to stand.

61. It was a gruesome murder. Perusal of postmortem shows that the deceased was mercilessly attacked. Severity of injuries clearly demonstrate the brutality of the attacks.

62. We have carefully scrutinized and examined the evidence of PW-2, Smt Murta, PW-3 Shankar and PW-4 Ram Naresh and we find that they have been correctly marshalled and assessed by the learned Trial Court.

63. In view of what has been indicated above, we are of the view that the prosecution has successfully proved its case beyond all reasonable doubt against all the accused-appellants.

64. Accordingly, the criminal appeal is dismissed.

65. The appellant Sanwarey is on bail. His bail bond is cancelled and sureties are discharged. He is directed to surrender before the Court concerned within four weeks to serve out the sentence awarded to him by the learned Trial Court.

66. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 2 ILRA 1053
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MADAN PAL SINGH, J.

Criminal Appeal No. 1597 of 2020

Raees Ahmad @ Raesu **...Appellant**

Versus

State Of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether conviction of the appellant could be sustained solely on the basis of a dying declaration, when prosecution witnesses had turned hostile and the dying declaration itself was allegedly recorded not on the direct statement of the victim but on the narration of an unidentified relative, and such circumstance was not put to the accused under S. 313 Cr.P.C. (Paras 28-30)

Headnotes

Criminal Law - S.s 302/34, 326A/34, 342 and 201 IPC - Conviction based on circumstantial evidence and dying declaration - Reliability - Victim not in a position to speak - Statement recorded through relative - Name and identity of relative not disclosed - Evidentiary value doubtful. (Paras 15-16, 29-30)

Criminal Law - Hostile witnesses - Prosecution witnesses including informant, relatives and ambulance driver turned hostile - No direct or circumstantial evidence except dying declaration. (Paras 7-11, 17, 28)

Evidence - Dying declaration - Must be voluntary, truthful and recorded in conscious state - Recording through third person renders it unreliable. (Paras 29-30)

Criminal Procedure - S. 313 Cr.P.C. - Non-putting of material circumstance to accused - Such circumstance cannot be used against accused. (Para 29)

Criminal Appeal - Benefit of doubt - Absence of reliable evidence - Conviction unsustainable - Acquittal. (Paras 30-31)

Held: Prosecution witnesses had turned hostile - The sole basis on which the conviction could have been done was that there was a dying declaration - P.W.-8 had categorically stated that the victim was not able to speak at all a relative used to speak on behalf of the victim and those statements were recorded - he had not recorded the name of the relative and what was the relationship of the victim with the relative - this circumstance was also not put to the accused at the time of the recording of the statement under S. 313 Cr.P.C. - when this circumstance was not put to the accused then the dying declaration could not also be used as an evidence - the dying declaration could not be relied upon for convicting the appellant - there was absolutely no evidence on the basis which the appellant could have been convicted - the judgment is quashed and set aside - The appellant is acquitted - The appeal stands allowed. (Paras -28,29,30,31) (E-7)

Case Law Cited

Kanchy Komuramma v. State of A.P., **1996 SCC (Crl) 31***; Puran Chand v. State of Haryana,* **(2010) 6 SCC 566***; Khushal Rao v. State of Bombay,* **AIR 1958 SC 22***; Suchand Pal v. Phani Pal,* **(2003) 11 SCC 527***; Raja Naykar v. State of Chhattisgarh,* **(2024) 3 SCC 481***; Sharad Birdhichand Sarda v. State of Maharashtra,* **AIR 1984 SC 1622***; Hate Singh Bhagat Singh v. State of Madhya Bharat,* **AIR 1953 SC 468***; Shamu Balu Chaugule v. State of Maharashtra,* **(1976) 1 SCC 438***; Sujit Biswas v. State of Assam,* **(2013) 12 SCC 406***; Nar Singh v. State of Haryana,* **AIR 2015 SC 310***; Sunil v. State of NCT of Delhi, AIROnline* **2023 SC 766***; Ashok v. State of Uttar Pradesh,* **AIR 2025 SC 308***; Indrakunwar v. State of Chhattisgarh,* **AIR 2023 SC 5221***; Naresh Kumar v. State of Delhi,* **AIR 2024 SC (Cri.) 437**

List of Acts

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

List of Keywords

dying declaration; hostile witnesses; circumstantial evidence; S. 313 Cr.P.C.; not in a position to speak; relative of the victim; not reliable piece of evidence; acquitted.

Case Arising From

APPELLATE JURISDICTION: The present Criminal Appeal has been filed against the judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016.

Appearances for Parties

Advs. for the Appellant:
Sri V.M. Zaidi, learned Senior Advocate, assisted by Sri M.J. Akhtar.
Advs. for the Respondents:
Sri Amit Sinha, learned AGA for the State.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Madan Pal Singh, J.)

1. The present Criminal Appeal has been filed against the judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016, under Sections 302/34, 326A/34, 342 and 201 IPC, Police Station Najibabad, District Bijnor.

2. The case was initiated with the lodging of a First Information Report on 5.12.2016 at 14:50 hours. The first informant, namely, Ahmad Ali @ Nanhe had in the FIR stated that his Bhanji (sister's daughter) a few days earlier had fallen in love with a neighbour's son which was not liked by Rahisa the husband of the sister Fatima. Even though the case had resulted in a settlement, the husband of the sister of the first informant was very cross with his daughter and therefore, because of this incident, the first informant had brought his niece to his house at Kashipur where she stayed for around 4 months. In the FIR, it has been stated that on 4.12.2016 at 6:00PM Rahisa the husband of the sister of the first informant came to the house of the first informant and told him that some people were coming to see his daughter in connection with her marriage at his house at Maswani and, therefore, Farheen his daughter be sent along with him. Upon this request, the first informant had taken Farheen on his motorcycle to the roadways bus stand at Kashipur and dropped her there. The next day i.e. on 5.12.2016 at around 7:00AM, he received an information from the Najibabad hospital that his niece Farheen had got acid burns and that she was found in Nanuwala village and for further treatment she had been referred to a better hospital at Bijnor. Upon getting this news, the first informant along with his brother Mubarak Ali reached the Bijnor Government Hospital and met his niece who told him that her father and one Nabi Hasan had taken her from Kasipur roadways bus stand and had made her sit in a pick up van and had proceeded for their village. On the way she had fallen asleep. Nabi Hasan the partner of the father of the niece had tried to throttle her and because of which her eyes had opened and she saw everything. Thereafter she had said she did not know as to what had happened. She had also informed that a vehicle from the Najibabad Hospital had come to take her. She had also told the first informant that she had given the telephone number of the first informant (Nanhe Mama) to the hospital authorities who had rung him up. He had, thereafter, stated in the FIR that his brother-in-law Rahees and his partner Nabi Hasan had first tried to kill his niece by throttling her and thereafter they had thrown acid on her to obliterate her identity. He had thereafter in the FIR itself stated that the niece was admitted in the hospital and he had got the FIR lodged. The case was registered as Case Crime No. 0976 of 2016 and was lodged under Section 307, 326A, 201, 342 and 34 IPC.

3. A dying declaration of the niece of the first informant was recorded on 5.12.2016 itself. The dying declaration which was got recorded on 5.12.2016 had stated that Farheen(victim) was staying for the past 5 to 6 months with her elder mami Sayra wife of Dr. Mubarak Ali (scribe of the first

informant report) at Police Station - Bhagatpur District - Kasipur. She had stated that in her village Maswani, she had fallen in love with a boy and therefore her father had left her with her elder Mami Sayra so that she may get detached from the boy she was loving. She had then stated that on 4.12.2016 at around 6:00PM her father Rahees came to her Mamiji's house at Kasipur and informed her that he wanted to take her home where for the purposes of the marriage of Farheen some people were coming to meet her. She had, thereafter, in her dying declaration stated that she did not know as to where her father Rahees took her. She had also mentioned that along with him there was one more person and that the two of them took her to a forest at around 11 and 12 in the night and they throttled her first and thereafter put something on her face and put fire on it. Upon seeing her lying there, somebody had rung at the Police at 108 and an ambulance had come and had taken her to the hospital. She had also stated that at the hospital her Mami Sayra, her mama Mubarak Ali were there but her father had not come.

4. Thereafter the clothes as were provided by the first informant Sri Ahmad Ali were also kept in the custody of the police and the memo was numbered as exhibit ka2. A certain closed bottle and kurta of the victim was also recovered and kept as exhibit ka-13. When the victim was sent to Jai Prakash Narayan Apex Trauma Centre (AIIMS) Delhi an admit card was prepared which is also a part of the recovery. Thereafter when the victim died on 23.12.2016 at 2:30PM after the inquest was performed, the body was sent for post mortem which was conducted on 24.12.2016 at 12:30 PM.

5. Upon the completion of the investigation, charges were framed against the appellant Rais alias Rahisa and Nabi Hasan under Sections 342 IPC, 302 read with Section 34 IPC, 326 A read with 34 IPC and under Section 201 IPC. Nabi Hasan had died during the trial and at the time of judgment he was not alive and, therefore, the trial had continued against the sole appellant Rais and when he was convicted, the present criminal appeal was filed by him.

6. During the trial as many as 13 prosecution witnesses were examined by the prosecution.

7. P.W.-1 was the first informant Ahmad Ali who has stated that on 4.12.2016 he had gone to a nearby village called Chilkiya Tanda from his own village Kashipur and while he was away the victim /deceased his niece went away somewhere. On 5.12.2016, he received a phone call that Farheen, his niece, was in Najibabad Government Hospital and, therefore, he reached that hospital along with his brother Mubarak and there he found that Farheen had burn injuries and that she was not in a position to speak as she was not in a good condition. The Doctor had recommended her to be taken to Delhi and he has stated that his brother Mubarak Ali had taken her to Delhi where she died. He has categorically denied the fact that his brother in law Rais and his partner Nabi Hasan had taken her on the fateful day and, thereafter, had killed her. When he made such a statement, the P.W.-1 was declared hostile. However, the prosecution cross-examined him and had he stated that though the FIR was written / scribed by his brother Mubarak Ali, he had not known what was written therein and he had only put in his signatures on it. All other places where his signature were he had denied that after putting them, he had read the contents of the document.

8. Upon the statements under Section 161 Cr.P.C. being read over to him, he had stated that he had not got recorded any statement as was recorded under Section 161 Cr.P.C. He has also denied

the fact that the victim was in a position to speak when he had reached the hospital. Upon a suggestion being made that he was trying to save his own brother-in-law, he had stated that this was a wrong fact. Upon a cross-examination by the defence, he had stated that he did not recognize Nabi Hasan. What he had stated in his cross-examination to the prosecution, he had also reiterated in his cross-examination done by the defence.

9. The P.W.-2 was Mubarak Ali, the brother of the P.W.-1. He had also stated that while he was working on his fields on 4.12.2016 his niece had gone away from his house without telling him. He also gets his statement-in-chief recorded by saying that on 5.12.2016 at 7:00am he got the information about the fact that Farheen was admitted in the hospital in a burnt condition and that she was burnt in such a manner that her face was also grievously burnt and she could not speak etc. and therefore she had been referred to Delhi for further treatment. He had taken her to the All India Institute of Medical Sciences where she died on 23.12.2016. He categorically denied the fact that his brother-in-law Rais and his partner Nabi Hasan had committed the murder. He was also declared hostile. The State counsel cross-examined him and when the statement under Section 161 Cr.P.C. was shown, he had stated that he had not stated any such thing which was recorded therein. He had also denied the fact that his brother-in-law Rais had taken the victim on 4.12.2016. When the defence counsel cross-examined him, he reiterated what he had reiterated in the cross-examination to the prosecution. He had, however, categorically stated that the victim could not speak when he had reached the hospital.

10. P.W.-3, Smt. Fatima, is the mother of the deceased. She had also stated that Farheen was her daughter and that she had gone to the house of Mubarak Ali and Ahmad Ali around one week back. She had been informed on 5.12.2016 by Ahmad Ali that someone had thrown acid on her face and that the victim was at the hospital at Bijnor and, thereafter, she had stated that her brother had taken the victim to Delhi. At this stage, she was also declared hostile. In her cross-examination, she denies the story about the love affair which the deceased supposedly had with a boy in her village. She had also stated that she had, in fact, not on her own sent her daughter to her brothers house. She had also stated that her husband Rais had not gone to fetch his daughter on 4.12.2016 and, therefore, had also denied the fact that he had put acid on her face. She also denied the recorded statement under Section 161 Cr.P.C. She had also stated that she did not know Nabi Hasan who was there in the court. She also denied the knowledge as to who had written the FIR.

11. P.W.-4, Smt. Sayra, is the wife of Mubarak Ali (brother of the P.W.-3). After having introduced her relationship with P.W.-3 and her husband, she states that she had no knowledge that Rais was angry with his daughter. She however states that he had come to her house earlier and on that very date he had taken his daughter along with him and, thereafter, she along with her husband and brother-in-law (Nanhe) had gone to Najibabad hospital and had also stated that the victim could not speak on that day and had also not given any information to them. She was also declared hostile. In her cross-examination, she denied her statement under Section 161 Cr.P.C. and reiterated the fact that the victim was not in a position to speak.

12. P.W.-6 is Dr. Suraj Ohal, Senior Consultant Forensic Department, AIIMS, Delhi. He had conducted the post mortem of the deceased on 24.12.2016 on 12:45 PM. He had, thereafter, proved the post mortem report.

13. P.W.-7 is Dr. Sheel Kumar Gautam, who was the doctoer at CHC Najibabad District Bijnor, and he had stated that he had taken care of the person who was brought by the Ambulance 108. He had stated that he had referred her to the hospital at Bijnor. He had stated in his cross-examination that it was not known to him as to which place the victim belonged to. The face, the chest and the neck was burnt. She was not in a position to speak and, therefore, she could not inform as to from where she had come. Who had brought her was also not known. How her name was written on the dying declaration was not known to him. He had stated that he had given the details of the injuries in the accident register.

14. P.W.-8 was Ramesh Chandra, the Naib Tehsildar, Tehsil Sadar, District Bijnor, in whose presence on 5.12.2016 the dying declaration of the victim Kumari Farheen was got recorded. He had stated that he had reached the burn ward of the hospital where the doctors attending to emergency were present and they had given their certificate about the fact that the victim was healthy enough to get her statement recorded. At 2:15 PM, he had started off with the recording of the statement and at 2:30PM the recording of the statement was completed. The dying declaration was numbered as exhibit ka-8.

15. However, in his cross-examination, the Naib Tehsildar, P.W.-8, had stated that when the statement was being recorded there was one lady and a man sitting beside the victim who had told him that they were the relatives of the victim. When the recording of the statement had commenced, he had asked them to go out of the room. However, because the face and the mouth of the victim was absolutely burnt she could not be recognized. Also when it was certain that she could not speak then the lady who was sitting beside her was summoned by him. He had also stated that there was one more reason for calling the lady inside as whatever little the victim was stating was not understandable/audible.

16. Thereafter the lady who entered the room heard the victim speak and she told the P.W.-8 as to what she was speaking. What the lady who came inside told the P.W.-8 was got recorded as dying declaration and the same was numbered as exhibit ka-8. He has categorically stated that exhibit ka-8 was prepared on the statement made by the relative who had been permitted to come inside the room.

17. P.W.-9 is Ram Saran who was the Ambulance driver of Ambulance 108. He had categorically stated that the girl could not speak. She had not even told her name. She had definitely not told the names of her father and that of his associate. She was referred to the Bijnor Hospital because of her bad state of health. The driver was also declared hostile. In the cross-examination, the driver P.W.-9 stuck to the statement which he had made in the examination in chief.

18. P.W.-10 was the Investigating Officer. He had stated that on 28.12.2016 he was posted at Police Station Najibabad and had taken over the responsibility of investigating the case. He had stated that after having recorded the statement of the driver Ram Saran, he had gone, on his pointing, to the place where the incident had taken place and with the assistance provided to him he had prepared the site plan. He had on 9.1.2017 taken the accused on remand.

19. On 24.1.2017, he had recorded the statement of P.W.-1 Ahmad Ali and the statement of P.W.-3 Fatima was recorded by him on 25.1.2017. He had taken the telephone numbers of the accused persons for the preparation of the call detail report. This report was received by him on 3.2.2017. Also, he had stated that the presence of the accused on the basis of the call detail reports was found at the place of incident. He had stated that the telephone numbers 9756428205 and 9719696796 were the telephones of the accused Rais and that they were used at the time of the incident. He stood firm in his cross-examination.

20. P.W.-11 was Dr. K.K. Singh and he had stated that he was the emergency medical officer on the relevant date i.e. on 5.12.2016 and he had stated that to record the dying declaration of Kumari Farheen, Ramesh Chandra, the Naib Tehsildar, Bijnor, had come at 2:15 PM and he had also stated that he had given the certificate that the victim was in a position to get her statement recorded. Thereafter, the statement of the victim was got recorded by the Naib Tehsildar. He has stated that at 2:30 PM after the recording of the statement was over, he had seen Farheen and had found that she was in a proper state of mind. He had then, upon being asked as to whether he was present at the time of the statement being recorded, he had stated that he was not present at that point of time. He had stated that, in his certificate, he had not even mentioned as to whether the victim was a male or a female. He had also not stated the time and place on the certificate. On what basis he had stated that she was in a fit mental state, he replied that he had no idea how he had given that certificate.

21. P.W. -12 was one Rohtas Singh Chaudhary and he had stated that on 5.12.2016 he was the Sub Inspector posted at Najibabad. He had also stated that the dying declaration was got recorded by the Naib Tehsildar Ramesh Chandra. He had stated that he had recorded the statements of all the relevant persons in the case diary. When the accused had told him about the manner of disposal of the clothes of the victim and the bottle of acid then he had gone to get them recovered on the pointing of the accused. He had, thereafter, stated the manner in which he had continued the investigation till such time he had the investigation in his hands.

22. P.W.-13 was Dr. Antariksha Kumar. He had stated that he was on the relevant date at the AIIMS Hospital Delhi where the victim had been admitted by her uncle Mubarak Ali. He had stated that the injured was in a fit condition to speak and, thereafter, had mentioned about the injuries. He had confirmed the death of Nabi Hasan on 7.12.2017. The statement of Rais, the accused appellant, under Section 313 Cr.P.C. was got recorded on 7.3.2019 and, thereafter, on 18.11.2019.

23. Upon the completion of the trial, the judgment and order was passed by the Additional Sessions Judge Court No. 3, Bijnor, by which he had on 18.2.2020 convicted Rais Ahmad the accused appellant under Sections 302/34, 326A/34, 342 and 201 IPC .

24. By the order dated 19.2.2020 sentence was pronounced. Under Section 302 read with Section 326A IPC. The appellant was punished with life imprisonment and he was also fined with Rs. 40,000/-. It was provided that if he did not deposit the fine then he would have to undergo further imprisonment of two months. Under Section 342 IPC, 1 year of imprisonment was awarded. Rais Ahmad was also punished under Section 201 IPC for 7 years and a fine of Rs. 10,000/- was

imposed upon him. On the non-deposit of the fine a month of further incarceration was provided. Half of the fine was to go to the mother of the deceased.

25. When the appeal was argued, the learned counsel for the appellant submitted that:-

I. The P.W.-1, the first informant, P.W.-2 the brother of the first informant, P.W.-3 Smt. Fatima the wife of Mubarak Ali P.W.-2 and Smt. Sayra mother of the victim had not supported the prosecution in the trial and, therefore, there was very little evidence available for the trial court to punish the appellant.

II. Learned counsel for the appellant further submitted that there was no eyewitness account and only on the basis of the circumstantial evidence punishment was awarded. Learned counsel for the appellant states that when the prosecution witnesses 1, 2, 3, 4 and also the driver P.W.- 9, Ram Saran, had gone hostile then the only evidence, i.e. the dying declaration, ought to have been properly assessed.

III. Learned counsel for the appellant still further submitted that Dr. Sheel Kumar Gautam P.W.-7 who had initially attended on the victim had categorically stated that the victim was not in a position to speak. He has, in fact, gone to the extent of saying that she was not even in a position to inform as to which place she belonged to. Who had brought her was also not told by her. He has stated that how the name of the victim was recorded on the dying declaration was a mystery to him. Learned counsel for the appellant further pointed to the statement of P.W.-8 who in his examination-in-chief, though had stated, that the emergency Medical Officer who was present, namely, P.W. - 11 Dr. K.K. Singh had stated that the victim was in a position to give her statement and her mental state was all right, he had in the cross-examination very categorically stated that it was very difficult to decipher as to what she was speaking, therefore he had to take the assistance of a lady who was a relative of the victim in getting the statement recorded. Since the victim was not speaking clearly and what she was speaking was incomprehensible , therefore, it was essential that the lady be summoned inside the room. What she stated was recorded by the P.W.-8 the Naib Tehsildar Sri Ramesh Chandra.

Learned counsel for the appellant states that in view of the fact that the statement as was got recorded by the P.W.-8 was not directly stated by the victim but was so stated by the relative of the victim it could not be treated as a dying declaration at all.

Learned counsel for the appellant states that as per the judgment in **1996 SCC Crl 31 (Kanchy Komuramma v. State of A.P)** and **2010 (6) SCC 566 (Puran Chand v. State of Haryana),** a dying declaration even if it is recorded by magistrate is only a piece of evidence and it is not a proof of truthfulness. Even the dying declaration has to go through the scrutiny of the court. While relying upon **2010(6) SCC 566 (Puran Chand v. State of Haryana),** learned counsel for the appellant relied upon paragraph no. 15 of the judgment and stated that the evidence at hand had to be considered by the court in its right perspective. Since the learned counsel for the appellant relied upon paragraph no. 15 of the judgement, it is being reproduced here as under:-

15. The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.

For explaining as to how a dying declaration has to be assessed, learned counsel for the appellant relied upon **AIR 1958 SC 22 (Khushal Rao v. State of Bombay).** He relied upon paragraph nos. 16-17 of the judgment and they are being reproduced here as under:-

16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a

given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.

Another judgment which the learned counsel for the appellant relied upon for the purposes of stating as to how a dying declaration has to be assessed as an evidence was **2003 (11) SCC 527 (Suchand Pal v. Phani Pal and anr.)** and from this judgment learned counsel for the appellant relied upon paragraph no. 9 which is being reproduced here as under:-

9. The trial court appears to have discarded the defence version highlighting the unacceptability of the prosecution version and came to a conclusion that the shot was made from a close range on the courtyard. This plea was taken at the argument stage by the prosecution, trying to read the prosecution evidence in a manner so that the ocular evidence and medical evidence do not appear to be irreconcilable. The High Court was right in disapproving the course adopted by the trial court. It is an established position in law that the prosecution can succeed by substantially proving the version it alleges. It must stand on its own legs and cannot take advantage of the weakness in the defence case. The court cannot on its own make out a new case for the prosecution and convict the accused on that basis. Only when a conclusion is arrived at on the evidence and the substratum of the case is not changed, such a course is permissible. The High Court noticed the medical evidence to be consistent with the defence version that the deceased was hit by the gunshot from a close range and that she was accidentally shot in the scuffle between the informant party and the accused. Coming to the acceptability of the dying declaration, the High Court has rightly discarded it. The declaration made by the deceased was not voluntary and in fact, the answers were not given by her and it was her husband who was answering. Such nature and manner of response from the injured who ultimately succumbed to injuries can by no means be elevated to the level of her dying declaration , even when it is found to sound the voice of Jacob . Stand of the prosecution that he tried to clarify by stating that it was the accused who had fired the gun does not improve the situation. In the true sense of the term or in legal parlance the statement made by the deceased cannot be called a dying declaration. In view of the admitted hostility and strained relations, the natural effort was to rope in the accused. The High Court, therefore, discarded the evidence as not worthy of acceptance.

Learned counsel for the appellant also relied upon **(2024) 3 SCC 481 (Raja Naykar v. State of Chhattisgarh)** and submitted as to how a circumstantial evidence had to be looked into.

IV. Learned counsel for the appellant thereafter submitted that as per the judgment of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **AIR 1984 SC 1622** that if a particular circumstance is not put to the accused while putting questions under Section 313 Cr.P.C. then that circumstance ought to be completely excluded from the zone of consideration. He submits that the Supreme Court has said so as the accused would have no opportunity to explain the circumstance.

Learned counsel for the appellant specifically relied upon paragraphs n. 142 and 144 of the judgment reported in **AIR 1984 SC 1622.**

142. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court, viz., circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Bharat AIR 1953 SC 468 this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 or Section 313 of the Criminal Procedure Code, the same cannot be used against him. In Shamu Balu Chaugule v. State of Maharashtra, (1976) 1 SCC 438: (AIR 1976 SC 557) this Court held thus :

"The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him."

144. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code have to be completely excluded from consideration.

Learned counsel for the appellant still further relied upon **2013 (12) SCC 406 (Sujit Biswas vs. State of Assam)** and submitted that the very purpose of examining the accused persons under Section 313 Cr.P.C. was to meet the requirement of principles of natural justice. Since the learned counsel for the appellant relied upon the contents of provisions of Section 313 Cr.P.C., the section 313 Cr.P.C. the section 313 Cr.P.C. is being reproduced here as under :

***313. Power to examine the accused**. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court*

(a) may at any stage, without previously warning the accused put such questions to him as the Court

considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his

defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in
evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

2[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]

V. In the instant case, learned counsel for the appellant states that if the statement under Section 313 Cr.P.C. is perused then it becomes clear that the circumstance that the statement was, in fact, got record on the basis of what the relative had stated was never put before the accused and, therefore, whatever the relative had mentioned in the dying declaration could not be read by the prosecution. He still further submitted relying upon **AIR 2015 SC 310 (Nar Singh vs. State of Haryana**) that not putting material evidence to accused in course of examination amounts to non-compliance of the mandates of Section 313 Cr.P.C. by the Trial court. In this regard, learned counsel for the petitioner also relied upon **AIROnline 2023 SC 766 (Sunil vs. State of NCT of Delhi) and AIR 2025 SC 308 (Ashok v. State of Uttar Pradesh), AIR 2023 SC 5221 (Indrakunwar vs State of Chhattisgarh) and AIR 2024 SC (Cri.) 437(Naresh Kumar v. State of Delhi).**

VI. In the instant case, the learned counsel for the appellant states that if the dying declaration is perused then it becomes abundantly clear that the Naib Tehsildar who was recording the statement had categorically mentioned that the victim was not in a position to speak and also the statements as were recorded was so recorded on the basis of what was spoken by the relative of the deceased. The dying declaration dated 5.12.2016 is also being reproduced:-

"मृत्यु पूर्व बयान दर्ज करने का समय दिनांक 05-12-2016मृत्यु पूर्व बयान कु० फरहीन कु० फरहीन पुत्री रहीस उम्र लगभग 17 साल निवासी ग्राम कच्छवासी, जिला रामपुर, थाना स्वार, निवासी नई बस्ती विजयनगर, काशीपुर, उत्तराखण्ड ने बहलफ बयान दिया कि- मै पाँच छः महीने से अपनी बड़ी मामी सायरा पत्नी डा० मुबारक अली थाना भगतपुर काशीपुर में रह रही थी। मेरा कच्छवासी में एक लड़के से प्यार का चक्कर चल रहा था, इस कारण मेरे अब्बा ने मुझे चार-पाँच महीने पहले मुझे मेरी बड़ी मामी सायरा के घर छोड़ दिया था, जिससे कि मेरा उस लड़के से प्यार का चक्कर छूट जायें। कल दिनांक 04-12-16 को शाम 6:00 बजे मेरे पिता रहीस मेरे मामी के घर काशीपुर आये तथा मुझे मेरी मामी के घर से यह कहकर लेकर आये कि मैं इसे अपने घर ले जा रहा हूँ। इसका निकाह करेंगे। इसे लड़के वाले देखने आ रहे हैं। इसके बाद मुझे पता नहीं कि मेरा पिता रहीस मुझे कहाँ लेकर गया, उसके साथ एक अन्य आदमी भी था। मेरे पिता ने जंगल में ले जाकर रात्रि 11-12 बजे के लगभग मेरा गला घोंटा तथा मुझे मरा हुआ समझकर आग लगा दी, जिससे में जल गयी। उसके बाद किसी ने पुलिस को सूचना की। पुलिस ने ने 108 एम्बुलेंस मंगाकर मुझे समीपुर अस्पताल भिजवाया वहाँ मुझे जिला चिकित्सालय बिजनौर में रेफर कर दिया है। यहाँ अस्पताल में मेरी बड़ी मामी सायरा व मेरे मामा डा० मुबारक अली आ गये हैं। मेरा पिता नहीं आया है। बयान सुनकर तस्दीक किया। बयान समाप्त करने का समय 2:30 पी०एम०।

नि० अं०
अपठित
नि० अं० दाया
कु० फरहीन पुत्री रहीस

सत्य--प्रतिलिपि"

Learned counsel for the appellant stated that if one looked at the dying declaration as was recorded by the Naib Tehsildar it cannot be believed in view of the cross-examination of the Naib Tehsildar wherein he has categorically stated that the victim could not speak and, therefore, to understand what she was speaking the relative of the victim was summoned inside the room and what the relative stated was thereafter recorded. The relevant portion of the cross-examination of the Naib Tehsildar is being reproduced here as under:-

'' जब मैं बयान लेने गया वहाँ पर लडकी उर्फ फरहीन के पास एक महिला व एक पुरुष बैठे थे. जो फरहीन को अपना रिश्तेदार बता रहे थे। मैने जब बयान लिखना शुरू किया था तब उन्हे कक्ष से बाहर कर दिया था। कु० फरहीन का चेहरा व सीना पूरी तरह से जला हुआ था। पहचान में भी नही आ रही थी, करहा रही थी, बोल रही थी स्पष्ट नही बोल रही थी जो बोलं रही थी वह स्पष्ट समझ में नही आ रहा था। फिर मैने उस महिला को बुलवाया जो उसकी रिश्तेदार थी, उसके साथ थी और उस महिला से पूछा कि यह क्या कह रही है, जो उस महिला ने बताया था, वह मैने प्रदर्श क-8 मे लिख दिया था। प्रदर्श क-8 मैने फरहीन की रिश्तेदार के बताने व बोलने पर लिखा था क्योकि फरहीनं ठीक से नही बोल पा रही थी "

He, therefore, submits that the dying declaration was a useless document in view of the fact that firstly it was not recorded directly by the Naib Tehsildar when the victim spoke and secondly the name of the relative was also not disclosed to enable the prosecution to bring her into witness box.

VII. Learned counsel for the appellant submits that the case further becomes doubtful on the account of the fact that in the FIR P.W.-1 the victim categorically had stated that it was her father and Nabi Hasan who had taken her from her Mama s place but in the dying declaration the name of the appellant was mentioned but the name of Nabi Hasan was not mentioned.

VIII. The appellant further states that there was one more circumstance which would go to show that the appellant was falsely implicated and that was that the dying declaration was got record on 5.12.2016. However, the deceased died on 23.12.2016 and the doctor of AIIMS had also given statement that she was later on able to speak. However, no dying declaration was subsequently recorded despite the fact that the deceased remained alive for almost 18 days.

IX. Learned counsel further stated that when the recording of the victims statement was being done on the basis of the statement made by the relative then it should have been mentioned by the P.W.-8 as to who was the relative and what exactly was her name. In the absence of this information no relative could be produced before the trial court and no statement of hers could be recorded in the Court for proving the statements as were recorded on her dictation.

26. Learned AGA, however, has opposed the appeal and has submitted that the dying declaration should be considered as a recorded statement which was sacrosanct and no court could

lightly ignore the same. He has submitted that it was a substantive piece of evidence which had to be read as such and there was no reason to disbelieve the same and he had, in fact, gone to the extent of saying that even if the dying declaration was recorded on the basis of the statement of the near relative of the victim then also the dying declaration was sacrosanct and should have been believed.

27. The learned AGA has also submitted that even if the witnesses had turned hostile then also the circumstances were such, which went to indicate that the appellant Raees Ahmad with the help of his associates had throttled the victim and, thereafter, had thrown acid on her and the circumstances were such which could not be lightly ignored.

28. Having heard Sri V.M. Zaidi, learned Senior Advocate, assisted by Sri M.J. Akhtar, learned counsel for the appellant and Sri Amit Sinha learned AGA for the State, we find that the prosecution witnesses who had initiated the case and on whose written as well as oral statement the police had submitted the charge sheet had turned hostile. The cross-examination as was done in the Court by the prosecution as also by the defence of these hostile witnesses also did not bear much fruit. Thus, we find that the sole basis on which the conviction could have been done was that there was a dying declaration of the victim/deceased. However, upon consideration of the arguments of the learned counsel for the appellant, we find that the dying declaration was recorded on 5.12.2016 after, P.W.-11, Dr. K.K. Singh had given a statement that the victim was in a position to speak.

29. However, if we peruse the statement recorded of P.W.11 on the dying declaration, we find that he had mechanically stated that the victim was in a position to give her statement. He had not stated as to whose statement was to be recorded and also he had not cared to record as to whether the victim was a male or female. The time and place was also not mentioned in the dying declaration. On what basis he had given his statement with regard to the fact that the victim was in a position to give her statement was also not record. All these facts could have been considered as omissions and the dying declaration could still have been believed. However, when we were taken through the statement of P.W.-8 we found that P.W.-8 had categorically stated that the victim was not able to speak at all and, therefore, a relative of hers was called from the outside the room and the relative first listened to what the victim was saying and thereafter she used to speak on behalf of the victim and those statements were recorded by the Naib Tehsildar. In his statement, he had categorically given out that he had not recorded the name of the relative and what was the relationship of the victim with the relative. We find that this circumstance was also not put to the accused at the time of the recording of the statement under Section 313 Cr.P.C. That the dying declaration was recorded on the basis of what was spoken by a relative of the victim was not informed to the accused while putting questions to him under Section 313 Cr.P.C. We are thus of the definite view that when this circumstance was not put to the accused then the dying declaration could not also be used as an evidence to come to a conclusion against the accused.

30. Thus when the statement itself was not recorded of the victim but was recorded on the basis of what relative of the victim was saying, we are of the view that the dying declaration could not be relied upon for convicting the appellant. Simultaneously, we are also of the view that had the P.W.-8 the Naib Tehsildar stated in the dying declaration as to how was the relative related to the

victim and as to what her name was then also she could have been produced in the Court to get the relevant information. But in the absence of these facts/informations when neither the relationship nor the name of the relative was known, the prosecution could not call her to the witness box. Even the court was clueless as to who had helped in getting the victim s statements recorded. We are also of the view that when the victim was taken to AIIMS where she died after 18 days of treatment no statement of her was got recorded, subsequent to the dying declaration as was got recorded on 5.12.2026. All these facts definitely go to indicate that the dying declaration on the basis of which the prosecution depended much, was not a reliable piece of evidence. In fact, since the relevant question about the circumstance that the relative had got the statement of the victim recorded was not put to the accused, we are of the view that all that had been stated in the dying declaration ought to be ignored and should not be considered as a piece of evidence at all.

31. Thus, we are of the view that there was absolutely no evidence on the basis which the appellant could have been convicted. The judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016, under Sections 302/34, 326A/34, 342 and 201 IPC, Police Station Najibabad, District Bijnor cannot, therefore, be sustained in the eyes of law. The judgment and order dated 19.2.2020 passed by the Additional Sessions Judge, Court No. 3, Bijnor, in S.T. No. 120 of 2017 (State vs. Raees Ahmad & another) arising out of Case Crime No. 976 of 2016, under Sections 302/34, 326A/34, 342 and 201 IPC, Police Station Najibabad, District Bijnor is quashed and set aside. The appellant is acquitted of the charges as were levelled against him. The appeal stands allowed. The appellant if is not required in any other case be released forthwith.

32. Before parting with the judgment, I would like to put in a word of appreciation for my Research Associate Mr. Abhishek Verma for his dexterity in research and superlative assistance in drafting of this judgment.

(2026) 2 ILRA 1067
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.02.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE RAJEEV BHARTI, J.

Criminal Appeal No. 1633 of 2022

Sujeet **...Appellant**
Versus
State Of U.P. **...Respondent**

Issue for Consideration

Matter pertains to "Whether the charge of murder against the appellant has been proved by the prosecution beyond reasonable doubt?" (Para 12)

Headnotes

Criminal Law - Penal Code, 1860 - S. 302 - Murder - Conviction based solely on dying declaration - Reliability and mental fitness - Requirement of "fit state of mind" - Mere certification of "consciousness" insufficient - Distinction between "conscious" and "fit state of mind" reiterated - Dying declaration held unreliable. (Paras 25, 27, 30, 34, 42)

Criminal Trial – S. 313 Cr.P.C. - Non-putting of incriminating material (dying declaration) to accused - Causes prejudice - Vitiates reliance on such evidence. (Paras 38, 39)

Evidence - Contradictions between FIR, medical evidence and dying declaration - Material discrepancies regarding substance used and time of incident - Creates doubt. (Paras 34, 35)

Investigation - Defective investigation - non-production of earlier dying declaration - Failure to examine treating doctors and collect bed-head tickets - Serious lapses affecting prosecution case. (Para 41)

Criminal Jurisprudence - Benefit of doubt - Suspicion cannot take place of proof - Accused entitled to acquittal where prosecution fails to prove case beyond reasonable doubt. (Paras 42, 44, 45, 46)

Held: In the absence of any recording of satisfaction with regard to mental fitness of the victim it does not appear to be entirely safe to rely upon such dying declaration to convict the appellant - In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous - The certification was only to the effect that the victim was conscious and not that she was in a fit state of mind to make such statement - Contents of dying declaration were not put to the accused during S.313 Cr.P.C. statement prejudice is caused to the accused - The evidence on the point of dying declaration does not inspire confidence and it cannot be relied upon - The prosecution has failed to prove the charge of murder against the appellant beyond reasonable doubt - The appeal stands allowed the accused-appellant is acquitted - He shall be released from jail forthwith (Paras – 25,27,30,38,42,44,46) (E-7)

Case Law Cited

Paparambaka Rosamma and others Vs. State of A.P. **(1999) 7 SCC 695;** *Aejaz Ahmad Sheikh Vs. State of Uttar Pradesh & another* **2025 (2) ACR 804;** *Irfan @ Naka Vs. State of U.P.* **AIR 2023 SC 4129;** *Lokesh and Ors. Vs. State of* ***U.P.*** **2023 (3) ADJ 47;** *Naresh Kumar Vs. Kalawati and others* **(2021) 16 SCC 158;** *Rameshwar Lal Chauhan Vs. State of U.P. 2023* **SCC OnLine All 1127;** *Radhey Jaiswal and others Vs. State of U.P.* **2024 SCC OnLine All 2649;** *Dilawar Singh Vs. State of U.P.* **(2024);** *Samsul Haque Vs. State of Assam* **(2019) 18 SCC 161;** *Laxman Vs. State of Maharashtra* **(2002) 6 SCC 710;** *Kanchy Komuramma Vs. State of A.P.* **1996 SCC (Cri) 31;** *Khushal Rao Vs. State of Bombay* **AIR 1958 SC 22**

List of Acts

Indian Penal Code, 1860; **Dowry Prohibition Act**,1961; Code of Criminal Procedure, 1973; Evidence Act,1872.

List of Keywords

Dying declaration; fit state of mind; conscious; mental fitness; benefit of doubt; defective investigation; kerosene; petrol; contradictions; acquittal; beyond reasonable doubt.

Case Arising From

APPELLATE JURISDICTION: Appeal against "judgment and order 06.05.2022 passed by the learned Sessions Judge, Lakhimpur Kheri in S.T. No.15 of 2019, arising out of Crime No.198 of 2018 convicting under S. 302 I.P.C.

Appearances for Parties

Advs. for the Appellant:
Shri Atul Verma
Advs. for the Respondents:
Shri Ravish Chandra Mishra, learned A.G.A.

(Delivered by Hon'ble Rajeev Bharti, J.)

1. The present criminal appeal under Section 374 (2) Cr.P.C. has been filed by the accused/appellant, namely, Sujeet s/o Nanhke, r/o Mohalla Haniya Tola, Police Station- Kheri, District- Lakhimpur Kheri challenging the judgment and order 06.05.2022 passed by the learned Sessions Judge, Lakhimpur Kheri in S.T. No.15 of 2019, arising out of Crime No.198 of 2018, Police Station- Kheri, District- Lakhimpur Kheri, convicting and sentencing the appellant to undergo life imprisonment under Section 302 I.P.C. with a fine of Rs.5,000/-. In default of payment of fine to further undergo one month simple imprisonment. The accused/appellant was acquitted from the charges under Sections 498-A, 304-B I.P.C. and Section 4 of D.P. Act. The alternate charge under Section 302 I.P.C. was found proved. The appellant is in jail. He remained incarcerated for 8 years, 01 month and 08 days with remission as per Report dated 18.11.2025.

Factual Matrix of the case

2. Prosecution story, in brief, is that the deceased Hema, wife of the appellant, was subjected to cruelty for dowry and was set on fire on 16.06.2018, as a result she succumbed to her burn injuries on 05.07.2018. The complainant, father of the deceased, Raju (P.W.1), lodged a police report on 16.06.2018 stating that he had solemnized marriage of his daughter Hema about three years ago with Sujeet s/o Nanhke, r/o Haniya Tola, Kheri. On 16.06.2018 at about 8:00 P.M. he heard some noise and came in the locality and when he went towards that place, he saw that there was chaos in the house where his daughter was married, when he reached near the house, he found his daughter Hema was burning with fire outside the door of the house. There was no person present inside the house, as all had fled. Raju-PW-1, in his statement, has stated that when the deceased was taken to hospital by the accused, he also went along. He has further stated that his daughter (deceased) was suffering from mental illness and, on account of the same, she poured oil on herself and set herself ablaze. He has also stated that accused Sujeet had got Hema treated. According to the complainant, his son-in-law, Sujeet s/o Nanhke along with mother-in-law-Arjunia and sisters-in-law, namely, Rekha, Shakuntala and Rinki, set his daughter ablaze. He (the complainant) had made every possible efforts to save his daughter, but she had already sustained severe burn injuries. He immediately took his daughter to the District Hospital where her condition was stated to be extremely serious.

3. On the basis of the aforesaid report, FIR under Sections 147, 307 I.P.C. came to be lodged on 17.06.2018 at 12:05 P.M. and was registered by Shri Umesh Pratap Singh (P.W.8), Constable at Nighasan Police Station, who deposed that he was present at the Kheri Police Station on that date and at about 12:05 P.M., the complainant, Raju s/o Thakur Prasad, r/o Bukhari Tola, Kheri town and police station, came to the police station and submitted a written complaint. He deposed that investigation of the case was assigned to Sub-Inspector Shri Vishambhar Dayal Singh. During cross-examination, Shri Umesh Pratap Singh (P.W.8) deposed that the informant reached alone at the police station at 12:05 P.M. to lodge the complaint and informed that the victim/deceased was hospitalized.

4. Shri Vishambhar Dayal Singh- Sub Inspector (P.W.9), who was initially appointed as Investigating Officer in the case, deposed that in the year 2018, he was posted as In-charge of Kheri

Police Station. FIR No.198/2018, under Sections 307 and 147 of I.P.C. was registered at the police station and the investigation was assigned to him. He further deposed that on the same date, i.e. 27.07.2018, Section 147 of I.P.C. was dropped, and Sections 498-A, 304-B of IPC and Sections 3/4 of the Dowry Prohibition Act were added (after she died), and investigation was handed over to the Circle Officer, Sadar. He further deposed that he inspected the incident site on 18.06.2018, and prepared a sketch map of the incident.

5. During cross-examination, Shri Vishambhar Dayal Singh- Sub Inspector (P.W.9) deposed that he took charge of the case on 17.06.2018, though he could not recall the exact time. He further deposed that he got information that the victim/deceased was admitted to the District Hospital, Kheri, but, he visited the hospital only on 18.06.2018 due to other works. He further deposed that he did not examine the bedhead ticket despite knowing the ticket contained crucial treatment details, nor record statements of the attending doctors or nurses. He further deposed that he visited site of the incident before going to hospital, accompanied by the informant, and prepared a site map (Exhibit A-5). He further deposed that he could not recall the starting or ending time of his investigation on 18.06.2018 and admitted to not marking these time on the case diary slips. He further deposed that while he got information that the victim/deceased was burnt with kerosene, he did not record medical statements regarding the same.

6. Shri R.K. Verma, Investigating Officer (P.W.10) deposed that on 28.07.2018, he was posted as Circle Officer Sadar, Lakhimpur Kheri. He was assigned the investigation of Case No.198/2018 under Sections 498-A, 304-B of I.P.C. and Sections 3/4 of the Dowry Prohibition Act, Police Station Kheri, District Kheri, from Shri Vishambhar Dayal Singh- Sub Inspector (P.W.9). He further deposed that on 28.07.2018, he prepared memo no.9 and took over the investigation, reviewed the previously prepared memos, and examined the inquest report and post-mortem report.

7. During cross-examination, Shri R.K. Verma, Investigating Officer (P.W.10) deposed that the case was initially registered under Sections 307/147 I.P.C., but it was subsequently converted to Sections 498A/304B I.P.C. and Sections 3/4 of the Dowry Prohibition Act. He further deposed that initial medical examination of the victim/deceased on 16.06.2018, recorded the smell of kerosene, though he could not verify the duration of her (victim) stay at the District Hospital. He further deposed that he did not examine the bed head tickets or record the statements of the doctors who had treated the victim at either the District Hospital, Lakhimpur Kheri or Dr. Shyama Prasad Mukherjee Civil Hospital, Lucknow, where the victim/deceased succumbed to her injuries.

8. As per medical reports, the victim/deceased was got admitted at District Hospital, Lakhimpur Kheri by father of the deceased. The victim/deceased remained admitted in hospital as per the bed head ticket, which was submitted before the learned trial court by Dr. Rajesh Kumar - D.W.1. In his examination-in-chief, Dr. Rajesh Kumar-D.W.1 stated that on 18.06.2018 at 12:40 P.M. father of the deceased, namely, Raju (P.W.1) made the following endorsements '*my patient was referred to Lucknow and Ambulance-108 had arrived, but I did not take my patient to Lucknow and I sent the ambulance back.'* Treatment of the deceased continued at District Hospital, Kheri from 17.06.2018 till 27.06.2018. Subsequently, when condition of the deceased started deteriorating, she was got admitted to Dr. Shyama Prasad Mukherjee Civil Hospital at Lucknow on 27.06.2018 where her dying declaration was recorded on the same day.

9. The deceased was medically examined at District Hospital, Lakhimpur Kheri at 10:10 P.M. on 16.06.2018 and Dr. Rajesh Kumar- P.W.12 recorded approximately 80% burn injuries and specifically noted smell of kerosene oil coming out from the body and clothes of the victim.

10. The prosecution examined Dr. Rajesh Kumar as P.W.-12 before the Court. Subsequently, the defence examined the said witness as D.W.-1 and sought to prove the bed-head ticket and further attempted to establish that the deceased had also made a dying declaration on 17.06.2018, though the same was not made in the presence of this witness.

11. On 06.07.2018 at 3:25 P.M. Dr. Girish Kumar Sharma-P.W.7, Consultant at Balrampur Hospital, Lucknow, conducted post-mortem examination of the deceased, Mrs. Hema Pandey, aged 22 years. Video-recording of the same was done by one Amitabh Singh. During post-mortem examination, post-mortem staining was found on the body of deceased in the areas that were not burnt. Rigor-mortis was present throughout the body. There were 90% ante mortem injuries on body of deceased and the cause of death was shown as septicemia. The following ante-mortem injuries were found on the body of deceased:-

"Injury no.1: A septic burn wound, extending from the surface to the deeper tissues, was present all over the body, except on the top and back of the head.

Injury no.2: The genital area was not burned.

Injury no.3: The areas below both knees and the back of the hips (buttocks), the soles and toes of the feet were not burned. Thick pus was present in the burn wounds. Upon opening and sectioning, pus spots were present in both lungs, liver, spleen and both kidneys.'

12. On the basis of the grounds urged in the memorandum of appeal and submissions advanced, the following point arises for determination.

(i) Whether the charge of murder against the appellant has been proved by the prosecution beyond reasonable doubt?

13. In this appeal, it is noteworthy to mention here that Raju- P.W.1, Uma Devi' P.W.2, Kasturi- P.W.3, Pramod Kumar -P.W.4 and Manohar Lal- P.W.5, who are father, maternal aunt, mother and close relatives of the deceased, have turned hostile.

14. Raju' P.W.1 has categorically stated that the deceased was mentally ill and had poured kerosene oil on herself and that the complaint was lodged under the pressure of relatives. Although he did not see her pouring kerosene oil. From the medical evidence it is proved that death was not natural. Question is was it a murder? If so, whether appellant/husband has committed it.

15. Raju-P.W.1, in his statement, has stated that when the victim/deceased was taken to the hospital by the accused, he also went along. He further stated that his daughter (deceased) was suffering from mental illness and, on account of the same, she poured oil on herself and set herself ablaze. He has also stated that accused Sujeet had got Hema treated.

16. The prosecution rests its case entirely on the dying declaration recorded on 27.06.2018 at Dr. Shyama Prasad Mukherjee Civil Hospital in Lucknow. The dying declaration dated 27.06.2018 reads as under.

"प्रमाणित किया जाता है कि हेमा पाण्डेय उम्र लगभग 22 years पत्नी सुजीत पाण्डेय निवासी ग्राम हनिया टोला पो०-खीरी जिला-लखीमपुर जो इस चि० में Old Burn Injury के कारण दि० 27/6/18 समय 1:22 PM पर भर्ती हुई थी जो आज दि० 27/6/18 समय 5:20 PM पर मृत्यु पूर्व बयान के समय **पूरी तरह से होशोहवाश में है।**

Dr. Sandhya Chaudhary
27/6/18
दि० 27/6/18 समय 5:47 PM

'मेरा नाम हेमा पाण्डेय है। मेरे पति का नाम सुजीत पाण्डेय है। मेरी उम्र 22 वर्ष है। मैं ग्राम हनिया टोला पो० खेरी खेरी जिला लखीमपुर खीरी की रहने वाली हूँ। सुबह 7, 8 बजे 16 जून को हमारे पति और सास में लड़ाई हो रही थी। हमारे पति को गुस्सा आ गया उसने घर में खड़ी मोटर साइकिल में से पेट्रोल निकाल कर मेरे ऊपर डाल दिया और मुझे कमरे में बंद करके मेरे उपर माचिस फेंक कर जला कर कमरे से भाग गया और कमरा बंद कर दिया। हम कमरे में जलने लगे। मैंने भाग के कमरा खोला फिर हम बाहर भागे। बाहर टोले वालों की भीड़ आ गयी थी वो हमारे उपर लगी आग को बुझाये मैं बेहोश हो गयी। मेरी सास, मेरी नंदे सब बहुत बदमाश है। हमको परेशान करती रहती है। मैं यह बयान किसी दबाव में नही दे रही हूँ। भगवान कसम हम सही बोल रहे है'।

बयान मेरे द्वारा लिया अंकित किया गया।

ह० अपठनीय ह० अपठनीय
27/6/2018
ACM VI

प्रमाणित किया जाता है, हेमा पाण्डेय उम्र लगभग 22 years पत्नी सुजीत पाण्डेय जो आज दि० 27/6/18 समय 5:47 PM पर मृत्यु पूर्व बयान के समय **पूरी तरह से होशोहवास में थी।**"

Dr. Sandhya Chaudhary
27/6/18

17. The trial court on the basis of evidence referred above, convicted the accused/appellant and sentenced as mentioned above.

18. Heard Shri Atul Verma, learned counsel for the appellant, Shri Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

Submission made by learned counsel for the appellant

19. Learned counsel for the appellant-accused argues that the dying declaration is not reliable and has incorrectly been treated to be a fair piece of evidence by the trial court. In support of his submission, learned counsel for the appellant has primarily urged that no satisfaction has been recorded by the doctor with regard to 'fit mental state' of the victim and, therefore, it is alleged that

in absence of any certification by the doctor with regard to the 'fit mental state' of the victim, the dying declaration cannot be relied upon. It is also urged that the dying declaration cannot be otherwise looked into as the contents of the dying declaration was not put up to the accused while recording his statement under Section 313 Cr.P.C.

20. In support of its case, learned counsel for the appellant has relied upon the following judgments :-

(i) Paparambaka Rosamma and others Vs. State of A.P. reported in (1999) 7 SCC 695;

(ii) Aejaz Ahmad Sheikh Vs. State of Uttar Pradesh & another, 2025 (2) ACR 804;

(iii) Irfan @ Naka Vs. The State of U.P., 2023 AIR SC 4129;

(iv) Lokesh and Ors. Vs. State of U.P. (Criminal Appeal No.1371 of 2015, decided on 28.01.2023), reported in 2023 (3) ADJ 47;

(v) Naresh Kumar Vs. Kalawati and others, reported in (2021) (16) SCC 158;

(vi) Rameshwar Lal Chauhan Vs. State of U.P. : 2023 SCC OnLine All 1127;

(vii) Radhey Jaiswal and others Vs. State of U.P. : 2024 SCC OnLine All 2649;

(viii) Dilawar Singh Vs. State of U.P. (Criminal Appeal No. 5591 of 2019, decided on 09.08.2024) and

(ix) Samsul Haque Vs. State of Assam : (2019) 18 SCC 161.

Submission made by learned A.G.A.

21. Learned A.G.A., on the other hand, submits that the judgment and order of conviction dated 06.05.2022 passed by the learned Sessions Judge, Lakhimpur Kheri, is well reasoned, based on proper appreciation of evidence and does not suffer from any illegality, perversity or material irregularity warranting interference by this Court in Appellate Jurisdiction. He further submits that law is well settled that a conviction can be based solely on the dying declaration if it is found to be voluntary, truthful and reliable and no corroboration is required as a matter of rule.

22. With respect to the alleged earlier dying declaration dated 17.06.2018, learned A.G.A. submits that no contents of such statements have been proved on record and, therefore, mere reference to its existence does not dilute the evidentiary value of the later dying declaration dated 27.06.2018, which has been duly proved.

23. Learned A.G.A. lastly submits that even if certain lapses are pointed out in investigation, a defective investigation by itself is not a ground for acquittal, especially when there is other reliable evidence on record clearly pointing towards the guilt of the accused.

Analysis

24. We have noticed that the prosecution's case rests primarily on the dying declaration of the deceased and, therefore, it is to be seen whether the dying declaration can be relied upon in support of the prosecution case on the specific contention urged by the appellant questioning it?

25. The dying declaration has already been extracted hereinabove. We find that the certification made by the doctor does not record conscious satisfaction with regard to fit mental state of the victim, wherein alone the victim could have made a valid dying declaration. The reasons for the same are apparent on the face of the record. In the present case, the victim had sustained 90% burn injuries. In such physical state, the victim would be traumatized and the doctors usually administer various medication to relieve pain etc., but the effect of such medication would have to be examined. Some medications may cause drowsiness or the traumatized condition of the victim may cause hallucinations, etc. Doubt would arise with regard to mental state of the victim and unless the doctor certifies the mental fitness of the victim, the Court usually would be reluctant in relying upon such dying declaration. It is in this context that we find substance in the argument of learned counsel for the appellant that, in the absence of any recording of satisfaction with regard to mental fitness of the victim, factually, at the time of making dying declaration, it does not appear to be entirely safe to rely upon such dying declaration to convict the appellant for committing murder.

26. In this regard the learned counsel for the accused-appellant has placed reliance upon a judgment of this Court in **Lokesh and Ors. (supra),** wherein this Court has made following observations in para-45 to 50:

'45. It has therefore to be seen as to whether the victim was in a position to make her dying declaration and whether necessary precaution had been taken by the prosecution to ensure that victim was in a proper mental shape to make a declaration.

46. The primary evidence that the victim was in a fit mental state to make a dying declaration is of the attending doctor who has been produced as P.W.-13. We have noticed that this witness in his statement has mentioned the critical situation of the victim. ***There is no satisfaction recorded by the doctor on the dying declaration that victim was in a fit mental state to give a voluntary statement.*** *P.W.1 has otherwise admitted that the victim was unconscious when she was brought to the S.N. Medical College at around 6:00 pm. He has also admitted that only after administering of first aid, the condition of the victim improved and she became conscious. It is not clear as to what kind of first aid was given to the injured victim but considering her serious condition, it is logical to expect that some short of pain killer may have been given to her.* ***In such circumstances, mere recording of satisfaction by the doctor that patient was conscious, was not sufficient. A specific satisfaction was warranted regarding fit metal state of the victim. No such satisfaction has been recorded by the doctor. Merely stating that the patient is clinically fit does***

not amount to a satisfaction with regard to fit mental state of the patient. *The ability of the victim to speak was severely compromised as per the prosecution evidence itself.*

47. We are therefore doubtful of the victim being in a proper mental shape to have given a conscious voluntarily statement which could qualify to be a dying declaration. The Magistrate/Deputy Collector who has recorded the dying declaration of the victim has also admitted that no questions were put to the victim regarding her fit mental state.

48. At this juncture, we would like to refer to the observation of the Supreme Court in ***Paparambaka Rosamma & Others Vs State of Andhra Pradesh reported in (1999) 7 SC 695, wherein the Court while referring to the dying declaration observed that mere statement that patient is conscious while recording the statement is not sufficient. In a case where injured had sustained 90% burn injuries, it was necessary to ascertain the fit mental state of the injured before accepting the dying declaration.*** *Paragraph- 9 of the judgment is reproduced hereunder:-*

"9. It is true that the medical officer Dr. K.Vishnupriya Devi (PW 10) ***at the end of the dying declaration had certified patient is conscious while recording the statement.*** *It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post mortem* ***stated that injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind.*** *In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K.Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration.* ***The certificate of the said expert at the end only says that patient is conscious while recording the statement.*** *In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly erred in accepting the said dying declaration (Ex.P-14) as a true, genuine and was made when the injured was in a fit state of mind.* ***In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below."***

(Emphasis supplied by us)

49. The observation made in the case of ***Paparambaka Rosamma (supra)*** *has been reiterated in a subsequent decision of the Supreme Court in the case of* ***Naresh Kumar Vs. Kalawati & Others*** *reported in* ***(2021) (16) SCC 158,*** *wherein the Supreme Court after referring to the above quoted paragraph no.9 observed as under in para-13:-*

"13. In the facts and circumstances of the present case, considering that the statements of the deceased have vacillated, there is no evidence about the fitness of mind of the deceased to make the dying declaration including the presence of the Doctor, the veracity and truthfulness of the

dying declaration remains suspect. It would not be safe to simply reject the probable defence of suicide, to reverse the acquittal and convict the respondents."

(Emphasis supplied by us)

50. The statement of the Magistrate/Deputy Collector is categorical that the contents of the dying declaration were not read out to the victim and no satisfaction in that regard is otherwise recorded in the dying declaration. In ***Suriender Kumar Vs. State of Haryana*** *reported in* ***(2011) 10 SCC 173,*** *the Supreme Court questioned the dying declaration also on the ground that such a satisfaction about the contents of the dying declaration having read out to the victim was missing. In paragraph no. 25 of the judgment, the Supreme Court observed as under:-*

"25. As per the prosecution, the incident took place at 2 a.m. on 26.06.1991 and as per her statement, the occurrence of burning was in the evening of 25.06.1991, that is, the previous day. ***The dying declaration did not carry a certificate by the Executive Magistrate to the effect that it was a voluntary statement made by the deceased and that he had read over the statement to her.*** *The dying declaration was not even attested by the doctor. As stated earlier, though the Magistrate had stated that the statement had been made in mixed dialect of Hindi and Punjabi and the statement was recorded only in Hindi. Another important aspect is that there was evidence that Kamlesh Rani was under the influence of Fortwin and Pethidine injections and was not supposed to be having normal alertness. In our view, the trial Court rightly rejected the dying declaration altogether shrouded by suspicious circumstances and contrary to the story of prosecution and acquitted the appellant."*

(Emphasis supplied by us)

27. In **Paparambaka Rosamma** (supra), which has been relied in the above noted judgment in **Lokesh (supra),** it has been categorically held that *in medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind.*

28. The certification of the dying declaration dated 27.06.2018 only reports that the victim (deceased) was 'conscious'. Dr. Sandhya Chaudhary ' P.W.11 admitted that burn patients are administered sedative drugs and she did not verify what drugs were given to the victim (deceased). The distinction between 'consciousness' and 'fit mental state' has been authoritatively explained by Hon'ble the Supreme Court in **Paparambaka Rosamma and others (supra)** holding that absence of certification regarding mental fitness renders the dying declaration unreliable.

29. The above view has been followed consistently by Co-ordinate Benches of this Court in **Rameshwar Lal Chauhan (supra), Radhey Jaiswal and others (supra) and Dilawar Singh (supra).**

30. The certification by the Doctor Sandhya Chaudhary (P.W.11) put before recording of the alleged dying declaration was only to the effect that the victim was of fully conscious and not that she was in a fit state of mind to make such statement.

31. It is noteworthy that while recording the dying declaration, the Magistrate has to satisfy himself before recording the dying declaration regarding fit state of mind of the victim. Shri Abhishek Pathak- P.W.6, Sub-Divisional Magistrate, who recorded the dying declaration in the present case, has stated in his cross-examination- 'that at the time he was recording the statement, the deceased was in a fit mental state to give a statement, and he could not tell to what extent the deceased was burnt'. It is questionable how Shri Abhishek Pathak-P.W.6 came to the conclusion that the victim was in a "fit state of mind". It is also not clear from the record whether he put forth certain questionnaire to the victim to ascertain that she was in a 'fit state of mind', as, Hon'ble Apex Court in the case of **Laxman Vs. State of Maharashtra reported in (2002) 6 SCC 710** while considering such a factual situation has observed that *'it is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration."* In the case at hand, not only the doctor merely says that the victim was conscious, the Magistrate does not give the basis for his satisfaction as to her mental fitness. He did not put any question to her to satisfy himself in this regard.

32. Further, it is also pertinent to mention here the decision of Hon'ble Apex Court in the case of **Kanchy Komuramma Vs. State of A.P. reported in 1996 SCC (Cri) 31** wherein it has been held that the dying declaration has been recorded by a Judicial Magistrate, by itself is not a proof of truthfulness of *the dying declaration, which, in order to earn acceptability, has still to pass the test of scrutiny of the court. There are certain safeguards that must be observed by a Magistrate when requested to record a dying declaration. The Magistrate, before recording the dying declaration, must satisfy himself that the deceased is in a proper mental state to make the statement. He must record that satisfaction before recording the dying declaration and he should also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement, and the prosecution must prove that opinion at the trial in the manner known to the law.*

33. No such exercise was done by the Magistrate in this case. We may also refer to the case of **Khushal Rao Vs. State of Bombay reported in AIR 1958 SC 22,** decided by a three Judges Bench of Hon'ble Supreme Court, where the law regarding evidentiary value of dying declaration has been discussed and it has been observed as follows :-

"(16) On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions

and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the. circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

34. Tested on anvil of the above mentioned law, the dying declaration being relied by the prosecution does not pass the test and is not reliable. In addition to above, we also find substance in the argument of learned counsel for the appellant, questioning the dying declaration. The following circumstances in this regard are noticeable. The dying declaration taken on 27.06.2018 speaks altogether differently from the prosecution story, by alleging that petrol was extracted from motorcycle and poured upon the deceased and that the incident occurred in the morning between 7:00 to 8:00 A.M. The Investigating Officer has admitted during cross-examination that the medical examination recorded kerosene smell while the dying declaration speaks of petrol. The father of the deceased, namely, Raju, who is also the informant, in his testimony has categorically stated that the incident occurred in the evening hours and the kerosene oil was used, which version finds support from the contents of the FIR as well as contemporaneous medical examination conducted by the doctor at District Hospital, Lakhimpur Kheri. Dr. Rajesh Kumar, P.W.12, who medically examined the deceased at 10:10 P.M. on 16.06.2018 has specifically deposed that there was a distinct smell of kerosene emanating from the clothes and body of the deceased. He has further clarified in his cross-examination that petrol and kerosene have different odours and that kerosene oil is ordinarily detectable. But the dying declaration speaks of petrol being taken from the motorcycle and being used to set the victim on fire which is incongruous with the prosecution case. No explanation whatsoever has been offered by the prosecution for this fundamental discrepancy in the victim's narrative, either through the Investigating Officer or through medical evidence.

35. Further the time of incident as mentioned in the FIR and statement of witnesses, is different from that mentioned in dying declaration, about which there is no satisfactory explanation by the prosecution thereby creating doubts about veracity and reliability of the dying declaration.

36. Before placing reliance upon the dying declaration, the Court is required to be fully satisfied that since declaration inspires complete confidence and has been recorded strictly in accordance with the principles consistently laid down by Hon'ble the Supreme Court.

37. It is also well settled that mere consciousness of the deceased is not sufficient; the court must be satisfied that the deceased was in a fit state of mind to make the statement. The declaration must be complete and made under circumstances that leave no doubt as to its voluntary and truthful. Ordinarily, such satisfaction should be recorded by the medical expert and the certificate of fitness must receive so as to affirm the dying declaration voluntarily. The recording authority

must ensure that dying declaration is complete and made voluntarily, i.e., it should not be the result of tutoring, prompting, or imagination. The statement must reflect the deceased's mental alertness and clarity. Further contents of such dying declaration must be specifically put to the accused during his examination under Section 313 Cr.P.C. to afford them a proper opportunity for an explanation which has not been done in this case.

38. The trial court, while convicting the accused mainly relied upon the dying declaration. However, the contents of dying declaration were not put to the accused during 313 Cr.P.C. statement. It is really a matter of concern that the trial court did not frame the question specifically putting the incriminating material stated by deceased in her dying declaration. Thereby, a very important circumstance was lost. The deceased in her statement (dying declaration) stated that the accused had poured petrol on her person and set her on fire. Particularly, this incriminating part of dying declaration was not put to the accused to get his explanation. Although, the dying declaration was treated to be the sole basis to convict the accused, contents of the same were not put to the accused in his statement recorded under Section 313 Cr.P.C. Apparently, the accused was not given opportunity to explain this vital circumstance. Recording of statement under Section 313 of Cr.P.C. is not an empty formality during trial. Section 313 Cr.P.C. prescribes the procedure to safeguard the interest of the accused. Obviously, in the absence of seeking explanation on this vital point, prejudice is caused to the accused.

39. It is undisputed that the contents of the dying declaration was not put to the appellant while recording under Section 313 Cr.P.C. It is also well settled that unless the contents of such dying declaration are confronted to the accused, the prosecution cannot be allowed to place reliance upon the contents of such dying declaration. The Hon'ble Apex Court in the case of **Samsul Haque (supra),** the Hon'ble Apex Court has observed in para nos.21 and 22 as under:

'21. The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to accused, and the statement recorded under Section 313 of the Cr.P.C. To say the least it is perfunctory.

22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in Asraf Ali v. State of Assam : (2008) 16 SCC 328. The relevant observations are in the following paragraphs:

21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom 7 (2008) 16 SCC 328 that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S. Harnam Singh v. The State (AIR 1976 SC 2140), while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non- indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.'

23. While making the aforesaid observations, this Court also referred to its earlier judgment of the three Judge Bench in Shivaji Sahabrao Bobade v. State of Maharashtra : (1973) 2 SCC 793, which considered the fall out of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement that the accused attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused must be eschewed. No doubt, it is recognised, that where there is a perfunctory examination under Section 313 Cr.P.C., the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed [(1973) 2 SCC 793].

40. In the case of **Aejaz Ahmad Sheikh Vs. State of U.P. & Another (supra)**, the Hon'ble Apex Court has held as under.

'28. Before parting with the judgment, Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court where we find that vital prosecution evidence is not put to the accused in statement under Section 313 of the Cr.PC. The Court becomes helpless, as due to the long lapse of time, the defect cannot be cured by passing an order of remand.'In the case of Raj Kumar Vs. State (NCT of Delhi), this Court dealt with this issue. In paragraphs 29 and 30, this Court held thus:

'29. In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the court and not as mouthpieces of their respective clients. While recording the statement under Section 313CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of sub-section (5) of Section 313 Cr.P.C., which will ensure that the chances of committing errors and omissions are minimised.'

41. Court finds that the investigation conducted in the present case is vitiated by serious lapses and unexplained omissions which strikes at the root of the prosecution case. Despite the fact that the deceased was initially treated at the District Hospital, Lakhimpur Kheri, and thereafter remained under treatment at Dr. Shyama Prasad Mukherjee Civil Hospital, Lucknow, till her death, the Investigating Officer failed to collect or place on record the bed head tickets'from the said hospitals. Furthermore, the statements of the treating doctors at Lucknow, where the deceased ultimately succumbed, were not recorded. More importantly, the evidence of Dr. Rajesh Kumar-P.W.12 that the hospital records clearly indicate an earlier dying declaration/statement of the victim/deceased was recorded on 17.06.2018. The prosecution has neither produced the said statement nor offered any explanation for its non-production. The existence of such an earlier dying declaration is of great significance, particularly as the later dying declaration of 27.06.2018 contains material contradictions with both the medical evidence and the FIR version. The failure of the Investigating Officer to explain these vital points reflects a casual and perfunctory approach to the investigation. In this regard, learned counsel for the accused-appellant has placed reliance upon a judgment of Hon'ble Apex Court in the case of **Irfan @ Naka Vs. State of U.P. (supra)** wherein the Hon'ble Apex Court has made following observations:-

'63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion.

*65. In **Sujit Biswas v. State of Assam** reported in **(2013) 12 SCC 406**, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' in para 13 has held as under:*

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

between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.'

66. It may be true as observed by Hon'ble the Supreme Court in the case of ***Dharm Das Wadhwani vs. State of Uttar Pradesh,*** *reported in* ***(1974) 4 SCC 267****, that the rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-convict in the crime.'*

42. The evidence on the point of dying declaration does not inspire confidence and it cannot be relied upon. In the present case, it is difficult to rest the conviction solely based on the dying declaration. As discussed above, the evidence on the point of dying declaration does not inspire confidence and it cannot be relied upon. We are not satisfied that the prosecution has proved its case against the appellant-convict beyond reasonable doubt.

43. The crime is said to have been committed on 16.06.2018, dying declaration is said to have been recorded on 27.06.2018 and victim is said to have died on 05.07.2018. Cause of death is mentioned as septicemia. In this context testimony of father (P.W.1) itself to the effect 'my patient was referred to Lucknow and Ambulance-108 had arrived, but I did not take my patient to Lucknow and I sent the ambulance back' is relevant. In spite of doctors having referred the patient for treatment at Lucknow, Raju (P.W.1) did not take her there and her treatment continued at District Hospital, Kheri. It is only when her condition deteriorated she was taken to Lucknow on 27.06.2018 where she died. The time-lapse and conduct of Raju (P.W.1) speak volumes. In these circumstances and evidence before us, it is not possible to hold the appellant guilty of the charge of murder.

44. It is also well settled that where an investigation is tainted, unfair, or conducted in a haphazard manner, and the prosecution evidence otherwise fails to establish the case beyond reasonable doubt, the accused is entitled to the benefit of doubt. The defective investigation in the present case further reinforces the conclusion that the appellant's conviction cannot be sustained. The prosecution has failed to prove the charge of murder against the appellant beyond reasonable doubt.

45. Learned trial court has erred in appreciating evidentiary value of the dying declaration which is the only evidence relied for conviction of the appellant and has not kept in mind the law on the subject as discussed hereinabove. It has also brushed aside the discrepancy in the time of commission of crime as mentioned in the F.I.R. and statement of the witnesses vis-a-vis with the dying declaration, cursorily, on surmises, ignoring the material impact which it had on the prosecution case. Learned trial court has thus erred in convicting the appellant and sentencing him

to life imprisonment for the charge of having committed an offence punishable under Section 302 I.P.C.

46. In view of the above, the appeal stands **allowed.** The judgment and order of conviction dated 06.05.2022 passed by Ld. Session's Judge, Lakhimpur Kheri in S.T. No.15/2019, Case Crime No.198/2018, under Section 302 I.P.C. Police Station-Kheri, District- Lakhimpur Kheri is quashed. The accused-appellant, Sujeet, is acquitted of the offence punishable under Section 302 of the IPC. He shall be released from jail forthwith, if not required in any other offence. The amount of fine, if deposited, shall be refunded to the accused.

47. The accused-appellant, namely, Sujeet would be released forthwith unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C.

48. Trial court record along with copy of this judgment and order be transmitted to the court concerned forthwith.

49. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

(2026) 2 ILRA 1083
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.02.2026

BEFORE

THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal No. 1937 of 2007

Munna **...Appellant**
Versus
State Of U.P. **...Respondent**

Issue for consideration

Matter pertains to mandate of sec 50 of Narcotics Drugs and Psychotropic Substance Act, 1985.

Headnotes

Narcotics Drugs and Psychotropic Substance Act, 1985-sec 50-nothing to show that the officers apprised them explicitly of right under section 50 of the act-mandate of Section 50 is not an empty formality - incident of the present case is said to happen on 17.01.2000 while chargesheet against the accused has been filed so promptly on 21.01.2000 -without waiting or procuring the FSL report in regard of suspect's contraband-signatures or thumb impressions of the respective accused persons were not taken on the samples memos- before sending them to the malkhana.-Held, should be given the benefit of doubt as the prosecution has failed to establish its case beyond reasonable doubt. **Appeals allowed.**(E-9)

Case Law Cited

1. State of Punjab v. Baldev Singh, (1999) 6 SCC 172
2. State of H.P. v. Pawan Kumar, (2005) 4 SCC 350

3. Tofan Singh v State of Tamil Nadu (2021) 4 SCC 1
4. Vinubhai Haribhai Malaviya v State of Gujarat (2019) 17 SCC 1
5. State of Rajasthan v. Parmanand & Anr. (2014) 5 SCC 345
6. Vijaysinh Chandubha Jadeja v. State of Gujarat (2011) 1 SCC 609
7. State of Delhi v. Ram Avtar (2011) 12 SCC 207
8. Ranjan Kumar Chadha v. State of H.P. 2023 SCC OnLine SC 1262
9. Gorakh Nath Prasad v. State of Bihar (2018) 2 SCC 305
10. Ashok Kumar Sharma v. State of Rajasthan (2013) 2 SCC 67

List of Acts

Narcotics Drugs and Psychotropic Substance Act, 1985

List of Keywords

Statutory right; section 50; statutory right; FSL report; search and seizure; standard of proof

Appearances of parties

Counsel for Appellant(s) : Avinash Srivastava, Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard, Shri Avinash Srivastava, learned counsel for the appellants and Shri Bishvanath Nishad, learned AGA for the State.

2. By means of the captioned appeals the appellants have assailed the correctness of the judgment and order dated 21.08. 2007 by which the learned additional sessions judge, fast track court no 30 district Barabanki in criminal trial no 22/2000 State v Kamlesh Case crime no. 12/2000 convicted the appellant (Kamlesh) to undergo RI for six months and a fine of Rs 5000 and in default of fine further imprisonment of one month under section 8/18 NDPS Act and convicted Munna in criminal trial no 23/2000 State v Munna under section 8/18 NDPS Act sentencing him to undergo RI one year and also to pay fine of Rs 10000, to further undergo 2 months additional rigorous imprisonment.

CASE OF THE PROSECUTION

3. On 17.01.2000, S.O. Gauri Shankar, along with Constable Ashok Kumar Singh and Constable Anil Pratap Singh, departed from the police station in search of the wanted accused Ram Naresh related to Case Crime No. 3/2000 under Sections 457, 380, 411 IPC Police Station Kothi, and upon reaching near Usmanpur, information was received through a special informer that two individuals had gone to the place of farmer Paridin in Village Birapur on a motorcycle to purchase opium, and if acted upon quickly, they could be caught. Believing this information, Constable Shahabuddin and Constable Rudra Nath Pandey, who were deployed on road patrol, were taken along, and they reached Village Birapur. Public witnesses were asked to accompany them after being told the purpose, but due to village enmity/issues, no person was ready to go along. Therefore, along with the informer and the accompanying staff, when they reached near Paridin's house around 8:00 PM, two individuals were sitting on a motorcycle and one person was talking to them. Upon the informer's signal, they were challenged by flashing a torch. All three individuals attempted to flee but were surrounded and stopped with the help of the accompanying staff. When

asked for their names and addresses, the person sitting on the motorcycle driver's seat stated his name as Kamlesh, the second person sitting behind on the motorcycle stated his name as Munna, and the third person stated his name as Paridin. On being asked the reason for attempting to flee, they stated that they possessed illicit opium, which is why they wanted to run away. Since there was information regarding the possession of illicit opium, all three individuals were asked if they wanted to give their personal search (Jama Talashi) before any nearest Magistrate or a Gazetted Officer. On this, all three said that when the police had caught them, they may only make the search.

4. Upon conducting the personal search as per rules, approximately half a kilogram of illicit opium was recovered from inside a polythene bag kept in the gamchha (towel) tied around Kamlesh's waist. From the person sitting behind Munna, approximately one kilogram of opium was recovered from a polythene bag pressed under his right armpit, and a Hero Honda Motorcycle U.P. G.O. Number 3830 was recovered in working condition; and from the third person, Paridin, approximately 400 grams of illicit opium was recovered from a polythene bag held in his right hand. The accused persons were arrested on the spot. Recovered suspicious contraband was sealed and a recovery memo was prepared to the same effect, a copy of which was given to the accused persons. The contraband and the accused were brought to the police station and deposited, and a case was registered on the basis of the memo. The case was registered, and an investigation was conducted. Statements of witnesses were recorded under Section 161 CrPC.

5. During the course of investigation the Investigating officer visited the place of incidence and prepared a site plan (Naksha Nazri) of the crime scene and recorded the statement of the accused and sent the contraband to the Forensic Science Laboratory for examination, and upon receipt of the test report, charge sheets against the accused persons were submitted to the court.

6. The essential prosecution documents were furnished to the accused persons by the trial court, and a charge was subsequently framed. The accused persons, however, pleaded not guilty and chose to be tried by the court.

7. To establish its case, the prosecution examined seven witnesses. After completing the prosecution evidence statements of accused persons were recorded under Section 313 Cr.P.C. At the stage of defence evidence three witnesses were examined.

8. On conclusion of the trial, the accused persons were held guilty and convicted by learned trial Court for the offence punishable under Section 8/18 of the Act in the manner already referred to supra.

9. Aggrieved against the judgment of conviction, instant appeal has been preferred by the appellants Kamlesh and Munna whereas the co-accused Paridin has passed away during the pendency of the appeal hence appeal in respect of Paridin has been abated.

SUBMISSIONS OF APPELLANTS

10. The counsel for the appellant submitted that the learned trial court has erred in holding that the alleged material was recovered in polythene from the possession of the appellants which does not come in personal search as such provisions of section 50 of the N.D.P.S Act are not applicable in the case.

11. The counsel also submitted that the learned trial court erred in not considering the fact that the alleged recovered material was sent for chemical examination on 20.01.2000 by the police and on the next day on 21.01.2000 charge sheet was submitted against the accused appellant without waiting the chemical examination.

12. The counsel further submitted that the trial court erred in not considering the fact that there were no independent witnesses and that prosecution has failed to prove its case beyond reasonable doubt.

SUBMISSIONS OF RESPONDENT

13. The counsel for the respondent submitted that judgment and order of the trial court is a reasoned one and that prosecution has proved its case beyond reasonable doubt.

14. I have heard the learned counsels for the parties and perused the entire material available on record with due care. The question that falls for consideration here is, whether the trial court erred in convicting the accused persons under section 8/18 of the NDPS Act.

ANALYSIS/ DISCUSSION/ CONCLUSION

15. At the outset, it is to be noted that the conviction of the appellants rests entirely upon the alleged recovery of opium from their respective possession. The prosecution case itself makes it evident that recovery of the contraband was effected after taking a personal search of the accused persons, namely, from a polythene bag kept in the gamchha tied around the waist of appellant Kamlesh, from a polythene bag pressed under the armpit of appellant Munna, and from a polythene bag held in hand by co-accused Paridin. In this regard the question arises whether the provision of section 50 of the NDPS Act was attracted in the present case and if yes then whether it was complied with. While dealing with this question of compliance of section 50 of the Act the trial court observed the following:-

"On behalf of the defense, the first argument presented is that at the time of the arrest of the accused persons, Section 50 of the N.D.P.S. Act was not complied with by the police. In my opinion, there is no force in this argument of the defense. The opium stated to have been recovered from all three accused persons, Kamlesh, Munna, and Paridin, is stated to have been recovered from the polythene recovered from each accused, which does not fall under the category of personal search, and in such a situation, the provisions of Section 50 of the N.D.P.S. Act does not apply, as propounded by the Hon'ble Supreme Court in AIR 2007 SC 2018 State of Rajasthan Vs. Baburam. There is no dispute in this regard that if the recovery of the narcotic substance is from any object other than the body of the accused, then it does not fall under the category of personal search. Since it has been stated that 500 grams of opium was recovered from accused Kamlesha

from a polythene kept inside the gamchha tied at his waist, one kilogram of opium from a polythene pressed in the armpit of accused Munna, and 400 grams of opium from a polythene held in the hand of accused Paridin. From which it is clear that the recovery of opium from all three accused persons has been described as being from polythene, which does not fall into the category of personal search, and accordingly, the provision of Section 50 N.D.P.S. Act does not apply in the present case. Where the recovery is not from a personal search but from any other type of plastic bag, polythene, etc., in such a situation, the provision of Section 50 N.D.P.S. Act does not apply. A similar view has been expressed by the Hon'ble Supreme Court in the case of AIR 2007 S.C. 2040 Ravindran @ John Vs. Superintendent of Customs. Therefore, keeping in view the above facts and circumstances in the present case, the provision of Section 50 N.D.P.S. Act does not apply. Thus, I have duly perused the precedents presented by the defense: "1999 (39) Supreme Court-349 State of Punjab Vs. Baldev Singh, 2006 E.F.R. 251 (Punjab and Haryana High Court) Gurucharan Singh Vs. State of Punjab, and 2006 (1) E.F.R. 272 Allahabad High Court Lucknow Bench Liyakat Gurjar Vs. State of U.P." Accordingly, the facts and circumstances of the above precedents are completely different and do not apply to the present case. Even otherwise, if it is assumed that the provisions of Section 50 N.D.P.S. Act apply in the present case, the accused persons were given the option by the police personnel before their search that the accused are free to give their search before any nearest Magistrate or Gazetted Officer. But their search was taken only on the basis of the consent of the accused persons, whereby opium was recovered from polythene bags during the search. As far as the question of giving information regarding the consent of the accused persons under Section 50 N.D.P.S. Act is concerned that it is not necessary that this information be given in writing. As mentioned in paragraph 58 of the precedent "Baldev Singh" presented on behalf of the accused persons. Therefore, there seems to be no force in this argument of the defense that the trial of the accused persons is vitiated due to non-compliance of Section 50 N.D.P.S. Act in the present case."

Non-compliance of Section 50 NDPS Act

16. What is pertinent to note from the prosecution evidence is that it transpires that a collective option was given to all the accused persons asking whether they wished to be searched before a nearest Magistrate or a Gazetted Officer, and all of them allegedly stated in one voice that the police personnel themselves may conduct the search. There is nothing on record to show that each accused was individually apprised of his independent and valuable statutory right under Section 50 of the NDPS Act. This right was waived by the accused persons collectively. There is also nothing on record taken in written by the officers regarding the waving off of such statutory right by the accused persons.

17. In the case of **State of Rajasthan v Parmanand & Anr (2014) 5 SCC 345** the apex court while dealing with the issue of joint communication of the right under section 50 of the Act held that such communication of the right would be bad in law. The relevant observations made are reproduced below.

"14. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose.

Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval."

18. While dealing with the question whether section 50 would be attracted where personal search of the accused has been carried out but the contraband has been recovered from a polythene or bag The Supreme Court in **Paramand *(supra)*** observed as follows: -

"12. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of 9 (2009) 16 SCC 644 1 Page"12 the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application."

19. While considering the law laid down in Parmanand the Supreme Court in the case of **Ranjan Kumar Chadha v State of Himachal Pradesh 2023 SCC OnLine SC 1262** dealt with the set of precedents and went on to clarify the position of law in this regard. The observation made the court are reproduced here: -

"126. As such, there is no direct conflict between SK. Raju (supra) and Baljinder Singh (supra). It is pertinent to note that in SK. Raju (supra) the contraband was recovered from the bag which the accused was carrying, whereas in Baljinder Singh (supra) the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being "inextricably linked to the person". Parmanand (supra) relied upon the judgment in Dilip (supra) while taking the view that if both, the person of the accused as well as the bag is searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would be applicable. However, it is pertinent to note that Dilip (supra) has not taken into consideration Pawan Kumar (supra) which is of a larger Bench. It is also pertinent to note that although in Parmanand (supra) the Court looked into Pawan Kumar (supra), yet ultimately it followed Dilip (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the large Bench in Pawan Kumar (supra). Baljinder Singh (supra), on the other hand, says that Dilip (supra) does not lay down a good law.

127. In the facts of the present case, there is no scope of applying the ratio of Parmanand (supra) and SK. Raju (supra). At the cost of repetition, we may state that in the case on hand, there is nothing to indicate that the search of the person of the accused was also undertaken along with the bag which he was carrying on his shoulder.

128. We do not propose to say anything further as regards SK. Raju (supra) as well as Baljinder Singh (supra). We adhere to the principles of law as explained by the Constitution Bench in Baldev Singh (supra) and the larger Bench answering the reference in Pawan Kumar (supra)."

20. From the above mentioned extract of the judgment, it can be deduced that even in the case at hand and even otherwise following the dictum of the Constitution Bench in **State of Punjab v. Baldev Singh,** (1999) 6 SCC 172 and of three judge bench in **State of H.P. v. Pawan Kumar**, (2005) 4 SCC 350 should be appropriate.

21. At this stage it is pertinent to look at the observations made in **Pawan Kumar** (supra):

"11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the word "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by Sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free."

22. The further observations made by the Supreme Court in **Ranjan Kumar Chadha** (Supra):

"129. It has been observed in Baldev Singh (supra) that drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals

of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. Reference in the said decision has also been made to some United Nation Conventions which the Government of India has ratified. It is, therefore, absolutely imperative that those who indulge in this kind of nefarious activities should not go scot-free on technical pleas which come handy to their advantage in a fraction of second by slight movement of the baggage, being placed to any part of their body, which baggage may contain the incriminating article."

23. In the present case the contraband was recovered from inside a polythene bag kept in the gamchha tied around Kamlesh's waist while from Munna the contraband was recovered from a polythene bag pressed under his right armpit while Paridin held it in his hand. I believe that if the contraband is seized by the empowered officer there would be some contact with the body of the accused persons but I feel that applying a straitjacket formula and this test as a sole determining factor without looking at the facts of the case would not be justified neither does the precedent at hand suggest that.

24. The manner of recovery differs significantly between the appellants. For appellant Kamlesh, the contraband was recovered from the folds of a gamchha tied around his waist. As held by the three judge Bench in Pawan Kumar (supra), a gamchha or dhoti worn by the accused is an integral part of his clothing and body. Therefore, the search of Kamlesh was a 'personal search,' mandating compliance with Section 50 of the NDPS Act.

25. Conversely, regarding accused Munna, the contraband was recovered from a polythene bag pressed under his armpit, and for co-accused Paridin, from a bag held in his hand. A bag or container even if carried under the arm does not constitute the 'person' of the accused unless it is concealed within the clothing. Consequently, I concede that Section 50 was not technically attracted for Munna and Paridin.

26. However, this distinction exposes a fatal flaw in the investigation procedure by the police. The empowered officer treated all three accused as a single unit. By offering a 'Joint Option' to a group where one person (Kamlesh) had an absolute statutory right to be searched before a Gazetted Officer and the others did not, the officer created an atmosphere of confusion. The 'Joint Option' failed to isolate and inform Kamlesh of his specific, indefeasible right, effectively diluting the mandate of Section 50 into an empty formality for him.

27. A constitution bench of the apex court in the case **of Vijaysinh Chandubha Jadeja v State of Gujarat (2011) 1 SCC 609** held that the obligation under section 50 is mandatory and the person to be searched should be specifically informed that he has a right to be searched in the presence of a Gazetted officer or Magistrate and disapproved with the concept of substantial compliance. The relevant observations made in this regard are reproduced below: -

"29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise

the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

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31. We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said section in Joseph Fernandez and Prabha Shankar Dubey is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh case. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf."

28. Similarly in the case of **State of Delhi v Ram Avtar (2011) 12 SCC 207** the apex court held that merely asking the accused whether he wished to be searched before a Gazetted Officer or a Magistrate without informing him that he enjoyed a right in that behalf, is not compliance of section 50 of the NDPS Act.

29. In a similar vein in the case of **Navdeep Singh v State of Haryana (2013) 2 SCC 584** the court while dealing with notice regarding informing the suspected persons of his right held that: -

"11. In our opinion, the provisions do not prescribe any set format for such notice. The essence is to apprise the accused of his legal right of being searched either by a gazetted officer or a Magistrate. Here, when the appellant was apprised of his statutory rights under Section 50 by PW 3 and he opted to be searched by a gazetted officer, then he has, by necessary implication, consciously exercised his right. In that view of the matter, we cannot accept the submission of the learned counsel for the appellant that the mandatory provisions of Section 50 of the Act were breached."

30. Thus it has to be seen whether the accused persons were merely informed of the option of being searched before a Gazatted Officer or a Magistrate or apprised of the statutory right to be exercised by them. An excerpt from the recovery memo is quoted below regarding this: -

"Since there is information of having illicit opium, therefore, the above-mentioned three persons were asked whether you people want to give your personal search (body search) before any Magistrate or Gazetted Officer, then the above-mentioned three people said that now that you people have stopped [us], then you yourself take our personal search, we are consenting/agreeable."

31. In the present case from the above excerpt and even the other evidence on record there is nothing to show that the officers apprised them explicitly of their right under section 50 of the act. The empowered officers while informing the accused persons of the choice available to them put it merely as an option but did not apprise them that they have a statutory right regarding the same.

32. The mandate of Section 50 is not an empty formality but a substantive safeguard provided to the accused. The law is well settled that the accused must be made aware of his right in clear and unambiguous terms, and such communication must be individual and specific, particularly when more than one accused is involved. A joint or collective consent cannot be treated as valid compliance of Section 50.

33. The majority in the case of **Tofan Singh v State of Tamil Nadu (2021) 4 SCC 1** while emphasising the on the need of compliance of safeguards provided in the NDPS act observed as follows:-

"55.Given the stringent provisions of the NDPS Act, together with the safeguards mentioned in the provisions discussed above, it is important to note that statutes like the NDPS Act have to be construed bearing in mind the fact that the severer the punishment, the greater the care taken to see that the safeguards provided in the statute are scrupulously followed. This was laid down in paragraph 28 of Baldev Singh (supra). That the NDPS Act is predominantly a penal statute is no longer res integra. In Directorate of Revenue and Anr. v. Mohammed Nisar Holia (2008) 2 SCC 370, this Court held:

"9. The NDPS Act is a penal statute. It invades the rights of an accused to a large extent. It raises a presumption of a culpable mental state. Ordinarily, even an accused may not be released on bail having regard to Section 37 of the Act. The court has the power to publish names, address and business, etc. of the offenders. Any document produced in evidence becomes admissible. A vast power of calling for information upon the authorities has been conferred by reason of Section 67 of the Act.

10. Interpretation and/or validity in regard to the power of search and seizure provided for under the said Act came up for consideration in Balbir Singh case [(1994) 3 SCC 299] wherein it was held:

"10. It is thus clear that by a combined reading of Sections 41, 42, 43 and 51 of the NDPS Act and Section 4 CrPC regarding arrest and search under Sections 41, 42 and 43, the provisions of CrPC, namely, Sections 100 and 165 would be applicable to such arrest and search. Consequently the principles laid down by various courts as discussed above regarding the irregularities and illegalities in respect of arrest and search would equally be applicable to the arrest and search under the NDPS Act also depending upon the facts and circumstances of each case.

11. But there are certain other embargoes envisaged under Sections 41 and 42 of the NDPS Act. Only a Magistrate so empowered under Section 41 can issue a warrant for arrest and search where he has reason to believe that an offence under Chapter IV has been committed so on

and so forth as mentioned therein. Under sub-section (2) only a gazetted officer or other officers mentioned and empowered therein can give an authorisation to a subordinate to arrest and search if such officer has reason to believe about the commission of an offence and after reducing the information, if any, into writing. Under Section 42 only officers mentioned therein and so empowered can make the arrest or search as provided if they have reason to believe from personal knowledge or information. In both these provisions there are two important requirements. One is that the Magistrate or the officers mentioned therein firstly be empowered and they must have reason to believe that an offence under Chapter IV has been committed or that such arrest or search was necessary for other purposes mentioned in the provision. So far as the first requirement is concerned, it can be seen that the legislature intended that only certain Magistrates and certain officers of higher rank and empowered can act to effect the arrest or search. This is a safeguard provided having regard to the deterrent sentences contemplated and with a view that innocent persons are not harassed. Therefore if an arrest or search contemplated under these provisions of NDPS Act has to be carried out, the same can be done only by competent and empowered Magistrates or officers mentioned thereunder."

11. Power to make search and seizure as also to arrest an accused is founded upon and subject to satisfaction of the officer as the term "reason to believe" has been used. Such belief may be founded upon secret information that may be orally conveyed by the informant. Draconian provision which may lead to a harsh sentence having regard to the doctrine of "due process" as adumbrated under Article 21 of the Constitution of India requires striking of balance between the need of law and enforcement thereof, on the one hand, and protection of citizen from oppression and injustice on the other.

12. This Court in Balbir Singh [(1994) 3 SCC 299] referring to Miranda v. State of Arizona [384 US 436 (1966)] while interpreting the provisions of the Act held that not only the provisions of Section 165 of the Code of Criminal Procedure would be attracted in the matter of search and seizure but the same must comply with right of the accused to be informed about the requirement to comply with the statutory provisions. xxx xxx xxx

16. It is not in dispute that the said Act prescribes stringent punishment. A balance, thus, must be struck in regard to the mode and manner in which the statutory requirements are to be complied with vis-"-vis the place of search and seizure."

33. Keeping this approach in mind, further the other evidence at hand can be analyzed.

34. It is also a glaring fact that the incident of the present case is said to happen on 17.01.2000 while chargesheet against the accused has been filed so promptly on 21.01.2000 without waiting or procuring the FSL report in regard of suspect"s contraband. This conduct casts significant doubt on the prosecution's narrative.The prompt submission of the charge-sheet on 21.01.2000, merely one day after the alleged contraband was sent for chemical examination on 20.01.2000, critically undermines the prosecution's case. In NDPS Act offenses, the substance's nature is a foundational element, and filing a charge-sheet without the requisite forensic report reflects a casual and mechanical investigatory approach, thereby casting significant doubt on the entire prosecution narrative. This haste, particularly given the incident occurred on 17.01.2000, strongly suggests the

investigation was conducted without properly securing or awaiting the FSL report, thereby creating clouds of suspicion over the prosecution's story. Though this fact does not alone vitiate the case of the prosecution but it portrays lack of fair investigation.

35. A three judge bench of the Supreme Court in the case of V**inubhai Haribhai Malaviya v State of Gujarat (2019) 17 SCC 1** while emphasising the need of fair investigation and inquiry has held that: -

"Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Mrs. Maneka Gandhi v. Union of India & Anr. (1978) 1 SCC 248, be "right, just and fair and not arbitrary, fanciful or oppressive" (see paragraph 7 therein). Equally, in Commissioner of Police, Delhi v. Registrar, Delhi High Court, New Delhi (1996) 6 SCC 323, it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the 18 procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see paragraph 16 therein). 17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that Article 21 is followed both in letter and in spirit."

36. A further lapse during the investigation that comes out is that the signatures or thumb impressions of the respective accused persons were not taken on the samples memos before sending them to the malkhana. This is a glaring lapse on the part of the prosecution as the absence of the signatures or thumb impression which are the identifying marks on the samples of the contraband, develop the possibility of misplacing and tampering. In fact in the recovery memo it has not been specifically stated that the contraband was separated and weighed on the spot rather this comes on later in the picture in the statements of the prosecution witnesses. This appears to suggest that they were only trying to fill the lapses. It is also poignant to note that the contraband allegedly recovered with possession of the accused persons is more than the small quantity but much less than the commercial quantity.

37. The act of the Investigating Officer filing the charge sheet in a predetermined manner without even awaiting the FSL report, reducing the investigation to an empty formality. More damning, however, is the failure to obtain the signatures or thumb impressions of the accused on the sealed sample packets. This omission is not merely a procedural irregularity but a substantive failure that destroys the sanctity of the seizure. Without these signatures, there is no judicial certainty that the samples tested were the same as those seized.

38. It is also evident from the record that although the alleged recovery of the contraband from the accused persons took place in a village area, no independent public witness was associated with the search and seizure. The explanation offered by the prosecution that villagers refused due to

enmity is a stereotyped and routine explanation, which does not inspire confidence, particularly in a case under the NDPS Act where the standard of proof is stringent and procedural safeguards are required to be strictly followed.

39. In the case of **Gorakh Nath Prasad v State of Bihar** (2018) 2 SCC 305 the apex court had observed while stating about the testimonies of police witnesses: -

"The remaining prosecution witnesses being police officers only, it will not be safe to rely upon their testimony alone, which in any event cannot be sufficient evidence by itself either with regard to recovery or the seized material being ganja. No explanation has also been furnished by the prosecution for non-production of the ganja as an exhibit in the trial. The benefit of doubt will, therefore, have to be given to the appellant and in support of which learned Senior Counsel Shri Rai has relied upon"

40. While the testimony of police personnel cannot be discarded merely on the ground of their official status, in cases involving severe punishment and stringent provisions, the absence of independent corroboration assumes significance and weakens the prosecution case when procedural lapses are already apparent.

41. The trial court after analyzing the records has refused to accept the testimonies of the defence witnesses on grounds that they are interested persons with political connections. With the other infirmities and lapses in the investigation process I believe this was not the right approach to take.

42. Before arriving at the conclusion the observations made by the apex court in the case of **Ashok Kumar Sharma v State of Rajasthan (2013) 2 SCC 67** squarely fit in the present case. The relevant portion of which is reproduced below: -

"We may, in this connection, also examine the general maxim "ignorantia juris non excusat" and whether in such a situation the accused could take a defence that he was unaware of the procedure laid down in Section 50 of the NDPS Act. Ignorance does not normally afford any defence under the criminal law, since a person is presumed to know the law. Indisputedly ignorance of law often in reality exists, though as a general proposition, it is true, that knowledge of law must be imputed to every person. But it must be too much to impute knowledge in certain situations, for example, we cannot expect a rustic villager, totally illiterate, a poor man on the street, to be aware of the various law laid down in this country i.e. leave aside the NDPS Act. We notice this fact is also within the knowledge of the legislature, possibly for that reason the legislature in its wisdom imposed an obligation on the authorized officer acting under Section 50 of the NDPS Act to inform the suspect of his right under Section 50 to be searched in the presence of a Gazetted Officer or a Magistrate warranting strict compliance of that procedure."

43. The cumulative effect of the aforesaid infirmities particularly the absence of independent witnesses as well as no names of persons who refused to be the witness, the discrepancy in how the weight was measured, the filing of the charge sheet prior to the receiving of FSL report, absence of the link evidence with regard to sending the contraband to the FSL for examination since secondary

evidence is adduced therefore it is lacking the transparency in carrying contraband in transit, absence of signatures of the accused on the samples of the contraband as well as other procedural lapses during investigation creates serious doubt about the prosecution version and thereby both the accused persons Kamlesh, in whose case there was non compliance of section 50 of the NDPS act and other procedural lapses during the investigation process and Munna, who also suffered due to these lapses, undoubtedly should be given the benefit of doubt as the prosecution has failed to establish its case beyond reasonable doubt. The learned trial court, while recording the conviction, failed to give attention to the procedural lapses apparent on the face of it and erroneously held that the accused persons were guilty of the offence under section 8/18 of the act, which finding is contrary to the evidence on record and settled legal principles.

44. Accordingly, the appeals are **allowed**.

45. The judgment and order dated 21.08.2007 passed by the learned Additional Sessions Judge, Fast Track Court No. 30, District Barabanki, in Criminal Trial No. 22/2000 (State v. Kamlesh) and Criminal Trial No. 23/2000 (State v. Munna), arising out of Case Crime No. 12/2000, Police Station- Kothi, District- Barabanki are hereby set aside.

46. The appellants Kamlesh and Munna are acquitted of the charge under Section 8/18 of the NDPS Act.

47. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged. The appellants shall comply with the requirement of section 437A Cr.P.C.

(2026) 2 ILRA 1096
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 2435 of 1984

Ram Narain & Ors. **...Appellants**
Versus
State Of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether "conviction of the appellants herein for the offence under S. 365 I.P.C." is sustainable "for want of evidence" and in absence of "any charge framed" and "wrongful confinement". (Paras 27, 29, 31)

Headnotes

Criminal Law - Indian Penal Code, 1860 - S. 365 - "it is necessary for the prosecution to prove something beyond abduction with regard to the wrongful confinement of the victim" - "prosecution evidence is totally silent" - conviction unsustainable. (Paras 25, 27)

Evidence - "neither the corpus of the victim has not been recovered alive or dead" - "no iota of evidence to suggest that there was any wrongful confinement" - ingredients of S. 365 not made out. (Para 24)
Criminal Trial - Charge - "no charge under S. 364 or 365 I.P.C. against the appellant" - conviction "without there being any charge" and "without giving them any opportunity to defend" - not sustainable. (Para 29)
Last Seen Theory - "victim was seen in the company of the accused persons" - but "no evidence that there was any wrongful confinement" - insufficient for conviction under S. 365. (Paras 23, 24)
S. 313 Cr.P.C. - "no specific questions have been put with regard to the incriminating evidence relating to the offence under S. 365 I.P.C." - vitiates conviction. (Para 28)
Acquittal - "for want of any charge framed and no incriminating evidence with regard to the wrongful confinement" - appellants entitled to acquittal. (Paras 29, 31)
Held: There is no justification for conviction of the appellants herein for the offence under S. 365 I.P.C. for want of evidence - their conviction under S. 365 is not sustainable, that too without giving any opportunity to defend - no incriminating evidence available on record with regard to the wrongful confinement - the instant appeal is allowed and all the accused appellants are acquitted of the offence under S. 365 I.P.C. (E-7)

Case Law Cited
Sharad Birdhichand Sarda v. State of Maharashtra, **(1984) 4 SCC 116;** *Kali Ram v. State of H.P.,* **(1973) 2 SCC 808;** *Ramreddy Rajesh Khanna Reddy v. State of A.P.,* **(2006) 10 SCC 172;** *Dilshad vs. State of Uttarakhand:* **2013 SCC Online Utt 1303**
State of Rajasthan vs. Kashi Ram: **(2006) 12 SCC 254***; Yakub Khan vs. State of Chattisgarh* **(Criminal Appeal No. 798 of 2023)**

List of Acts
Indian Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords
conviction; wrongful confinement; abduction; kidnapping; corpus; last seen; charge; incriminating evidence; acquittal; S. 365 IPC; S. 313 CrPC; prosecution evidence

Case Arising From
APPELLATE JURISDICTION: Against "the judgment and order dated 21.08.1984 passed by the First Additional Sessions Judge, Jhansi in Sessions Trial No. 107 of 1982 (State of U.P. vs. Ram Narain and 11 others)" convicting appellants under S. 365 I.P.C.

Appearances for Parties
Advs. for the Appellant:
Sri Amit Daga, learned Senior Advocate assisted by Sri Bihaan Pandey; Sri Jitendra Kumar Rawat; Sri Bhriguram Ji Pandey; Sri Pankaj Kumar Shukla, Amicus Curiae.
Advs. for the Respondents:
Sri D.P.S. Chauhan, learned A.G.A. for the State.

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

1. Heard Sri Amit Daga, learned Senior Advocate assisted by Sri Bihaan Pandey, learned counsel for appellant no.2; Sri Jitendra Kumar Rawat, learned counsel for appellant no.3; Sri Bhriguram Ji Pandey, learned counsel for appellant no.5; Sri Pankaj Kumar Shukla, learned Amicus Curiae on behalf of appellant no.4; and Sri D.P.S. Chauhan, learned AGA for the State.

2. The instant criminal appeal has been filed by the appellants against the judgment and order dated 21.08.1984 passed by the First Additional Sessions Judge, Jhansi in Sessions Trial No. 107 of 1982 (State of U.P. vs. Ram Narain and 11 others), whereby all the appellants herein were convicted for the offence under Section 365 I.P.C. During the pendency of the instant appeal the appellant no.1, namely Ram Narain, died and his appeal was abated vide order dated 19.02.2018.

3. The brief facts in the instant case are that on 09.06.1981 at 2:30 PM, the informant Raja Ram lodged an F.I.R. at Police Station- Kotwali, District- Jhansi, stating therein the informant and his son Govind Ram was implicated in a case of murder and were arrested. On 04.06.1981, the informant Raja Ram was released from the jail after the bail was granted by the High Court. When after release from the jail he reached at his house situated at New Basti, Jhansi, then he met his son Shiv Narain, who was aged about 19 years and one Kammad Kachi, the appellant no.5 herein at his house. The appellant no.5, Kammad Kachi informed that Ram Narain etc. who have falsely implicated the informant and his son are regretting their action and he has asked him to come to the village so that he can get a settlement of dispute so that son Govind Ram may also be released on bail. When the informant heard the aforesaid suggestion of the appellant no.5, then he reacted that since they are having too much enmity with the informant and his family members, therefore, they are trying to do some wrong things by inducing and cheating them. Then, he cautioned his son Shiv Narain not to go to the village.

4. On 05.06.1981, after attending the court of District Magistrate, he along with his other relatives went to the village- Datavli and when he came on 07.06.1981 at his house in New Basti, Jhansi, then, he came to know that his son Shiv Narain is not in the house. Then, he inquired about him in the neighbourhood. On inquiry, one Bhagirath and Lakhan Singh has informed that on Saturday 06.06.1981 at around 2:00 PM, they have seen Shiv Narain in the company of Kammod (appellant no.5) near Motor Stand as he was going towards Kachahri Chauraha. When they have inquired from them, then Shiv Narain told them that Kammod (appellant no.5) herein was carrying him to the village for settlement of the case. At that time, Shiv Narain was having cycle and was also having watch on his wrist. Next day, he went to the village to find out the whereabouts of Shiv Narain but he could not get any clue. Then, he continued to search for his son in various places. When he could not find him then came back to Jhansi at around 8:30 PM, hoping that he would have reached Jhansi. However, he has not reached their. Thereupon, the informant has expressed his apprehension that since he was having enmity with Ram Narain, Bhagwat, Gopal Das, Darale, they might have conspired with Kammad and would have called Shiv Narain to the village and since the informant and his elder son was in jail, Shiv Narain, victim son went to the village. Then, he apprehended that the aforesaid accused persons in collusion with other accused persons would have killed the victim, Shiv Narain. The matter be investigated. On the aforesaid information the F.I.R. was registered under Section 364 I.P.C. against Ram Narain, Bhagwat, Gopal Das, Darale.

5. Subsequently, on 24.09.1981, one Ram Swaroop @ Bhunni s/o Mari Mate deposed under Section 164 Cr.P.C. before the Judicial Magistrate, 1st Class, Moth, Jhansi, making out his confessional statement wherein he stated that about three months ago he was in the house of Prabhu, who was resident of his village. Prabhu was also with him at that time. Ram Narain came their and he asked them to accompany him. Thereupon, the witness, Ram Swaroop and Prabhu taken their latthi and accompanied Ram Narain. At that time, it was 8-9 PM. They reached near the

canal towards village, where they found Bhole @ Lallu, Bhagwat and Jagdish alongwith three other persons who was not known to the witness. Bhole was having ballam, Jagdish was having axes, Bhagwat was having an open knife. Out of the three unknown persons, one was having a countrymade pistol, Ram Narain was having lathi and torch. All of them have gone to the horticulture field of Kammod. Ram Narain had flashed torch from the distance then there came Kammod and Shiv Narain was sitting there. Shiv Narain tried to ran away after seeing them. Then, Kammod had caught hold of his hand and all of them have reached their. Shiv Narain tried to shout, then Jagdish has closed his mouth by putting his hand. Thereafter, they carried out Shiv Narain in the fields of the village near the well where Jagdish and Lallu have thrown Shiv Narain in the well. One hand of Shiv Narain was caught hold by Bhagwat and another hand was caught hold by Prabhu and one leg was caught hold by Lallu and another hand was caught hold by Ram Narain and Jagdish had assaulted with an axe on the neck of Shiv Narain due to which half of the neck was cut. He died on the spot. At that time, he was standing along with the accused persons. Jagdish and other accused persons have thrown the dead body as well as the axe in the said well and one spear was also thrown in the well. Thereafter, Ram Narain and Jagdish have gone towards Samthar and the other three persons along with them have also gone. Jagdish has instructed the witness as well as Prabhu and Kammod to go to their homes and around 12:00 P.M. in the night they have came back to their house. The next day evening, around 6-7 PM, Ram Narain came to him and he called Prabhu and told that dead body is floating on the well, that is required to be abolished. Then, the witness went to the house of Prabhu but he did not meet him there. Along with Ram Narain, Kammod also came to their house. Thereafter, all the three persons went near the well where the cart of Darale was there. Near the well, Darale, Dhan Singh, Badri, Gopal Das, Govind, Jagdish, Bhole @ Lallu and Bhagwat were standing. Lallu and Jagdish went down in the well and brought out the dead body from the well. The dead body was kept in the bullock cart of Darale. Gopal Das has told him that he has brought the petrol and the blood which was lying on the well, on that Gopal Das has thrown out the petrol and ablazed.

6. After the fire was subsidized they have carried out the dead body on the bullock cart towards the west of the well. When they reached near the canal of Samthar, thereafter they went to Wajita drainage. After pulling out the dead body from the cart, Ram Narain had went to Wajita, where Brij Kishor, Kaushal Kishor and Gauri Shankar met him in the house of Rajendra Singh. Rajendra Singh was also present there. Ram Narain has asked Rajendra Singh to make the arrangement of the woods. Thereupon, Rajendra Singh has brought the woods along with his servant and Brij Kishor, Gauri Shanker and Kaushal Kishor. Rajendra Singh was having single barrel gun; Ram Narain Singh having double barrel gun; and Govindi was having the gun. All of them have ablazed the dead body near Wajita drainage. Prabhu is the childhood friend of this witness and his relative that is why Prabhu has saved him in his statement. He is associated with Gopal Das and in the offence of murder of Rambabu, the son of Gopal Das, Govind Ram and Rajaram were the accused that is why they have killed Shiv Narain son of Rajaram. After recording the aforesaid statements the police has conducted the investigation and thereupon recovered various incriminating material and thereupon submitted charge-sheet on 22.10.1981.

7. On submission of the charge-sheet the case was committed to the Sessions Court for trial. On 28.04.1981, the learned Sessions Judge framed various charges against the accused persons in four sets. First set of charge was leveled against Ram Narain, Bhagwat, Gopal Das, Darale,

Kammod, Jagdish, Dhan Singh, Badri, Govindi and Ramswaroop. The first set of charge includes the charges under Section 147 as well as under Section 149/201 IPC. The second set of charge was framed against Ram Narain, Bhagwat, Prabhu, Jagdish and Ramswaroop for the offenscs under Sections 147, 149 read with Section 302 IPC and 149 read with Section 201 IPC. The third set of charge was framed against Kammod, Bhagwat, Prabhu, Ramswaroop and Darale under Section 147 IPC as well as 364 IPC and under Section 149, 302 IPC as well as for the offences under Section 149 and 201 IPC. The fourth set of charge was framed against Jagdish for the offence under Section 148, 302 IPC as well as under Section 149, 201 IPC. All the accused persons denied the charges and claimed trial.

8. In support of its case, the prosecution has examined the informant as PW1; one Babu Lal as PW2, who is the witness of the fact that he has seen the victim Shiv Narain in the company of Kammod and Shiv Narain has informed that he was going to the village along with Kammod to settle the case; PW3 is Babu Khan, who has last seen the victim Shiv Narain in the company of Kammod, Bhagwat, Ram Narain, Jagdish, Prabhu and Bhole who were talking to each other and had gone towards the field on the side of the Datavali; Gabdoo was examined as PW4 who has denied the prosecution story and did not affirm his statement under Section 161 Cr.P.C. He was declared hostile; PW5 is Laxman who has deposed that Prabhu was working for few days with him and one day said Prabhu was very sad, he has asked him the cause thereof, then he has disclosed that he has committed a murder. Immediately thereafter, this person has relieved Prabhu. Thus, he is the witness of the extra judicial confession made by the accused appellant no. 3, Prabhu with regard to the murder of the victim; PW6 is Siya Ram who deposed that Prabhu was working with PW5, Laxman and subsequently he came to know that he was arrested. This witness was also declared hostile; PW7 is Narain Das who has deposed that he has seen Shiv Narain in the court complex while he was sitting in a bus. This witness was also declared hostile.

9. PW8 is Bhagirath who has deposed that on 06.06.1981, around 2:00 PM he has seen Shiv Narain in the company of accused Kammod and he has also stated that he is going along with Kammod for settlement of dispute. PW9 Vijendra Pal, Head Constable who had registered the F.I.R. and PW10, Sri P.D. Atal is the initial Investigating Officer, who submits that he had investigated the case upto 02.07.1981 and thereafter since he was transferred, further investigation was carried out by SHO Bhullan Ram. SHO Bhullan Ram has not been examined in the instant case. PW11 is Raunak Hussain who has recorded the 164 Cr.P.C. of accused Ramswaroop. After the prosecution witnesses were examined the statement of accused persons were recorded. They denied all the allegations made against them. Thereupon, vide impugned judgement and order dated 21.08.1984 the trial court has acquitted all the accused persons for all other offences except the appellants herein, who were convicted for the offence under Section 365 I.P.C. and sentenced to undergo three years rigorous imprisonment. Being aggrieved by the same, the instant appeal has been filed.

10. Learned Senior Counsel appearing for the appellant no.2, Sri Amit Daga has vehemently submitted that in the instant case though the appellant no.2 has been named in the F.I.R., however, no specific role has been assigned against the appellant and the F.I.R. was filed only on the basis of the apprehension. He has vehemently argued that the trial court has not framed any charges against the appellant no.2 as well as the appellant nos. 1, 3 and 4 herein for the offence under Section 365

I.P.C. or 364 I.P.C. and submitted that in the first set of the charge, the charge is only for the offence under Section 147 as well as the 149 read with Section 201 I.P.C. for which all the appellants herein have already been acquitted. For the second set of the charges, framed against the appellant nos.1, 2, 3 and 4 and acquitted accused Ramswaroop was for the offence under Sections 147, 149/302, 149/201 I.P.C. For those offence also, all the appellants herein were acquitted. Relying upon the third set of the charge framed against the appellant nos.5, 2, 3, and 4 and two other acquitted accused persons, learned Senior Counsel submits that the aforesaid third set of the charge is also in four parts. In first part, the charge was framed under Section 147 I.P.C. for which all the accused persons have already been acquitted. For the third and fourth charge, under Section 149/302 I.P.C. as well as 149/201 I.P.C., for the same also, all the accused persons have been acquitted. So far as the second charge in the third set of the charge is concerned, it is submitted by learned Senior Counsel for the appellant that it was framed only against appellant no.5 and not against any other accused person, which was framed for the offences under Section 364 I.P.C. Therefore, he submits that since there was no charge under Section 364 or 365 I.P.C. against the appellant no.2, he cannot be convicted for the offence under Section 365 I.P.C. It is further submitted by learned Senior Counsel for the appellant relying upon the statement under Section 313 Cr.P.C., specifically the question no.4, that even according to the aforesaid question put to the appellant, the witness Narottam and Babu Khan have seen the victim Shiv Narain in the company of Kammod as well as Ram Narain, Bhagwat, Bhole. However, in the aforesaid question, it has been categorically mentioned that Kammod and Shiv Narain have went towards west and Ram Narain, Bhagwat, Bhola have gone towards village Datavali. Therefore, even as per the last seen theory, there is no question put to the appellants that the victim was last seen in the company of the appellants herein except the appellant no.5.

11. Learned Senior Counsel for the appellant submits that there are three key witnesses in the instant case on the part of the prosecution, namely PW1, Rajaram, PW2 Babulal and PW3 Babu Khan. So far as the statement of co-accused Ramswaroop, which was recorded under Section 164 Cr.P.C. is concerned, the same has already been discarded by the trial court, therefore, the reliance cannot be placed upon the said statement. Otherwise also, for the other offences, the appellants have already been acquitted. Thus, learned counsel for the appellants submits that so far as the offence under Section 365 I.P.C. is concerned, there has to be abduction by an accused and kidnapping and thereupon a wrongful confinement of the victim. Since, there is no evidence available on record with regard to any wrongful confinement on the part of the accused appellants herein, the trial court has erred in convicting the appellants herein under Section 365. The corpus of the victim has not been recovered dead or alive by the prosecution. All the key witnesses do not depose anything against the appellants that the appellants have wrongly confined the victim at any stage.

12. Learned Senior Counsel has further submitted that the statement under Section 313 Cr.P.C. is not mere an empty formality, rather the proper incriminating material has to be put to the accused persons, if all the incriminating material on the basis of which has been convicted has not been put to him in the 313 Cr.P.C. statement, then his conviction becomes erroneous and cannot be sustained. There is no material available on record nor any question has been put to the appellant with regard to the wrongful confinement of the victim. Thus, learned Senior Counsel for the appellants submits that the impugned judgement and order convicting the appellant herein for the

offence under Section 365 I.P.C. is not sustainable in law, therefore, he seeks quashing/setting-aside of the impugned judgement and order dated 21.08.1984 and submits that the appellants herein are entitled to be acquitted for the ofence under Section 365 I.P.C. as well.

13. Sri Jitendra Kumar Rawat, learned counsel appearing for the appellant no.3, Prabhu has also adopted the submissions so made by Sri Amit Daga, learned Senior Counsel for the appellant no.2.

14. Sri Pankaj Kumar Shukla, learned Amicus Curiae appearing on behalf of the appellant no.4 has relied upon the judgements of Apex Court in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, Kali Ram v. State of H.P., (1973) 2 SCC 808, Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172, Dilshad vs. State of Uttarakhand : 2013 SCC Online Utt 1303 and State of Rajasthan vs. Kashi Ram : (2006) 12 SCC 254*** had submitted that an accused cannot be convicted for the offence under Section 365 unless the victim of such offence is recovered and has made statement against the accused persons with regard to the factum of wrong confinement against his wishes. Since, in the instant case the corpus of the victim either dead or alive has not been recovered, the conviction of the appellants under Section 365 is unsustainable in law, therefore, he seeks acquittal of the appellants herein.

15. Per contra, learned A.G.A. for the State submits that in the instant case the victim Shiv Narain was induced by appellant no. 5, Kammod at the instigation of the other appellants herein as they were having enmity with the informant as well as the son Shiv Narain, the victim herein. Therefore, appellants herein had sufficient motive to commit the offence as alleged against them. The entire story in detail has been narrated by the co-accused Ramswaroop in his confessional statement recorded under Section 164 Cr.P.C. before the Magistrate.

16. Learned A.G.A. further submits that there is categorical deposition by PW3 that he has last seen the victim in the company of the appellants herein, thereafter, he could not be traced out till date and further story has been narrated by the co-accused Ramswaroop in his 164 Cr.P.C. statement, which explains that it were the accused persons herein who have wrongfully confined, killed the victim and thereupon have ablazed the dead body to wipe out the evidence of the death of the victim. The trial court has erroneously discarded the deposition under Section 164 Cr.P.C. by accused Ramswaroop and wrongly acquitted the appellants herein. The appellants herein had sufficient motive to cause the incident as narrated by the prosecution. However, for want of sufficient evidence, the trial court has acquitted the accused persons for the other offences under Sections 147, 148, 149/302, 149/201 I.P.C. and have convicted only five of the appellants herein for the offence under Section 365 I.P.C. Therefore, learned A.G.A. submits that no interference is called for in the matter. The nature of offence is heinous. The accused persons not only brutally killed, but have also wiped out the evidence by setting the dead body ablazed. Thus, no interference is called for in the impugned judgment.

17. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case.

18. The brief facts of the case have already been noted herein above. There are only three key witnesses of the incident as led by the prosecution namely PW1 Rajaram, PW2 Babulal and PW3 Babu Khan. Therefore, proceeding further, it would be appropriate to closely scrutinize the depositions of the aforesaid three witnesses. The PW1 Rajaram has supported the narration of the F.I.R. to the effect that he and his son Govind Ram were falsely implicated in a murder case. Thereupon, having been granted bail by the High Court, he was released from the jail on 04.06.1981 and he came to the house at New Basti, Jhansi where his younger son Shiv Narain as well as the appellant no. 5 was present. Shiv Narain has told him that appellant no. 5, Kammod was telling him that Ram Narain etc. who have falsely implicated the informant as well as the elder son of the informant are regretting their conduct and they want to settle the dispute so that the elder son of the informant namely Govind Ram may also be released on bail. The appellant no. 5 Kammod has also told the same thing to the informant. Thereupon, Shiv Narain, the victim, has told the informant that those persons are having enmity, therefore informant should not go with them.

19. On 05.06.1981, he went to attend the date in the Collectorate and thereafter he had gone to his village and returned on 07.06.1981 to his house at Jhansi where he came to know that Shiv Narain is missing from the house. Then, he inquired in the neighborhood. Then, Bhagirath and Lakhan had told him that on 06.06.1981 Shiv Narain has gone along with Kammod and he has seen him near Kachahri Crossing. On inquiry he has told him that he is going to settle the dispute. This witness has further deposed that he had waited till 7th and thereupon, on 8th he has went to the village for searching his son and he has also searched his son Shiv Narain in various relations and when he could not trace out him, he came on 09.06.1981 at 9:00 AM in the morning to Jhansi and thereupon he got scribed the report from Har Govind and thereupon had put his signatures on the report upon which the F.I.R. was registered.

20. In cross-examination, this witness has deposed that he was having enmity with appellant no.1 Ram Narain regarding the consolidation matters. However, he was not having any enmity with the appellant no.5, Kammod. He has denied the suggestion that in 1979 also a false case was lodged by his elder son Govind Ram against Ram Narain with regard to kidnapping of the informant. He has also shown his ignorance with regard to any proceedings carried out against his elder son under Section 211 I.P.C. He has further denied the suggestion that his son has neither been abducted nor killed. This witness was further called to prove that carbon copy of the F.I.R., as the original report as well as the F.I.R. was missing. In the cross-examination he admits that on 06.06.1981 he was not in Jhansi and he has met witness Bhagirath on 05.06.1981. Then he said, on 06.06.1981, he met with Bhagirath, again denied that he has met with Bhagirath on 06.06.1981. Again, at 5:00 PM on 05.06.1981 he had met Bhagirath. On 05.06.1981 Bhagirath has not told anything to him. He further stated that when he was searching his son Shiv Narain, then Babulal has told him that on 07.06.1981 he has seen Shiv Narain near Jhansi Bus Stand. However, he has shown his ignorance why the name of witness Babulal has not been mentioned in his written report.

21. The PW2 in his statement has stated that on 06.06.1981 he was there at the bus stand at Jhansi around 2:00 PM. He has seen the victim Shiv Narain and Kammod. He had asked Shiv Narain where he is going and Shiv Narain has told him that he is going to settle the dispute with Ram Narain along with Kammod. Shiv Narain was having cycle and was wearing the watch on his wrist. In the cross-examination, he admits that he was previously known to the victim Shiv Narain

and also Govind Ram who was residing in the neighborhood of his house. He further states that his statement was recorded on 26.07.1981 at PS- Samthar as the constable from PS- Samthar has come to call him and has told him that the sub-inspector from Jhansi had come to record his statement. He has told to the sub-inspector that Shiv Narain was having the cycle and wrist-watch on his hand. However, if the aforesaid is not mentioned in his statement, then he cannot tell the reasons for the same.

22. PW3 Babu Khan has deposed that around three years back he had gone near culvert at Pandokhar Road for defecation around 5:30 PM. Narottam was coming from Pandokhar. He has asked the matchbox for lighting his cigar/bidi. Thereafter, he was talking to him. Thereupon, he has seen that accused Kammod and Shiv Narain came from the eastern side. Shiv Narain was having cycle and a wrist watch on his hand, who was coming from the side of the horticultural field. Ram Narain, Bhagwat, Jagdish, Prabhu and Bhole came out and thereafter they started talking to Shiv Narain. Shiv Narain and other persons have gone towards the horticulture field towards Datavali while talking to each other. Thereafter, he has come back. Since, thereafter he has not seen Shiv Narain. In his cross-examination he has stated that the horticulture field is around hundred steps away from the culvert. Shiv Narain and Kammod had come to the culvert. Thereafter, Ram Narain etc. have come out from the aforesaid horticulture field. Shiv Narain and Kammod were ahead and rest of the persons were around 25 feet behind them. Thereafter, after some time all of them have gathered ahead and while talking to each other they have went towards the field on the north side.

23. Thus, from the statement of the aforesaid key witnesses, the case of the prosecution is that on 06.06.1981, the victim, Shiv Narain, had gone along with Kammod to settle the dispute with Ram Narain. The PW2, Babulal, has seen the victim in the company of appellant no. 5 at Jhansi and on query, he has also confirmed that he was going towards the village to settle the dispute with Ram Narain and others and PW3 has deposed that he has seen the victim in the company of appellant no. 5 and the rest of the accused persons were coming from behind, who were 25 steps behind Kammod and Shiv Narain, and subsequently after some distance, they have gathered and while talking to each other, they have went towards the agricultural field on the North side from the culvert near canal. Since thereafter, he has not seen the victim Shiv Narain.

24. It is also apparent from the aforesaid evidence that the neither the corpus of the victim has not been recovered alive or dead. There is no evidence that any remains of the dead body was found or which correlated with the corpus of the victim. There is no evidence on record to suggest that any force was being used by any of the accused persons/ appellants herein against the victim which could suggest that there was any wrongful confinement of the victim on the part of either of the accused persons. The statement of PW2 and PW3 only suggest that the victim was seen in the company of the accused persons, but there is no iota of evidence to suggest that there was any wrongful confinement on the part of the appellants herein. To find out the ingredients of the offence under Section 365, it is relevant to take note of the definition of the offence of kidnapping under Section 359 and abduction under Section 362 and the definition of offence under Section 365, which reads as under:

Section 359, 362 and 365

*"**359. Kidnapping**.- Kidnapping is of two kinds: kidnapping from 1[India], and kidnapping from lawful guardianship.*

***362. Abduction**.- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.*

***365. Kidnapping or abducting with intent secretly and wrongfully to confine person.-** Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

25. The kidnapping is defined, the kidnapping of a person from lawful guardianship or kidnapping from India. In the instant case, there is no allegation or whisper about the offence of kidnapping in the evidence available on record. So far as abduction is concerned, there is apprehensive evidence of PW1 with regard to the inducement of the victim by appellant no. 5 at the instigation of rest of the appellants due to enmity which may indicate to some extent the offence of abduction through inducement of the victim by appellant no. 5. However, for the offence under Section 365 IPC, it is necessary for the prosecution to prove something beyond abduction with regard to the wrongful confinement of the victim.

26. In judgement and order dated 09.11.2023 passed in ***Criminal Appeal No. 798 of 2023 (Yakub Khan vs. State of Chattisgarh through Station House Officer, P.S.-AJK, Korba, District-Korba,C.G.),*** relied upon by learned Counsel for the appellant no.5, the Division Bench has observed as under:

"11. The essence of the offence under Section 365 of the IPC embodies an aggravated form of offence of kidnapping as defined in Sections 360 and 361 and of abduction as defined in Section 362 IPC. Section 365 is attracted when the kidnapping or abduction is committed with intent to secretly and wrongfully confine the victim. Section 365 of the IPC lays down that where a person was abducted in order to that he might be held to ransom by his abductors, it was held that this section is applicable. The prosecution must prove:

(i) Kidnapping or abduction by the accused.

(ii) The accused thereby intended that the person kidnapped or abducted should be kept in wrongful or secret confinement.

12. To prove the ingredients of Section 365 of the IPC, it is essential that there should be abduction, if no abduction is there; the offence under Section 365 of the IPC is not made out. To prove charge of wrongful confinement, proof of actual physical restriction is not essential. It is sufficient if the evidence shows that such an impression was produced in the mind if the accused as to create a reasonable apprehension in the mind of the victim. The Intention can be inferred from the subsequent acts and conduct of the kidnapper or abductor."

27. With regard to the wrongful confinement of the victim, the prosecution evidence is totally silent. Therefore, this Court do not find any justification for conviction of the appellants herein for the offence under Section 365 I.P.C. for want of evidence in this regard.

28. From the perusal of the 313 Cr.P.C. statements of the appellants, it is apparent that no specific questions have been put to any of the accused persons with regard to the incriminating evidence relating to the offence under Section 365 I.P.C. From the perusal of the third set of the charge as framed against the accused persons, specifically the second charge of the third set of charge, from the close scrutiny, it would be apparent that the said charge was framed only against the appellant no. 5, Kammod and not against any other accused persons, while corrections being made with regard to the first and third charge, no correction has been made in the second charge of third set of charges whereby the other accused persons could be included in the second charge. Had there been any intent of the court framing the charge to include other appellants as well, the necessary amendments with regard to the naming of the other accused persons would have been done in the second charge as has been done in the first and third charge.

29. From the perusal of the impugned judgment, it is apparent that the trial court has proceeded on the assumption that the charge under Section 364 was framed against all the appellants herein, whereas as has been noticed herein above, the aforesaid charge under Section 364 was framed only against the appellant no. 5 herein. Thus, the other appellants, namely appellant nos. 1 to 4, have been convicted for the offence under Section 365 without there being any charge for the said purpose and thus without giving them any opportunity to defend the aforesaid charge. So far the other charges are concerned, the appellants have already been acquitted. Thus, for want of any charge framed against the appellants under Section 364 or 365 I.P.C., their conviction under Section 365 is not sustainable, that too without giving any opportunity to defend the aforesaid charge or without putting any incriminating material against them with regard to the aforesaid charge. Otherwise also, this Court has already noticed that there is no incriminating evidence available on record with regard to the wrongful confinement whereby the offence under Section 365 can be said to have been constituted against the appellants herein.

30. From the perusal of the judgements of the Apex Court in ***Sharad Birdhichand Sarda (supra), Kali Ram (supra), Ramreddy Rajesh Khanna Reddy (supra), Dilshad (supra) and Kashi Ram (supra)***, it is apparent that the Apex Court has categorically held that unless there is recovery of the corpus of the victim and there is categorical statement by such victim that he was wrongly confined by the accused person, the offence under Section 365 I.P.C. cannot be said to have been made out against the appellants herein.

31. In view of the aforesaid, this Court do not find any justifiable reason for conviction of the appellants herein for the offence under Section 365 I.P.C. Accordingly, the instant appeal is **allowed** and all the accused appellants are acquitted of the offence under Section 365 I.P.C. as has been held by the Apex Court.

32. Since, the appellants no.2 to 5 are on bail, their bail bonds are cancelled and sureties are discharged.

33. The original record of the trial court be returned to the trial court to be consigned.

34. This court appreciates the assistance provided by Sri Pankaj Kumar Shukla, 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.

(2026) 2 ILRA 1107
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.02.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 2903 of 2020

Shakeel Ahmad & Anr. **...Appellants**
Versus
State Of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the sentence of life imprisonment awarded under S. 304B IPC in a case of dowry death is liable to be reduced considering absence of direct evidence, hostile witnesses, and socio-economic circumstances of the parties. (Paras 11,15,20,21,22)

Headnotes

Dowry death - Unnatural death within seven years of marriage by burn injuries in matrimonial home established - factum of death proved despite prosecution witnesses turning hostile - conviction sustainable. (Para 13)

Evidence - Dying declaration corroborated by medical certification and recording officer - forms basis of conviction where accused fail to explain circumstances of death. (Para 14)

Burden of proof - Once unnatural death in matrimonial home established, burden shifts upon accused to explain circumstances - failure to discharge burden relevant for conviction. (Para 14)

Sentencing - S. 304B IPC provides minimum sentence of seven years which may extend to life imprisonment - life imprisonment not mandatory and must be reserved for rare cases. (Paras 11,16,17)

Sentencing policy - Punishment must not be too lenient or too severe - socio-economic condition of parties and absence of direct evidence are relevant mitigating factors. (Paras 15,19)

Reduction of sentence - Where accused already undergone more than ten years imprisonment and mitigating circumstances exist - sentence reduced to period already undergone while maintaining conviction. (Paras 20,21,22)

Held: Conviction of accused-appellants under S. 304B IPC and S. 4 of Dowry Prohibition Act is justified as deceased died an unnatural death by sustaining 80 percent burn injuries in her matrimonial home - dying declaration supported by medical evidence established prosecution case - accused failed to explain circumstances of death thereby attracting statutory presumption - however sentence of life imprisonment is excessive in view of settled principle that punishment should neither be too lenient nor too harsh - life imprisonment under S. 304B IPC is to be awarded only in rare cases - considering absence of direct evidence socio-economic background of parties and period of incarceration already undergone exceeding ten years

ends of justice would be met by reducing sentence to period already undergone while maintaining conviction.(Paras 13 – 22) (E-7)

Case Law Cited

Hem Chand v. State of Haryana, **(1994) 6 SCC 727**

List of Acts

Indian Penal Code,1860; Dowry Prohibition Act,1961; Code of Criminal Procedure,1973; Indian Evidence Act,1872

List of Keywords

dowry death; unnatural death; burn injuries; dying declaration; hostile witnesses; presumption; burden of proof; sentencing; life imprisonment; mitigating circumstances; socio-economic condition; period already undergone;

Case Arising From

APPELLATE JURISDICTION: Against the judgment and order dated 29.09.2018/03.10.2018 passed by learned IVth Additional Session Judge/Special Judge (E.C. Act), Bijnor in Session Trial No. 593 of 2015 arising out of Case Crime No. 272 of 2015 convicting the accused-appellants under S.s 304B IPC and S. 4 of Dowry Prohibition Act.

Appearances for Parties

Advs. for the Appellant:
Arvind kumar Srivastava, R.P.S. Chauhan,
Rajiv Sisodia, Shailesh Kumar Srivastava,
Shyam Shanker Pandey.
Advs. for the Respondents:
Learned A.G.A. for the State.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been filed against the judgment and order dated 29.09.2018/03.10.2018 passed by learned IVth Additional Session Judge/Special Judge (E.C. Act), Bijnor in Session Trial No. 593 of 2015, arising out of Case Crime No. 272 of 2015, under Sections 304B in alternative 302/34 IPC and Section 4 of Dowry Prohibition Act, Police Station Chandpur, District Bijnor. By the impugned order, learned Additional Session Judge has convicted and sentenced the accused-appellants Shakeel Ahmad and Sherbaz @ Shadab to undergo imprisonment for life under Sections 304B IPC and under Section 4 of Dowry Prohibition Act, to undergo two years imprisonment and a fine of Rs. 10,000/- and in default of payment of fine, to undergo three months' further imprisonment. Both the sentences awarded to the accused-appellants are to run concurrently.

2. Brief facts of the case are that on the basis of written report, Ext. K-1, which was filed by informant Naseema (PW-1) at police station Chandpur, district Bijnor, a first information report, Ext. K11, was registered on 24.04.2015 against Gulshana, Shakeel Ahmad, Shahzad, Km. Roshan and Shadab, who are mother-in-law, father-in-law, brother-in-law, sister-in-law and husband of the deceased, respectively, alleging inter alia that her daughter's marriage was solemnized with Sherbaz @ Shadab on 14.12.2014. After the marriage, her in-laws used to taunt her for bringing less dowry and the son-in-law used to demand a motorcycle and rest of the family members were demanding

Rs. Two lakh. On 09.04.2015 at about 10:30 PM, Sherbaz put kerosene on her daughter and her mother-in-law and sister-in-law were saying that because the demand of additional dowry has not yet been fulfilled, therefore, burn her to death. After that, her brother-in-law Shahzad and father-in-law Shakeel lit a fire with a matchstick and threw it on her daughter. The daughter of the informant was seriously burned. The first information report was lodged after the death of the daughter of the informant.

3. On receiving information of the incident, Investigating Officer Mahesh Chandra Atri (PW-11) reached at the spot of the incident and inspected the place of occurrence. Prior to this witness, the case had been investigated by Shailendra Rao, Circle Officer. Mahesh Chandra Atri (PW-11) recorded the statement of the informant Naseema on 25.04.2015. He also prepared a site plan of the place of occurrence, Ext. K14, on the pointing out of the informant Naseema (PW-1). Thereafter, Investigating Officer recorded the statement of Reshma and Asif @ Asif. Investigating Officer also prepared other formal police papers and also prepared panchayatnama of the dead body of the deceased through Sub Inspector Kripal Singh (PW-8). After panchayatnama, dead body of the deceased was sent for autopsy. After recording the statement under Section 161 Cr.P.C. of the prosecution witnesses, charge-sheet was filed only against accused-appellants, Shakeel Ahmed and Sherbaj @ Shadab, under Section 304B IPC and Section 3/4 Dowry Prohibition Act. Other persons named as accused in the written report were exonerated by the police. Dr. Ravi Prakash (PW-6) conducted the postmortem of the deceased Nazia and prepared the postmortem report, Ext. K-10, and according to Ext. K-10, Dr. Ravi Prakash (PW-6) found following burn injuries on her body :

"Superficial to deep burn present on whole of face, neck front and back both upper limb right and left, breast and abdomen as whole front and back, buttocks both genital organ, left thigh whole thigh front and back, right thigh front up to the knee. Blackish brown skin present. Infected pus present at the burn wound, whitish yellow in colour. Clawing of hand both right and left present. Line of redness present. Signing of hairs present on scalp, head, charred skin and face out. Burn is about 80%.'

4. Cause of death of the deceased as stated by Dr. Ravi Prakash (PW-6) was shock and septicemia due to ante mortem burn injuries. As per the postmortem report, the deceased had sustained approximately 80% burn injuries.

5. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

6. Against accused-appellants, Shakeel Ahmed and Sherbaz @ Shadab, charge was framed by learned Sessions Judge under Section 304B IPC and in alternative under Section 302 read with Section 34 IPC. Charge was also framed against the accused-appellants by the learned trial Court under Section 4 of the Dowry Prohibition Act. The accused-appellants denied from the charge and claimed trial.

7. Prosecution adduced as many as 11 witnesses in support of its case; informant Naseema (PW-1), Reshma (PW-2), Asif @ Arif (PW-3), Devraj Singh (PW-4), Om Prakash Yadav (PW-5), Dr. Ravi Prakash (PW-6), Onkar Singh (PW-7), Kripal Singh (PW-8), Dr. Madhumita Tripathi

(PW-9), Indresh Singh Chahar (PW-10) and Mahesh Chandra Atri (PW-11). Apart from these evidences, prosecution also relied on documentary evidence, such as, Ext. K1 to Ext. K15.

8. In trial Court, after recording of the evidence of the prosecution witnesses, statements of accused persons were recorded under Section 313 Cr.P.C. The accused-appellants in their statements under Section 313 Cr.P.C. denied the allegations. They have also stated that the stove exploded while the deceased was cooking food, as a result of which the clothes of the deceased caught fire. She was taken to hospital for her treatment but she died. Accused-appellants have not adduced any evidence in support of their defence.

9. The trial Court after appreciating all evidences, both oral and documentary as available on the record, held the accused-appellants guilty of the alleged crime and death of deceased Nazia and convicted both of them under Section 304B IPC with life imprisonment and under Section 4 of Dowry Prohibition Act for two years imprisonment with a fine of Rs. 10,000/- to each accused accused and in default of payment of fine, both accused-appellants were directed to undergo further imprisonment for three months. Aggrieved by the above judgment and order of conviction dated 03.10.2018, accused-appellants have preferred this criminal appeal before this Court.

10. We have heard the arguments of learned counsel for the accused-appellants and also the arguments of learned A.G.A. for the State, gone through the evidence as available on record and also perused the judgment and order of conviction passed by the learned Trial Court.

11. Learned counsel for the accused-appellants has argued in support of this criminal appeal that both parties belong to weaker sections of the society. Accused-appellants had not made any demand for dowry from the deceased or her family members. No demand was made for a motorcycle and Rs. 2 lakhs. On the date of incident, i.e., 09.04.2015, deceased Nazia was cooking food on the stove and the stove exploded during cooking, because of which the clothes of the deceased caught fire, causing her burn injuries. Accused-appellants took her to the hospital for treatment, but she died during treatment at the hospital. It is also submitted that the deceased Nazia sustained 80% burn injuries at her matrimonial home within seven years of her marriage but the accused-appellants had not poured kerosene nor lit fire from the matchstick. The prosecution witnesses, including Naseema (PW-1), Reshma (PW-2), and Asif @ Arif (PW-3) have not supported the prosecution story. However, learned trial Court wrongly relying on the evidence of above prosecution witnesses and also on the dying declaration, held the accused-appellants guilty under Section 304B IPC and convicted them for life imprisonment, which is excessive. It is also submitted that the parties belong to very poor sections of the society and earn their livelihood through labour work. It is further submitted that life imprisonment awarded to the accused-appellants by the trial Court is excessive. Accused-appellant no. 1 Shakil is languishing in jail since 13.08.2015 and appellant no. 2 since 10.10.2015, thus both the accused-appellants are in jail for more than ten years. It is also argued that under Section 304B IPC, it is not mandatory to award life imprisonment under Section 304B IPC. In Section 304B IPC, option has been given to the Court to award minimum sentence of seven years. By the above arguments, learned counsel for the accused-appellants submitted that both the accused-appellants are languishing in jail for more than ten years which is much more than the minimum provided under Section 304B IPC. In view of the above, it

is further pleaded that the punishment of the accused-appellants be reduced to the imprisonment as the period already undergone.

12. Per contra, learned A.G.A. for the State has submitted that the accused-appellants committed a heinous crime in their home. Deceased Nazia was the wife of accused-appellant no. 2, Sherbaaz @ Shadab, and daughter-in-law of accused-appellant no. 1, Shakeel Ahmed. She was burnt in her matrimonial home within two years of marriage. Her body was burnt by 80%, which proved fatal for her due to septicemia. It was also submitted by learned A.G.A. for the State that accused-appellants not only demanded dowry of Rs. 2 lakhs and one motorcycle from the deceased Nazia but when their demand was not fulfilled by Nazia and her parents, they poured kerosene upon her and lit the fire, causing 80% burn injuries on her body and she died during her treatment at hospital due to septicemia. He further submitted that the trial Court rightly and in proper perspective convicted the accused-appellants by maximum punishment of life imprisonment provided in Section 304B IPC. The accused-appellants by their criminal act ended the life of a young girl of 22 years of age, hence the accused-appellants deserved maximum punishment of life imprisonment which was rightly awarded to them by learned trial Court. Learned A.G.A. has also submitted that the reasoning and finding as recorded by learned trial Court suffers from no perversity or misappreciation of the evidence, hence criminal appeal filed by the accused-appellants has no merit and is liable to be rejected.

13. The prosecution case has not been supported by the prosecution witnesses, informant Naseema (PW-1), Reshma (PW-2) and Asif @ Arif (PW-3) who turned hostile during recording of their evidence. However, from perusal of the evidence of the prosecution witnesses, this fact is clearly proved that deceased Nazia died in her matrimonial home in unnatural circumstances by sustaining 80% burn injuries on her body. Thus the factum of unnatural death has been established by the evidence of the prosecution witnesses, Naseema (PW-1), Reshma (PW-2) and Asif @ Arif (PW-3).

14. Learned Trial Court mainly relying on the dying declaration, Ext. K-3, evidence of Devraj Singh (PW-4), who recorded the dying declaration of the deceased Nazia and also relying on the evidence of Dr. Madhumita Tripathi (PW-9), who has given certificate before and after recording of dying declaration of the victim Nazia, held the accused-appellants guilty under Section 304B IPC and Section 4 of Dowry Prohibition Act. The Trial Court also considered this fact that a young married lady of 22 years of age was burnt and sustained 80% burn injury in her matrimonial home and died at hospital during treatment. Learned Trial Court relying on dying declaration, Ext. K-3 and also to the evidence of Devraj Singh (PW-4) and Dr. Madhumita Tripathi (PW-9) found that an unnatural and homicidal death had occurred in the house of the accused-appellants and, therefore, the burden was on the accused-appellants to explain the circumstances in which the deceased Nazia received burn injury of 80% on her body. The accused-appellants were unable to explain the burn injuries on the deceased by adducing any oral or documentary evidence. As per law, it was the responsibility of the accused-appellants to explain this fact by adducing their evidence in this regard in their statement under Section 313 Cr.P.C.

15. From the records, it appears that families of informant and accused-appellants belong to the weaker sections of the society, earning their livelihood by doing labour work. It is settled

principle of law that punishment should be of the nature and extent that it must not be too lenient and also must not be too severe and harsh. Both sides belong to weaker sections of the society and are daily wage earner. In view of the above social condition and economic capacity of the accused-appellants as well as also of the prosecution sides, we find that life imprisonment under Section 304B IPC as awarded by learned Trial Court for life imprisonment is too harsh and severe.

16. The Three Judges Bench of Hon'ble Supreme Court in the case of **Hem Chand v. State of Haryana, (1994) 6 SCC 727**, which was also a case under Section 304B IPC (dowry death), held in para 7 that;

"A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned in the section are satisfied. In the instant case the prosecution has proved that the deceased died an unnatural death, but there is no direct evidence connecting the accused with the death. The accused has not been charged under Section 302 IPC. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which case also Section 304-B IPC would be attracted. But this aspect i.e., absence of direct connection of the accused with death has certainly to be taken into consideration in balancing the sentence to be awarded to the accused.

Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case."

17. Thus, from the above case law of Hon'ble Supreme Court, it is clear that under Section 304B IPC for dowry death, life imprisonment should be awarded in rarest of the rare cases, where it is alleged that bride was killed in a brutal and ruthless manner and also where there is no mitigating circumstances, then in this condition, life imprisonment should be awarded as a rarest of the rare cases. However, the trial Court also held the accused-appellants guilty under Section 4 of Dowry Prohibition Act and convicted them for two years imprisonment and a fine of Rs. 10,000/- to each accused and in default of payment of fine, both the accused-appellants were directed to undergo further imprisonment for three months.

18. In the case in hand, we find that it was the defence of the accused-appellants that the stove exploded at the time of cooking food on the stove by the deceased and the deceased caught fire and sustained burn injuries on her body.

19. We are of the view that the quantum of punishment should be proportionate. It should neither be too lenient nor too excessive and harsh. While awarding sentence, the Court must take an overall view of the facts and circumstances of the case, including the socio-economic conditions of both the parties, so as to meet the ends of justice and convey a clear message to society that no person could dare to commit any heinous crime.

20. In view of the above facts and circumstances of the case, as revealed from the records, we are inclined to sustain the order of conviction maintaining the finding and reasoning in this respect. However, we are inclined to reduce the sentence from life imprisonment to the period already undergone by the accused-appellants, without altering the finding of the trial Court.

21. In the light of the above discussion, we are of the considered view that the ends of justice would be met by reducing the sentence of life imprisonment, as awarded by the trial Court, to imprisonment for a period of ten years.

22. Since the accused-appellants have already served more than 10 years in jail, hence we reduce the sentence of both the accused-appellants as the period already undergone by them. Thus, the criminal appeal filed by the accused-appellants is liable to be partly allowed.

23. The criminal appeal is partly allowed. The sentence of life imprisonment under Section 304B IPC as awarded by the learned Trial Court to the accused-appellants is reduced to the period already undergone by them.

24. Let the accused-appellants be released forthwith.

25. Let the trial Court record be returned by the office alongwith copy of this judgment for necessary information and compliance forthwith.

(2026) 2 ILRA 1113
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.02.2026

BEFORE

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

Criminal Appeal No. 3252 of 1984

Mata Din & Anr. **...Appellants**
Versus
State Of U.P. **...Respondent**

Issue for Consideration

Matter pertains to "whether the prosecution have been able to prove their case beyond reasonable doubt." (Para 26)

Headnotes

Criminal Procedure Code, 1973 - S. 374(2) - Appeal against conviction -Sustainability of conviction based on ocular testimony corroborated by medical evidence.

Indian Penal Code, 1860 - S. 302 - Murder - Appellants (brothers-in-law of the deceased) shot the deceased in the informant's courtyard over a land dispute - Presence of motive to grab property through illegal mutation.

Criminal Trial - FIR - Promptness - "it is proved that the FIR was lodged on 09.04.1983 at 1:00 p.m. i.e. after about 2 hours of the incident there is no delay in lodging the FIR. It is prompt and not ante-timed." (Para 27)

Place of Occurrence - Proof - "we are of opinion that the place of occurrence is established by the prosecution." (Para 30)

Defective Investigation - Effect - "any lapse on the Investigating Officer's part, would not adversely affect the prosecution case." (Para 30)

Eye-witnesses - Reliability - "they are consistent in their deposition and there are no major contradictions reliable and trustworthy." (Para 31, 38)

Chance Witness - Presence Explained - "the reason for Jivaram's presence at the time of the incident is well explained." (Para 32)

Non-reaction of Witnesses - "there cannot be any suspicion about the witnesses' presence particularly, when the appellants were armed with pistols." (Para 37)

Ocular vs Medical Evidence - "there are no material contradictions in the ocular and medico-legal evidence." (Para 39)

Motive - Land Dispute - "there was motive for the appellants to commit the evil deed in order to grab Shyama Devi's property." (Para 40)

Direct Evidence -Motive not material - "in case of direct evidence, it is settled law that motive is not very material." (Para 40)

False Implication - Defence Plea - "the defence have not produced an iota of evidence in support of this contention." (Para 41)

Held: The FIR was lodged after about 2 hours - there is no delay prompt and not ante-timed - place of occurrence is established by the prosecution - they are consistent reliable and trustworthy - there are no material contradictions in the ocular and medico-legal evidence - there was motive to grab Shyama Devi's property - the prosecution have proved their case beyond reasonable doubt - The appeal fails and is dismissed -The conviction and sentence is hereby affirmed. (Paras 27,30,31,38,39,40,42,43) (E-7)

Case Law Cited

Rana Pratap v/s State of Haryana, **AIR 1983 SC 680, (1983) 3 SCC 327**

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code,1860; Land Revenue Act,1901

List of Keywords

FIR; place of occurrence; eye-witness; ocular and medico-legal evidence; motive; defective investigation; beyond reasonable doubt; false implication.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against "judgment and order dated 31.10.1984 in Sessions Trial No. 270 of 1983 under S. 302 IPC.

Appearances for Parties

Advs. for the Appellant:

P.N.Mishra, Rakesh kumar Rathore, Sanjeev Kumar

Advs. for the Respondents:

learned A.G.A. on behalf of the State

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

1. This criminal appeal has been preferred, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), by the appellant/ convicts, Matadin and Ram Kishan against the judgment and order dated 31.10.1984 passed by Mr. K.S. Srivastava, the then 1st Addl. Sessions Judge, Mainpuri in Sessions Trial No. 270 of 1983, State v. Matadin and another (arising out of Crime No.101 of 1983), under Section 302 of the Indian Penal Code (for short, 'IPC').

2. By the impugned judgment and order, both the appellants were convicted on the charge of murdering one Smt. Shyama Devi and sentenced to undergo imprisonment for life.

3. The brief facts of the prosecution case are that the informant, Ujagar Singh son of Ram Dayal, a resident of Village Khirna, Police Station Kurawali, District Mainpuri, lodged a first information report at Police Station Kurawali, District Mainpuri on 09.04.1983, stating therein that Smt. Shyama Devi, widow of late Daya Ram, was living in the informant's house. A case with regard to a land dispute was pending between her and two brothers-in-law (husband's brother), to wit, Matadin (Devar) and Ram Kishan (Jeth). On the fateful day at around 11 o'clock in the morning, her Devar Matadin and Jeth Ram Kishan came over brandishing pistols and both of them shot Smt. Shyama Devi, who was sitting near the hearth (chulha). She was hit in the arm and head, in consequence of which she died instantaneously. According to the informant, Mahender son of Guljari, Jivaram son of Ratiram and Ramlal son of Kharge, all residents of his village, were present at his house. All of them had congregated to go over to village Patharua to consider a groom for Jivaram's daughter and had witnessed the incident. All women in the informant's house too had seen the incident. Upon the informant and the witnesses raising alarm and hearing gun fire, a multitude of men came over to the place of occurrence and saw Matadin and Ram Kishan brandishing country-made pistols.

4. Upon this information, chik First Information Report (for short, 'FIR'), bearing Case Crime No.101 of 1983, under Section 302 IPC, was lodged at Police Station Kurawali, District Mainpuri, on 09.04.1983 at about 1:00 p.m. against Matadin and Ram Kishan. The investigation commenced. The Investigating Officer reached the place of occurrence and collected samples of blood stained and plain earth. He sealed them in a container and prepared a recovery memo (fard baramadgi), (Ext. Ka-10). The inquest was held and an inquest report along with other papers were prepared on the spot. Thereafter, the cadaver was sent for autopsy, where the post-mortem examination was done. The Investigating Officer recorded statements of the informant and other witnesses, inspected the place of occurrence and prepared a site-plan at the pointing out of the informant. After completion of investigation, the Investigating Officer submitted a charge-sheet under Section 302 IPC before the Magistrate.

5. The Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial on 13.06.1983 by the learned Magistrate.

6. The appellants appeared before the Court of Sessions, where a charge under Section 302 IPC was framed against them, to which they pleaded not guilty and claimed to be tried.

7. The prosecution have examined as many as six witnesses in evidence to prove their case, to wit, PW-1 Ujagar Singh; PW-2 Jivaram; PW-3 SHO Amir Chandra Singh; PW-4 Constable No. 672 Suresh Chandra; PW-5 SI Kamta Prasad and, PW-6 Dr. A.K. Srivastava.

8. PW-1, Ujagar Singh is the first informant and eye-witness of the incident. He has said on oath that Shyama Devi was the late Dayaram's widow, and the appellants, Ram Kishan and Matadin, are Shyama Devi's brothers-in-law, to wit, Devar and Jeth, respectively. Neksu and Dayaram were other brothers of these appellants. Their father's name was Umrai. Shyama Devi was issueless. After Dayaram's death, his share of the land passed on to Shyama Devi. The appellant Matadin got Shyama Devi's name removed from records and got the land transferred to himself and his brothers. Shyama Devi had instituted proceedings in Court against him. These proceedings were going on in the Tehsil at the time of Shyama Devi's murder. Shyama Devi was staying with PW-1 for about three months before the murder. She was murdered at about 11:00 a.m. PW-1 was sitting in his baithak (meeting room) in Khirna village. Jivaram, Ramlal, and Mahendra were also present there. They were sitting on a platform (chabutara). They were set to go to village Patharua to find a groom for Jivaram's daughter.

9. Coming down the stairs from the backyard, the appellants, Matadin and Ram Kishan, entered PW-1's home, and Shyama Devi, who was then making chapati in the kitchen, leaning against a wall in the courtyard, was shot by the appellants using pistols, as a result whereof she died instantly. PW-1 has said that he had witnessed the appellants killing Shyama Devi. After killing Shyama Devi, the appellants fled towards south from the spot. He got a report scribed by his son, Kripal and thereafter he appended his signature to it, and on the basis of this report, lodged an FIR at Police Station Kurawali. The witness has proved the written report (tehrir) (Ex. Ka-1).

10. PW-1 in his cross-examination has said that Dayaram was killed in a police encounter before this incident. PW-1 did not visit Shyama Devi's house, nor did she visit his house earlier. After Dayaram's death, she had given her land to the appellants on lease (batai). During those days, Shyama Devi lived separately in her house. PW-1 had no concern with Shyama Devi's property. He does not know that the appellant Matadin had deposed against Mahendra, Ram Lal and Ramdas in a murder case, in which Mahendra was sentenced to undergo imprisonment for life. He knew that Mahendra spent some time in jail.

11. PW-1 has further said that about one year prior to this incident, elections for the post of Gram Pradhan were held. Prior to this election, he himself was Village Pradhan and had contested for another term. He lost the said election to Sovaran Singh. Some others had also contested this election. It is incorrect to say that the appellants opposed him in this election.

12. PW-1 has also said that his house has a staircase, facing eastwards in the courtyard, with a door on the west side and there was no toilet in his house. Dayaram's house is about 50-60 paces away from his house and Ramlal's house is 60 paces away from his house. Shyama Devi came to his house of her own sweet will. She lived in the room next to the hearth, northwest of the

courtyard. He had given her a bed to sleep in, and she had told him that once the land dispute was over, she would vacate his house. His kitchen and Shyama Devi's kitchen were separate. He had supplied her utensils to cook meals for herself. The witness said that when he went to Shyama Devi's kitchen after the incident, a cooked dish of pulses was there in the zinc pot (patili), wet flour stuck to her hands, a chapati was on the pan (tawa) and she was sitting on the south side of the hearth, with her back against the wall. When Shyama Devi was shot, blood spilled around her and splattered on the cow-dung. Both the shots were fired from a distance of 3-4 paces by the appellants after approaching from the east. The Investigating Officer had inspected the place of occurrence and observed all these details.

13. PW-1 has further said in his cross-examination that the distance from the platform, where they were sitting and the hearth was 15 paces and the staircase was about 2-3 paces away from the hearth. The witness said that he stayed on the platform until the assailants left. The assailants had passed by him at a distance of 2-1 paces, to wit, the place where he was sitting. The witness says that when he and others on the platform saw the assailants, approaching armed with country-made pistols, they got frightened, moved 2-1 paces away and the assailants went away. He does not know the name of Jivaram's daughter, for whom they had to go to find a groom. The boy, whom they had proposed to see, was his Samadhi's son, named Ravi Lal. Firstly, Jivaram came to his house at about 8-10 o'clock. Thereafter, Mahendra and Ram Lal came to him. After 2-3 months, they again went to Village Patharua to find a groom along with Mahendra and Ram Lal. He went to the police station alone on foot. He remained at the police station for about half an hour. At about 4.00 p.m., the cadaver of Shyama Devi was taken from his house. He does not know, who cremated Shyama Devi. May be the police had cremated the dead body. He has denied that he had illicit relations with Shyama Devi and said that he treated her as his daughter. He has also denied the suggestion that his wife, daughter-in-law and son were annoyed with him for sheltering Shyama Devi in their house and his family members had killed Shyama Devi and the appellants have been falsely implicated in the present case to save the real assailants. He had asked the appellants to accommodate Shyama Devi in their house and cultivate her land. Upon his request, the appellants kept her with them for 4-6 days and then beat her up and threw her out. She wandered here and there, and when she came to the witness, he gave her a room to stay there.

14. PW-2 Jivaram is also said to be an eye-witness of the incident. He has said in his examination-in-chief that on the fateful day at about 11:00 a.m., Shyama Devi was murdered. During those days, Shyama Devi was living in PW-1, Ujagar Singh's house. At the time of her death, he was sitting in front of the baithak along with Ujagar Singh, Mahendra and Ram Lal. He had to go to find a groom for his daughter in village Patharua along with Ujagar and that is why he had come to Ujagar's house. At that time, Shyama Devi was making chapati. The appellants, Matadin and Ram Kishan, came to the courtyard from the terrace through the stairs armed with pistols and shot Shyama Devi. As a result, she died and the appellants fled away towards thr south direction. Subedar, Hajari and Ram Swarup saw them fleeing away from the spot. In his cross-examination, this witness has said that Shyama Devi's husband Dayaram was killed in a police encounter before the incident. Shyama Devi was living in Ujagar's house 2-3 months prior to the incident. Ujagar Pradhan had told him about a boy for his daughter, 2-3 days prior to the incident. He had no friendship with Ram Lal and Mahendra. He had asked Ram Lal and Mahendra to accompany him to village Patharua. His brothers also reside in the same village, but he did not ask

them to accompany him to go to village Patharua for assistance alone. Ram Lal alone was his worker. Mahendra was convicted in a murder case and sentenced to undergo imprisonment for life. Now-a-days, he is on bail. In the case, where Mahendra was convicted, the appellant Matadin had deposed against him. Ram Lal was also tried along with Mahendra in the case.

15. PW-2 has further said that at about 10:00 a.m., he came to Ujagar's house and was sitting on a platform outside the baithak of Ujagar's house. Ujagar was already sitting there. After 10-5 minutes, Ram Lal and Mahendra reached there. They had sticks (danda) in their hands. Shyama Devi was making chapati at the time of incident. While they were sitting on the platform, Ujagar's daughter-in-law (bahu) had not closed the doors, because she was sitting with her back to them. He has denied the suggestion that the door was not locked because the inside was not visible from the place, they were sitting. While they were sitting, their faces were towards the courtyard. Upon hearing the sound of gun shot, they got frightened and stayed in place. The appellants, carrying weapons, passed by them at a distance of 6-7 paces. After the shooting, all of them raised alarm and as the assailants were armed, he did not attempt apprehending them.

16. PW-3, SHO Amir Chandra Singh, is a formal witness and the second Investigating Officer of this case. He has filed the charge-sheet in the Court, which he proved as Ex. Ka-2.

17. PW-4 Constable 672 Suresh Chandra is also a formal witness, who had taken the deceased Shyama Devi'a cadaver for autopsy to Mainpuri along with related papers. He has said that at about 5:00 p.m., he proceeded from Village Khirna to Mainpuri, which was 30 kilometers away from there.

18. PW-5 SI Kamta Prasad is the first Investigating Officer of the case. He has stated about the investigation carried out by him and said that he recorded statements of the informant and other witnesses. He reached the place of occurrence at Village Khirna Kalan along with other police personnel. He inspected the place of occurrence and prepared a site-plan, which he proved as Ex. Ka-3. Prior to undertaking steps in investigation as aforesaid, the Investigating Officer held an inquest and drew up a report, which he proved in Court. It was marked Ex. Ka-4. He has also proved the other related papers, such as, challan lash, photo lash, letter to RI and letter to C.M.O. as Ext. Ka-5 to Ka-8, respectively. He has proved the sample seal as Ex. Ka-9 and said that the corpse was handed over to Constable Suresh Chandra and Rajendra Singh along with relevant papers for the purpose of conveying the cadaver to the doctor concerned for autopsy. He has further said that he collected samples of blood stained earth and plain earth from the place where the corpse was found and sealed them in two separate containers. He has proved these containers as Material Exhibits 1 and 2 and its recovery memo as Ex. Ka-10. He has proved the chik FIR as Ex. Ka-11 and G.D. No.16 dated 09.04.1983, registered at 13:00 hours, scribed by Head Moharrir Jawahar Lal, as Ex. Ka-12, who, according to this witness, was posted with him. He was well acquainted with his handwriting and signatures. In his cross-examination, this witness has said that he did not find any wet flour stuck to the deceased's hands. When he inspected the kitchen, he did not find baked chapati, cooked pulse and the zinc pot there. He did not find any blood stained cow dung at the spot. He found one stove t the place, marked as 'B' in the site-plan. The informant had not told him the place from where the assailants shot the deceased. He did not find Shyama Devi's effects or belongings in the informant's house.

19. PW-6 Dr. A.K. Srivastava is an expert witness, who has conducted the autopsy on 10.04.1983 at 12:45. He has said that rigour mortis was present over the body and the stomach was swollen. The body was average built and the age was about 35 years. He found the following ante-mortem injuries over the body:

(1) Gun shot entry and exit wound 19cm x 17cm x brain deep extending from root of nose to just above occipital protuberance. Blood clots were present.

(2) Gun shot entry 23cm x 6cm on inner aspect of right arm extending from just above medial condyle of elbow joint to right axilla pit then entry extending into right chest cavity. Blood clots present.

In the internal examination, he found that all bones of the skull were fractured, the brain lacerated and in pieces with blood present there. Four pellets of the size of a pea were found in the brain matter, right axilla, the first and the second ribs on the right side were fractured, the right lung was shredded into pieces and 14 small pellets and one wad was found in it. In right chest cavity, half a pound of clotted blood was found. The small intestine and stomach were empty, the large intestine was half filled and the uterus empty. The cause of death was shock and hemorrhage, as a result of laceration of brain matter and the death would have occurred about a day before. It could have occurred on 09.04.1983 at 11:00 a.m. PW-5 has proved the autopsy report as Ex. Ka-13.

This witness has said in his cross-examination that the root of nose and occipital protuberance are not at the same level. Occipital protuberance was at a little higher level and upon raising the head, both would be at the same level. Injury No.1 could have been caused while the deceased was sitting and shot by from the same level, and if she raised her head and the person shooting was in the standing position or at a higher level, even then injury No.1 could be caused. If the deceased was in the sitting position, having both her hands in between her knees, while making chapati, injury No.2 could be caused or not, was a matter that could be explained by a ballistic expert. The distance from which injury Nos.1 and 2 were caused, could also be estimated only by a ballistic expert.

20. The prosecution have produced the following documentary evidence, to wit, chik FIR, Ext. Ka-11; written report (tehrir), Ex. Ka-1; recovery memo of blood stained and plain earth, Ex. Ka-10; post-mortem report, Ex. Ka-13; inquest report, Ex. Ka-4; charge-sheet, Ex. Ka-2; police form-13, Ex. Ka-5; photo lash, Ex. Ka-6; letter to RI, Ex. Ka-7; letter to the CMO, Ex. Ka-8; sample of seal, Ex. Ka-9; copy of G.D. No.16, Ex. Ka-12; copy of the application filed by the deceased Shyama Devi before the Naib Tehsildar in Case No. 32 of 1982 under Section 34 LR Act, Ex. Ka-14; and, a copy of the order dated 13.01.1983 in the above case, Ex. Ka-15.

21. After closure of evidence by the prosecution, statements of the appellants were recorded under Section 313 Cr.P.C., in which they denied the prosecution case and have stated that the witnesses have deposed against them due to enmity and a false case lodged against them. It is admitted that both the appellants are real brothers and the deceased, Shyama Devi was wife of Dayaram, their real brother. She was the appellants' bhabhi (sister-in-law). It is also admitted that Shyama Devi was issueless and a widow. It is also admitted that after the death of Dayaram, his

share was inherited by Smt. Shyama Devi. It is also admitted that Shyama Devi had filed a case before the Tehsildar, Mainpuri regarding the same land against the appellants. The appellant, Matadin stated that a case under Section 302 IPC was lodged against Ramlal and Mahendra, in which he was a witness. Ujagar Singh, Gram Pradhan, had contested elections to the office of Gram Pradhan, where Matadin had supported the rival party. Ujagar Singh lost the election, and, as such, had harboured animosity against them. In consequence, the appellants have been falsely implicated in this case.

The defence have not adduced any oral evidence and in the form of documentary evidence, a certified copy of the judgment dated 17.11.1978, (Ex. Kha-1), passed by the 1st Additional Sessions Judge, Mainpuri in S.T. No.155 of 1978, State v. Ramlala and others, under Sections 302/34, 307/ 34 IPC, Police Station Kurawali, District Mainpuri was produced.

22. The learned Trial Judge, after hearing arguments of both parties and perusing the evidence on record, found that the prosecution have been able to prove their case beyond reasonable doubt. The FIR was lodged promptly and the place of occurrence was established. The witnesses of fact have been consistent and their testimony reliable and trustworthy. There was no contradiction in ocular and medical evidence. There was motive for the appellants to murder Smt. Shyama Devi in order to grab her land. Therefore, the learned Trial Judge found both the appellants guilty of committing Shyama Devi's murder and has, thus, convicted and sentenced the appellants under Section 302 IPC as indicated above.

23. We have heard learned Counsel for the appellants, the learned A.G.A. on behalf of the State and perused the evidence on record.

24. It is submitted on behalf of the appellants that the prosecution have examined PW-1, Ujagar Singh and PW-2, Jivaram, as the witnesses of fact. Both the above witnesses are interested witnesses and also inimical to the appellants. PW-2, Jivaram, is a chance witness. No independent witness has been examined by the prosecution. Therefore, the testimony of PW-1 and PW-2 is highly unreliable. It is further submitted that the appellants had supported Ujagar from the rival party in the election to the office of the Gram Pradhan, where the informant contested and lost. Therefore, he has developed enmity against the appellants, giving him a cause to falsely implicate. It is further submitted that the informant has had illicit relationship with the deceased, Shyama Devi, and was keeping her in his house, which was a reason for annoyance and bickering between the informant and his family members, who did not accept it. It is the informant's family members, who have killed Shyama Devi and the informant has falsely implicated the appellants to save his family. It is further submitted that the place of occurrence is highly doubtful because in view of the testimony of PW-1 and PW-2 and the Investigating Officer, the utensils, blood stained cow dung, baked chapati etc., which the witnesses of fact have said that they were lying at the place of occurrence, were not found by the Investigating Officer, when he inspected it. It is also submitted that the manner in which the incident has occurred, is not supported by medical evidence and, thus, there are contradictions in ocular and medical evidence, falsifying the prosecution story. It is also submitted that the presence of PW-1 and PW-2 at the place of occurrence is highly doubtful because if the incident had occurred in their presence, then their normal reaction would have been to capture the appellants. Sitting tight while the appellants committed the crime fled from the house

without any resistance from them is highly unnatural. It creates doubt about the prosecution case. It is also submitted that the firearm was not recovered by the Investigating Officer, which could have corroborated the prosecution case by forensic examination of the weapon and the pellets found from the corpse of the deceased. Lastly, it is submitted that there was no motive for the appellants to commit the said crime. Civil litigation was already pending there in the Court and the murder of the deceased could have been of no benefit for the appellants to grab her property. Thus, the Trial Court has appreciated the evidence incorrectly and reached a wrong conclusion. Therefore, the impugned judgment and order is liable to be set aside.

25. Per contra, the learned A.G.A. has submitted that the prosecution case is proved beyond reasonable doubt; the FIR is prompt; the place of occurrence is established; the eye-witnesses have supported the prosecution case and their testimony is consistent and reliable. There are no major contradictions in ocular and medical evidence. There was motive for the appellants to commit the murder of Shyama Devi in order to grab her property. Thus, the Trial Court has rightly convicted and sentenced the appellants. This appeal has no force and is liable to be dismissed.

26. In view of the evidence led in the case and the submissions of both parties, let us see whether the prosecution have been able to prove their case beyond reasonable doubt.

27. According to the prosecution, the incident occurred on 09.04.1983 at 11:00 a.m. The FIR was lodged on the same day at 1:00 p.m. According to the chik FIR, the distance between the place of occurrence and the police station is 3 kilometers. PW-1, Ujagar Singh, is the first informant of the case. He has stated on oath that after the incident, he got the written report (tehrir) scribed by his son, Kripal, and thereafter went to the police station and lodged the FIR. PW-1, Ujagar Singh, has proved the written report as Ex. Ka-1 and said that he went to the police station alone on foot. He gave the written report to the Constable at the police station. He remained at the police station for about half an hour. PW-5, SI Kamta Prasad, the Investigating Officer of the Case, has proved the chik FIR, Ex. Ka-11 and G.D. No.16 dated 09.04.1983 entered at 13:00 hours and Ex. Ka-12, scribed by Head Moharrir Jawahar Lal. It is argued on behalf of the appellants that the FIR is ante-timed, but in this regard the defence have not cross-examined PW-1, Ujagar Singh and PW-5, SI Kamta Prasad. The inquest report was prepared at 3:00 p.m. on 09.04.1983 and there are particulars of case crime number and sections etc. mentioned on the first page, and on the second, it is mentioned that by G.D. No.16, dated 09.04.1983 registered at 13:00 hours, SI Kamta Prasad reached the place of occurrence, drew up the relevant papers with regard to the inquest and sent the dead body for autopsy to the hospital. In view of the above oral and documentary evidence, it is proved that the FIR was lodged on 09.04.1983 at 1:00 p.m. i.e. after about 2 hours of the incident. Therefore, looking into the facts and circumstances of the case, there is no delay in lodging the FIR. It is prompt and not ante-timed.

28. According to the prosecution, the incident occurred in the courtyard of the informant, Ujagar Singh's house in Village Khirna Kalan, P.S. Kurawali, District Mainpuri. PW-1, Ujagar Singh, is the first informant as well as eye-witness of the case. He has deposed on oath that Shyama Devi was murdered at about 11:00 a.m. by the appellants, coming down the stairs from the backyard, when she was making chapati in the kitchen, leaning against a wall in the courtyard. He has said that the appellants had shot her from a distance of 3-4 paces in his courtyard and blood

splattered around her. PW-2, Jivaram, is also one of the eye-witnesses of the case. He has also deposed on oath that the appellants entered into the informant's courtyard, after getting down the roof, and shot Shyama Devi while she was making chapati there.

29. According to the inquest report, it was drawn up at the place of occurrence that is the courtyard of the informant's house, which corroborates that the incident occurred in the said courtyard. The Investigating Officer has inspected the place of occurrence and drawn up the site-plan, where the place of occurrence is shown as the courtyard of the informant's house.

30. PW-5, SI Kamta Prasad, the Investigating Officer of the case, has said on oath that he took samples of blood stained and plain earth from the place, where the dead body was lying, sealed them in separate containers and drew up its recovery memo. He has proved these containers as Material Exhibits 1 and 2 and its recovery memo as Ex. Ka-10, which also corroborates that the incident occurred at the place alleged by the prosecution. It is vehemently argued on behalf of the appellants that the place of occurrence is highly doubtful because according to the testimony of PW-1, kneaded dough stuck to the deceased's hands, cooked chapati was on the pan, cooked pulse in the zinc pot, the earthen pots and blood stained cow dung etc. were lying at the place of occurrence, whereas the Investigating Officer has said that he did not find or notice any of these things. This shows that the place of occurrence, as propounded by the prosecution, is highly doubtful. We do not find force in this submission. It has come in evidence that the Investigating Officer has found blood splattered around the body of the deceased at the place of occurrence and collected samples of blood stained and plain earth from the said place. He also found Shyama Devi's dead body lying at the place of occurrence. If he failed to notice the more subtle materials, it has no bearing on the case. It may be minor lapse on his part or at the most, an instance of defective investigation. It is settled law that if the prosecution case is proved otherwise from ocular and medical evidence, any lapse on the Investigating Officer's part, would not adversely affect the prosecution case. Here, it is material that the dead body was found at the place of occurrence along with blood splattered there. Therefore, going by clear and telltale evidence, we are of opinion that the place of occurrence is established by the prosecution.

31. The prosecution have examined PW-1, Ujagar Singh and PW-2, Jivaram, as the two eye-witnesses of the incident, who have proved the facts of the case. Looking into the testimony of both these witnesses, it appears that they are consistent in their deposition and there are no major contradictions to hold that they are not reliable or the prosecution case not proved. PW-1, Ujagar Singh, has supported the prosecution case and deposed that at the time of the incident, he was sitting in his baithaka along with Jivaram, Ramlal and Mahendra. The other men were sitting there too, because they had to go to Village Patharua to find a groom for Jivaram's daughter. The appellants came into the courtyard of his house from the backside of the house. Shyama Devi was cooking in the backyard. The appellants shot her. As a result, she died instantly. Thereafter, the appellants fled towards southern side. PW-1 has been cross-examined at great length, but nothing material could be extracted from his cross-examination, which would cast doubt on his veracity. Here, it is pertinent to mention that it is the admitted case of the appellants that both of them are real brothers and the deceased, Shyama Devi was wife of Dayaram, their real brother. It is also admitted that after Dayaram's death, Shyama Devi inherited his share. It is also admitted that Shyama Devi had filed a case in the Tehsildar's Court against the appellants regarding the

abovementioned property. It is also admitted that Shyama Devi was living in Ujagar's house at the time of the incident, but it is further stated on behalf of the appellants that she was living in her own house also. In view of the above, admittedly at the time of incident, Shyama Devi was living in the informant's house and PW-1, Ujagar Singh has stated that Shyama Devi had asked him to stay there till her case was decided. PW-1 has said that they were sitting in the baithaka in such a position that the place of occurrence was clearly visible to them. It has come in the testimony of PW-1 that he had not shown the place to the Investigating Officer, from where the appellants had stood and shot Shyama Devi. In this regard, it is submitted on behalf of the appellants that non-disclosure of the place, from where the fire was opened by the appellants, is a material lapse on the part of the prosecution, which adversely affects their case. We do not find any force in this submission. It is established from the evidence that Shyama Devi was shot in the courtyard of the informant's house, while she was sitting near the hearth (chulha). The Investigating Officer has shown the hearth and the place, where the dead body was lying. Therefore, not showing the place to the Investigating Officer, from where the appellants had opened fire, is not very material so as to adversely affect the prosecution case.

32. PW-2, Jivaram, has also supported the prosecution case and according to the prosecution, Jivaram reached the informant's house at about 10:00 a.m. and he was sitting along with the informant and two other men, Mahendra and Ramlal in the baithak. He has also said that he came to the informant's house because it was agreed between them that they would go to Village Patharua to find a groom for his daughter. Therefore, the reason for Jivaram's presence at the time of the incident is well explained. According to PW-1, the groom whom they were going to meet was his Samadhi's son. Though, it has come in evidence that till the statements of these witnesses were recorded, the marriage of Jivaram's daughter was not settled, but it does not mean that the presence of Jivaram at the informant's house was without reason. There is no material contradiction in Jivaram's testimony, though he has been cross-examined at length.

33. In the appellants' submission, the testimony of PW-1 and PW-2 does not show that they could see the incident from the baithaka and reckon what was going on in the courtyard. Looking into the testimony of both these witnesses, it has come in their evidence that the door of the baithaka was open and the hearth and the place, where the deceased was sitting, was visible from the door. The Investigating Officer has drawn up a site-plan, where he has shown the place by letter 'A' where both these witnesses were sitting and the place marked by letter 'B' in the courtyard, where the hearth was located and the dead body of Shyama Devi lay. In between letters 'A' and 'B', there is a door shown, which is straight in line with 'A' and 'B'. This would give clear vantage to one sitting at place 'A', what was happening at place 'B'. The platform is also shown in the baithaka and both these witnesses say that they saw the shooting from the baithaka and it was the appellants, who shot the deceased employing country-made pistols. The defence have given a suggestion to PW-2, Jivaram, that the baithaka door must have been closed because the daughter-in-law (bahu) in rural societies stay veiled. Therefore, the suggestion further goes, if Jivaram was present there with his face towards the courtyard and women of the house inside, as a matter of normal practice, door would not be open. Rather, it would have been closed to keep privacy. But, PW-2 has explained this by saying that the back of the daughter-in-law (bahu) was towards them, so the door was open. The explanation given by PW-2, Jivaram, appears to be reasonable and it is not unusual in such condition that the door of the baithaka was open.

34. It is further submitted on behalf of the appellants that the appellant, Mata Din was witness in a murder case against Ramlal and Mahendra, where they were convicted and sentenced to undergo imprisonment for life. Thus, they harboured animosity against Mata Din and stood witness against the appellants in this case. The defence have filed a certified copy of the judgment passed in the sessions trial against Ram Lal, a reading whereof shows that though Mata Din stood witnesses against Ramlal, but so far PW-2, Jivaram, is concerned, he was not on trial in that case. There is, therefore, no reason shown by the defence why PW-2, Jivaram, would falsely depose against the appellants. Jivaram is an independent witness. His presence on the spot is found reasonable and reliable. It is a day-light murder. There is no reason why Jivaram would give false evidence against the appellants.

35. It is also submitted on behalf of the appellants that according to PW-1 and PW-2, after committing the crime, the appellants emerged from the informant's house using the baithaka door, passing these witnesses at a distance of 5-6 paces, where the normal reaction of these witnesses should have been to apprehend the appellants, but the absence of any such reaction of these witnesses sitting in the baithaka while the appellants passed by, is not natural and raises suspicion about their presence at the scene. We do not find any force in this submission, because it has come in evidence that the appellants were armed with country-made pistols, which they were brandishing, and these witnesses were scared into staying away from the appellants, who had moments earlier, had shown their propensities to kill.

36. In **Rana Pratap v/s State of Haryana AIR 1983 SC 680, (1983) 3 SCC 327,** the following remarks of O. Chinnappa Reddy J. are relevant:

'Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. The others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no such rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.'

37. In this view of the matter by not reacting in a particular manner to apprehend the appellants, there cannot be any suspicion about the witnesses' presence at the place of occurrence, particularly, when the appellants were armed with pistols.

38. It is further submitted on behalf of the appellants that there were elections around for the office of Gram Pradhan and the informant, a former Gram Pradhan, contested the election. The appellants supported the rival candidate and in the election, the informant lost. Therefore, he harboured animosity against the appellants, leading to their false implication in this case. We do not find any force in this submission as well. The appellants have not clarified, who was the rival candidate, whom they were supporting and the election to the office of the Gram Pradhan was held about a year ante-dating the occurrence. There was no reason for the informant to falsely rope in the appellants after the lapse of a year from the electoral event. In view of the above discussion, we hold that the testimony of PW-1 and PW-2 is consistent, reliable and trustworthy.

39. So far as the medico-legal evidence is concerned, it is submitted on behalf of the appellants that the ocular evidence is not corroborated by the medico-legal evidence, rendering the prosecution case highly doubtful. In this regard, we have examined the testimony of PW-1, Ujagar Singh, PW-2, Jivaram and PW-6, Dr. A.K. Srivastava, who conducted the autopsy. According to the post-mortem report, Ex. Ka-13, there were two gun shot wounds, one of entry and exit, 19cm x 17cm x brain deep, extending from root of nose to just above occipital protuberance, and the other, was of an entry, 23cm x 6cm on inner aspect of right arm extending from just above medial condyle of elbow joint to right axilla pit, the entry extending into right chest cavity. On internal examination, all the bones of skull were found fractured, brain lacerated and in pieces with blood present there. Four pellets were found in brain matter, the right axilla and ribs over the right side fractured, the right lung shredded into pieces and 14 small pellets and one wad was found in it. The cause of death was opined to be shock and hemorrhage, as a result of ante-mortem injuries. According to PW-1 and PW-2, Shyama Devi was sitting near the hearth and making chapati, when she was shot by the appellants. She was in the sitting position with both her arms between her legs. PW-6, Dr. A.K. Srivastava, has opined that injury Nos.1 and 2 could be caused while the deceased was in sitting position. Both the witnesses of fact have said that the deceased was shot by the appellants and the doctor has found that the deceased died due to gun shot injury. Therefore, there are no material contradictions in the ocular and medico-legal evidence, which substantiates the prosecution case.

40. According to the prosecution, the appellants had motive to commit the murder of the deceased because after the death of the deceased's husband Dayaram, Shyama Devi inherited his property, but the appellants, who are Devar and Jeth, managed to get her name mutated out of the revenue records. In this regard, Shyama Devi had instituted a case in the Tehsildar's Court. The prosecution have produced copies of the application and the order of the Tehsildar's Court, which corroborates their version. The appellants too have admitted that Shyama Devi had instituted a case against them in the Tehsildar's Court. Therefore, there was motive for the appellants to commit the evil deed in order to grab Shyama Devi's property. Besides this, this is a case of direct evidence and in case of direct evidence, it is settled law that motive is not very material and has no significance. In view of the above, the prosecution have proved motive for the appellants to commit this crime. The direct evidence corroborated with the medico-legal evidence, support the prosecution case as well.

41. It is in the last submitted on behalf of the appellants that the informant, Ujagar Singh, had an illicit relationship with Shyama Devi. The informant was keeping her in his house, which was a cause of annoyance to his family members and it was the informant's family members, who did Shyama Devi to death. The informant has falsely roped in the appellants in this case to save his family members from the penalties of the law. The defence have not produced an iota of evidence in support of this contention of theirs. PW-1, Ujagar Singh, has disclosed his age as 60 years whereas according to the autopsy report, Shyama Devi was aged about 35 years. There was an age difference of 25 years between Shyama Devi and the informant. PW-1 has said on oath that he regarded Shyama Devi as one of his daughters and has denied that he had any illicit relationship with her. It has come in evidence that at the time of the incident, the women of the house were present and the informant had a daughter-in-law too. It is highly improbable that women from the informant's family and other family members of his would murder Shyama Devi because of

annoyance with the informant for sheltering Shyama Devi in his house. If according to the appellants, it were the family members of the informant, who committed the crime, they (the appellants) could have moved an application or stated this fact to the police or other authorities, who would have investigated the case from this angle as well. There is nothing on record to show that the appellants did so during the entire course of investigation and the trial. Therefore, this submission on behalf of the appellants has no force.

42. In view of what we have said above, we hold that the prosecution have proved their case beyond reasonable doubt. The Trial Court has appreciated the evidence on record correctly and reached the conclusion about guilt of the appellants for sound reasons. The appellants have been rightly convicted and sentenced for the said crime.

43. Therefore, this appeal has no force. The appeal fails and is dismissed. The conviction and sentence of the appellants by the Trial Court is hereby **affirmed.**

44. The appellants are on bail. Their bail bonds and personal bonds are cancelled and sureties discharged. They are directed to surrender before the Trial Court within two weeks from today to undergo the remaining part of their sentence, failing which, the Trial Court is directed to adopt coercive measures for securing their presence.

45. Let a copy of this order be forwarded to the Trial Court concerned along with the lower court record for information and necessary compliance.

(2026) 2 ILRA 1126
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.02.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 4445 of 2005

Balak Ram & Ors. **...Appellant**
Versus
State Of U.P. **...Respondents**

Issue for Consideration

Matter pertains to "whether the evidence of last seen together is sufficient enough to convict the appellants in a case resting entirely on circumstantial evidence?" (Para 25)

Headnotes

Criminal Law - Circumstantial Evidence - "the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established consistent only with the hypothesis of the guilt of the accused" (Para 23)

Criminal Trial - Suspicion - "suspicion, howsoever grave, cannot substitute proof" (Para 23, quoting Devi Lal case)
Last Seen Theory - Scope - "ordinarily, the circumstance of the deceased being last seen alive with the accused may alone not be sufficient to record conviction" (Para 26)
Last Seen Theory - Time Gap - "comes into play where the time-gap is so small that the possibility of any person other than the accused becomes impossible" (Para 26)
Circumstantial Evidence - Chain - "there must be a chain of circumstances so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused" (Para 23)
Appreciation of Evidence - Weak Links - "last seen theory is weak evidence in this case - long gap makes the last seen evidence unreliable" (Para 25)
Benefit of Doubt - Entitlement - "prosecution has failed to establish its case beyond the reasonable doubt - benefit of doubt would have to be extended" (Para 29)
Held: The prosecution has failed to elevate its case from the realm of 'may be true' to the plane of 'must be true - last seen theory is legally unsustainable in this case as law requires a strict proximity of time and place - there exists significant gap which is not narrow enough to exclude the possibility of third party interference - prosecution has failed to establish its case beyond the reasonable doubt - the benefit of doubt would have to be extended to the accused-appellants - the appeal deserves to be allowed the appellants are acquitted of all the charges. (E-7)

Case Law Cited

Hanumat Govind Nargundkar & Anr. v. State of Madhya Pradesh, **AIR 1952 SC 343***; Sharad Birdhichand Sarda v. State of Maharashtra,* **(1984) 4 SCC 116;** *Vijay Shankar v. State of Haryana,* **(2015) 12 SCC 644; Bablu** *v. State of Rajasthan,* **(2006) 13 SCC 116;** *Shivaji Sahabrao Bobade v. State of Maharashtra,* **(1973) 2 SCC 793;** *Devi Lal v. State of Rajasthan,* **(2019) 19 SCC 447;** *Nizam v. State of Rajasthan,* **(2016) 1 SCC 550;** *Navneetakrishnan v. State,* **(2018) 16 SCC 161;** *Kanhaiya Lal v. State of Rajasthan,* **(2014) 4 SCC 715;** *State of U.P. v. Satish,* **(2005) 3 SCC 114;** *Ramreddy Rajesh Khanna Reddy v. State of A.P.,* **(2006) 10 SCC 172;** *Bodhraj v. State of J & K,* **(2002) 8 SCC 45;** *Rambraksh v. State of Chhattisgarh,* **(2016) 12 SCC 251;** *Krishnan alias Ramasamy v. State of Tamil Nadu,* **(2014) 12 SCC 279;** *Arjun Marik v. State of Bihar,* **1994 Supp (2) SCC**

List of Acts

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

List of Keywords

circumstantial evidence; last seen theory; chain of circumstances; benefit of doubt; motive; delay in FIR; medical evidence; suspicion cannot substitute proof; proximity of time; acquittal

Case Arising From

APPELLATE JURISDICTION: Arising out of "judgment and order of sentence dated 24.09.2005 passed by the Additional Sessions Judge, Saharanpur arising out of Case Crime No. 37 of 1992, registered as Sessions Trial No. 66 of 1995"

Appearances for Parties

Advs. for the Appellant:
Sri Chetan Chatterjee, Amicus Curiae
Advs. for the Respondents:
Sri G. N. Kanojiya, learned A.G.A.-I

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Chetan Chatterjee, learned counsel appointed by the High Court Legal Service Committee for arguing the appeal on behalf of appellant no.2, who has also been appointed as amicus curiae by this Court for arguing the appeal on behalf of appellant no. 3; Sri G. N. Kanojiya, learned A.G.A.-I appearing on behalf of the State and perused the trial Court record as well as the judgment and order passed by the trial Court.

2. This criminal appeal has been preferred by the appellants against the judgment and order of sentence dated 24.09.2005 passed by the Additional Sessions Judge, Saharanpur arising out of Case Crime No. 37 of 1992, registered as Sessions Trial No. 66 of 1995 (State Vs. Anoop Singh and others), whereby the learned Additional Sessions Judge had convicted appellant Anoop Singh under Section 364 and 302/34 I.P.C. and sentenced him under Section 364 I.P.C. to undergo 10 year rigorous imprisonment with fine of Rs. 10,000/- and to undergo life imprisonment with fine of Rs. 10,000/- under Section 302/34 I.P.C. In case of default in the payment of fine, he was sentenced to undergo additional sentence of three months. Appellants, Ram Kumar, Vinod and Balak Ram have been convicted and sentenced to undergo life imprisonment with fine of Rs. 10,000/- under Sections 302/34 I.P.C. In case of default in payment of fine, they have been sentenced to undergo additional sentence of three months.

3. Two appellants, namely appellant no.1, Balak Ram and appellant no.4, Vinod, died during the pendency of this appeal and the appeal qua them stood abated vide orders dated 11.01.2023 and 08.01.2026 respectively passed by this Court. The only surviving appellants are appellant nos. 2 and 3, namely, Anoop Singh and Ram Kumar, respectively.

4. The prosecution story in nutshell is as under:-

On 07.02.1992 at 6:00 am, Anoop Singh and Ram Kumar kidnapped Chandrapal @ Chandraprakash from the house of Baldev Singh situated in Mohalla Mahagarh, Police Station Mandi, District Saharanpur, with the intention to kill him and on 08.02.1992 at 01:00 pm, they murdered Chandrapal @ Chandraprakash near the Ballabhgarh railway station within the territory of police station Ballabhgarh, District Faridabad. The informant in the instant case is Baldev Singh who is brother of the deceased. He lodged F.I.R. in the police station on 12.02.1992, after which case was registered and investigation was conducted. The dead body of the deceased Chandraprakash was recovered near Ballabhgarh railway station.

5. During investigation of the present case, an inquest of the dead body was done, post-mortem was conducted and statements of the witnesses under Section 161 Cr.P.C. were recorded. The accused persons were arrested. The Investigating Officer submitted the charge-sheet against accused Anoop Singh, Ram Kumar, Vinod and Balak Ram and cognizance was taken. Thereafter, the matter was committed to the Court of Sessions. The charge was framed under Sections 364, 302/34 I.P.C. All the accused denied the charges and claimed trial.

6. During the course of the trial as many as 12 prosecution witnesses were examined. The incriminating circumstances appearing in the prosecution evidence were put to the appellants while recording their statements under Section 313 Cr.P.C. The appellants denied the incriminating circumstances and claimed that they had been falsely implicated in the present case.

7. By the impugned judgment, the learned trial judge convicted the appellants. Hence, this appeal.

8. Sri Chetan Chatterjee, learned counsel appearing on behalf of the appellants submitted that:-

(i) PW1 and PW2 were already aware about the fact that accused Anoop Singh and Ram Kumar had taken the deceased with them but missing report was only given on 12.02.1992 i.e. with delay of 5 days after the incident which took place on 07.02.1992.

(ii) The prosecution has failed to prove that the contents of parcha (Ex. Ka1) are in the hand writing of accused Anoop Singh.

(iii) No one would murder someone for mere Rs. 7,500/- and there are contradictions in the statement of PW1 about the amount allegedly given by the deceased to accused Anoop Singh and Ram Kumar for getting job. Thus, the prosecution has failed to prove the motive of occurrence.

(iv) Medical evidence does not corroborate the prosecution version.

(v) The prosecution has failed to prove the evidence of last seen. Even if it were proved, conviction cannot be solely based upon it as it is a very weak piece of evidence.

(vi) There is no eye-witness to the case and this is a case of circumstantial evidence. The chain of circumstances is incomplete.

9. On the other hand, supporting the impugned Judgment Sri G. N. Kanojiya, learned A.G.A.-I for the State has submitted that:-

(i) The delay caused in reporting the missing report was explained by PW2. Baldev Singh.

(ii) PW4 Desh Raj has duly proved the Parcha written by accused Anoop Singh .

(iii) The Motive for the occurrence is the money which was given by deceased to accused for getting job, is proved by PW1 Jasmati.

(iv) Prosecution has proved the evidence of last seen which completes the chain of circumstances drawing an inference that accused has committed the offence.

10. Having considered the rival submissions advanced by learned counsel for the parties, it would be appropriate to first analyze the testimony of witnesses.

11. PW1 Smt. Jasmati is the wife of the deceased, who stated that she knew accused Anoop Singh and Ram Kumar. They came to her house and asked about her husband, who was not present at home at that time. They had given her a slip of paper and told her to send Chandraprakash to Rampur on the next day. Chandra Prakash (deceased) did not go to Rampur on the next day. She

deposed that again in the next morning, Anoop and Ram Kumar came to her house and took her husband with them. She further deposed that her husband did not return home after that. A photograph from the file was shown to her and she recognized the photograph was of her husband. She further stated that prior to this incident, her husband had given Rs.7,500/- to accused Anoop Singh and Ram Kumar for getting job. She further stated that she left her husband with two accused persons Anoop Singh and Ram Kumar at home and went out for natural call. When she returned back, her husband and both the accused persons had left the house. People from her locality went to the police station 2 or 3 days later. She went to police station much later. She further deposed that if the Investigating Officer mentioned the amount only Rs.7,000/- instead of Rs. 7,500/- in her statement under Section 161 Cr.P.C. , which she cannot explain.

In her cross-examination, she stated that accused Anoop Singh and Ram Kumar were her relatives and they had taken Rs. 7,500/- from her husband to provide job to him. The amount of Rs. 7,500/- was taken by the accused, 2 to 3 months before the murder of her husband. There was no written agreement for making payment of the aforesaid amount.

12. PW2 Baldev Singh is the brother of deceased, who had identified the clothes of Chandraprakash at Ballabhgarh establishing that recovered body was that of the deceased Chandraprakash. He deposed that about 5 years back, the accused Anoop Singh and Ram Kumar came to their house and gave a letter to the wife of his brother Chandraprakash (deceased) instructing her to send Chandraprakash to the Rampur bus stand. In the next morning again both the accused came to their house and took Chandraprakash with them. After that his brother never returned back. Chandraprakash (deceased) was the maternal uncle of accused Anoop Singh and Ram Kumar. Anoop Singh and Ram Kumar are the real brothers. He further stated that 2 or 3 days before on 12.02.1992, he alongwith his neighbourhood went to police Station Mandi but police personnel concerned had refused to lodge the F.I.R. but later on the same day the report was lodged. He further deposed that a note (Parcha) written by accused was given to the police.

In his cross-examination, he stated that Daroga had never recorded his statement. If Daroga had already recorded his statement under Section 161 Cr.P.C., then he cannot explain the reason.

13. PW3 Krishna Lal is the neighbour of deceased who deposed that more than five years back at about 8:30 am in the morning Anoop Singh , Ram Kumar and Chandraprakash @ Chandrapal (deceased) met him infront of Rishipal's shop at Rampur bus stand. They said that they were going to Delhi to purchase sacks and gunny bags. He recognized hand writing and signature of accused Anoop Singh. Paper no. 5/2 was shown to him and on seeing it, he stated that text on it was written by accused Anoop Singh, present in Court.

In his cross-examination, he stated that Daroga Ji recorded his statement five months later. He stated to the police that he had seen the deceased Chandrapal with the accused persons at the Rampur Bus stand on 06.02.1992. He further stated that if Daroga Ji had recorded in his statement that he had seen the accused persons alongwith deceased on 07.02.1992, then he cannot explain the reason for this discrepancy.

14. PW4 Desh Raj stated that he knew the accused Anoop Singh and Ram Kumar. He owned a grocery store. About 5 years back , at around 6:00 am in the morning, accused Anoop Singh and Ram Kumar came to his shop and asked him for a piece of paper and pencil. Anoop Singh had written something in front of him on the paper while sitting at his shop. He further deposed that Daroga had recorded his statement five months later.

15. PW5 M. S. Ahlawat is the doctor who had stated that on 10.02.1992 , he was posted as a Senior Medical Officer in civil hospital Chandigarh. On that day, he had conducted post-mortem examination of an unidentified dead body and found the following ante-mortem injuries :-

" The deceased was found to have extensive swelling over both eyes and forehead. Upon examining the skull, the cranial cavity was found to be filled with blood and there were fracture of the interior and middle cranial fossa which were also filled with clotted blood. All other organs were healthy. Cause of death is shock and hemorrhage due to injuries on vital part which are ante-mortem in nature and sufficient to cause death. Possibility of injuries due to railway accident cannot be ruled out."

He has proved the post-mortem report which is exhibited as Ex. Ka2.

In his cross-examination, he stated that he had not mentioned time of post-mortem in post-mortem report. He further stated that police informed him that deceased was under influence of some intoxicating substance due to which he fell down from a moving train and died. The deceased's death could have occurred at any time on 09.02.1992. The injuries found on the body of the deceased could have been caused by falling from a moving train.

16. PW6 B. P. Singh (Deputy S.P.) who had stated that on 19.09.1992, he was posted as an Inspector In-charge at Police Station Mandi. On that day, he commenced investigation in the instant matter. He recorded statements of witnesses under Section 161 Cr.P.C. on the same day. On the same day, PW1 Jasmati had given him a note written by accused Anoop Singh which is Ex. Ka1. He prepared memo Ex. Ka3. On 20.02.1992, he arrested the accused Anoop singh at about 05.20 pm from the Delhi Bus stand and on 23.02.1992 at around 5.50 am, he arrested accused Balak Ram and Vinod Kumar from Behat Bus stand and interrogated them. The investigation of the present case remained with him till 24.03.1992.

17. PW7 Satyabir is a cobbler who knew the deceased. He stated that around 6 years back at 6:00 pm, he saw the deceased and accused persons at the Delhi railway station when he arrived at the Delhi railway station to travel to Saharanpur. They were accompanied by accused Anoop Singh, Ram Kumar, Balak Ram and Vinod. Thereafter, they met him and had tea together. He further stated that they told him to go to Ballabhgarh to purchase gunny bags .

18. PW8 S. P. Singh (Inspector Incharge) has stated that on 08.07.1992, he took over the investigation and took action to arrest accused Ram Kumar. A report under Sections 82 and 83 Cr.P.C. had been forwarded by him to the C.J.M. concerrned.

19. PW9 Babu Lal, the Assistant Sub-Inspector of Police Station City Ballabhgarh, District Faridabad had stated that on 09.02.1992 at around 12:00 Noon, he was standing alongwith his police party in front of Alson Cotton Mill when Richhpal S/o Chhuttan Jat informed him verbally that a dead body of young man was lying in the field of wheat near the railway line. Upon reaching the spot, he saw that the dead body was approximately four steps away from the boundary of the railway line. He conducted the inquest and sent the dead body for conducting post-mortem. He has proved the inquest repot exhibited as Ex. Ka4.

20. PW10 Constable Rishipal Singh, Police Station Behat, District Saharanpur, stated that he was posted as constable in Police Station Mandi. On 12.02.1992 Baldev Singh had given a written report at the police station regarding disappearance of his brother Chandraprakash at 10.30 am which he mentioned in General Diary as Rapat No. 23. The original General Diary had been destroyed and its photocopy which is in his hand writing is on the file, which is exhibited as Ex. Ka10.

The investigation of the case was handed over to S.P. Singh on 19.01.1992 when he returned from Faridabad and the case was converted from missing report to Case Crime No. 37 of 1992, under Sections 364, 302/201 I.P.C.

21. PW11 Ram Babu who was the third Investigating Officer of the case had stated that he has submitted the charge sheet.

22. PW12 Harpal Singh is the Sub Inspector/Reader of the D.I.G., Nainital, Uttaranchal who had assisted PW11 Ram Babu during investigation and has prepared the site plan Ex.Ka15

23. Before we proceed further, considering that we are dealing with a case which is to be decided on the basis of circumstantial evidence, it would be useful to notice the legal principles to be borne in mind when a criminal trial is to be decided on the basis of circumstantial evidence. Where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of circumstances so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused **(vide Hanumat Govind Nargundkar & Anr. V. State of Madhya Pradesh, AIR 1952 SC 343; Sharad Birdhichand Sarda V. State of Maharashtra, (1984) 4 SCC 116). In Vijay Shankar V. State of Haryana, (2015) 12 SCC 644, the Supreme Court following its earlier decisions in Sharad Birdhichand Sarda (supra) and Bablu V. State of Rajasthan, (2006) 13 SCC 116**, in respect of a case based on circumstantial evidence, held that "the normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was

committed by the accused and they should be incapable of explanation of hypothesis other than that of the guilt of the accused and inconsistent with their innocence". Further, (vide paragraph 153 of the celebrated judgment in **Sharad Birdhichand Sarda's case**) the circumstances from which the conclusion of guilt is to be drawn should be fully established meaning thereby they 'must or should' and not 'may be' established. In addition to above, we must bear in mind that the most fundamental principle of criminal jurisprudence is that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions **(vide Shivaji Sahabrao Bobade & Another v. State of Maharashtra, (1973) 2 SCC 793).** These settled legal principles have again been reiterated in a three-judge Bench decision of the Supreme Court in **Devi Lal v. State of Rajasthan, (2019) 19 SCC 447** wherein, in paragraphs 18 and 19 of the judgment, it was held as follows:-

"18. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment, to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same."

24. Having noticed the prosecution evidence and the legal principles governing decision of a criminal trial on circumstantial evidence, we notice that in the instant case, the prosecution seeks to bring home the guilt of the accused appellant by proving following circumstances;-

(i) On 06.02.1992 at around 6:00 am in the morning accused Anoop Singh and Ram Kumar had gone to shop of PW4 Desh Raj and asked him for a piece of paper and pencil. Accused Anoop Singh had written something on the paper, (ii) they had given a slip to PW1 Smt. Jasmati on 06.02.1992 and told her to send Chandraprakash (deceased) to Rampur and again in the next morning they had gone to her house and took her husband with them, (iii) on 07.02.1992 at around 8.30 am in the morning, accused Anoop Singh, Ram Kumar and Chandraprakash (deceased) met PW3 Krishna Lal at Rampur Bus Stand, (iv) on 07.02.1992 at about 6:00 pm, deceased and all the accused persons were seen by PW7 Satyabir at Delhi Railway Station, (v) on 09.02.1992 at around 12:00 Noon, the dead body of the deceased was found near the railway line at City Ballabhgarh, District Faridabad. (vi) cause of death of deceased was ante-mortem injuries and (vii) motive of occurrence is Rs. 7,500/- which was given by the deceased to accused persons Anoop Singh and Ram Kumar for providing him job.

25. Now, we shall examine as to whether the prosecution has been able to successfully prove all the circumstances narrated above.

(i) The prosecution relies on slip allegedly written by the accused, which, as per the record, was written with a pen and not with a pencil. There is no reliable proof as to the hand writing, therefore, this circumstance remains doubtful and cannot be treated as strong link against the accused, (ii) The deceased left his house with accused-appellants is not disputed but this was voluntary act. The wife of accused did not make any complaint to the police before 12.02.1992 alleging suspicion or threat. Mere departure together, without any objection cannot be treated as an incriminating circumstance, (iii) Being present at public place, where many people come and go, does not create any suspicion. There is no record of any quarrel, threat or unusual conduct at that place, (iv) the last seen theory is weak evidence in this case. The deceased was last seen around 6:00 pm on 7.02.1992 with the accused person but the body was found on 9.02.1992 around noon. The long gap of several hours makes the last seen evidence unreliable as possibility of involvement of some other person can not be ruled out, (v) dead body was found near railway line but this does not show any direct link between accused-appellants and place of recovery, (vi) the alleged motive of taking Rs. 7,500 for providing employment is doubtful as they both were labourers. Further, the wife of deceased in her statement under Section 161 Cr.P.C. stated the amount to be Rs. 7,000, which is contradictory to case of prosecution and (vii) PW5 Dr. M. S. Ahlawat who conducted the post-mortem examination stated that deceased's death could have occurred at any time on 09.02.1992 by falling down from the moving train, which could be accidental as it does not show any link to the accused persons.

Keeping in view the above-stated testimonies, the crucial question is-whether the evidence of last seen together is sufficient enough to convict the appellants in a case resting entirely on circumstantial evidence ?

26. Accused-appellants being last seen with deceased on 07.02.1992 at about 6:00 pm at Delhi Railway Station and on 09.02.1992 at around 12:00 Noon, the dead body of the deceased was found near the railway line at City Ballabhgarh, District Faridabad. The post-mortem of the dead body was conducted on 10.02.1992 and the doctor had opined that deceased's death could have been occurred at any time on 09.02.1992. Before we dwell on this issue we may observe that, ordinarily, the circumstance of the deceased being last seen alive with the accused may alone not be sufficient to record conviction **(vide Nizam V. State of Rajasthan, (2016) 1 SCC 550; Navneetakrishnan V. State, (2018) 16 SCC 161; and Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715).** But, it is an important link in the chain of circumstances that could point towards the guilt of the accused with some certainty. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is long gap and possibility of other persons coming in between exists **(vide State of U.P. V. Satish, (2005) 3 SCC 114). Similar view is taken in Ramreddy Rajesh Khanna Reddy & Another V. State of A.P., (2006) 10 SCC 172, where, following the decisions in State of U.P. V. Satish (supra) and Bodhraj V. State of J & K, (2002) 8 SCC 45**, in paragraph 27 of the judgment, it was held that

"the last seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. Even in such cases the courts should look for some corroboration."

27. In **Rambraksh v. State of Chhattisgarh (2016) 12 SCC 251**, Hon'ble Apex Court observed that the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

28. Further Hon'ble Apex Court in the case of **Krishnan alias Ramasamy v. State of Tamil Nadu (2014) 12 SCC 279** while relying on its judgment in **Arjun Marik v. State of Bihar 1994 Supp (2) SCC 372** observed as follows:

"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows : (SCC p. 385, para 31)

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

29. In view of the facts and circumstances of the case and the law laid-down by Hon'ble Apex Court as mentioned above, we are of the opinion that since the deceased was last seen around 06:00 pm on 07.02.1992 with accused persons at the Delhi Railway Station and on 09.02.1992 at around 12:00 Noon, the dead body of the deceased was found near the railway line at City Ballabhgarh, District Faridabad and PW5 Dr. M. S. Ahlawat has opined that death of deceased could have occurred on 09.02.1992. Therefore, last seen theory is legally unsustainable in this case as law requires a strict proximity of time and place between last sighting and the death. In this case there exists significant gap which is not narrow enough to exclude the possibility of third party interference. Hence, prosecution has failed to establish its case beyond the reasonable doubt.

Accordingly, the benefit of doubt would have to be extended to the accused-appellants. Consequently, the appeal deserves to be allowed and it is, accordingly, allowed. The judgement passed by the trial Court is set aside. The appellants nos. 2 and 3 namely Anoop Singh and Ram Kumar, are acquitted of all the charges for which they have been tried.

30. The appellants are in jail. Their bail bonds are cancelled and sureties are discharged.

31. Criminal appeal qua appellant no.2, Anoop Singh and appellant no.3, Ram Kumar, is allowed.

32. Let a copy of the judgment and order alongwith trial court record be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

33. Sri Chetan Chatterjee, Advocate is entitled to his professional fee of Rs.15,000/- for appearing as Amicus Curiae to argue this appeal.

(2026) 2 ILRA 1136
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 7953 of 2022

Puneet **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to unreliable prosecution evidence in case u/s 302 IPC.

Headnotes

Indian Penal Code-Section 302/34; Arms Act-Sections 25/27 - Written report lodged against an unknown person - prosecution witnesses did not name or implicate the accused-appellant in their statements recorded u/s 161 Cr.P.C. - prosecution witnesses gave improved and changed evidence - evidence of the prosecution witnesses is wholly unreliable - alleged recovery of the so-called murder weapon is highly doubtful and suspicious - disputed bullet was fired from a 7.62×25 mm pistol and not from the disputed country-made pistol - no direct or circumstantial evidence against the accused-appellant, statement recorded under Section 313 Cr.P.C. is completely blank - judgment and order of conviction and sentence are not sustainable in the eyes of law - **Criminal Appeal allowed.** (E-9)

Case Law Cited

1. Dhanna v. State of M.P.; (1996) 10 SCC 79
2. Munesh v. State of U.P.; 2004 CRI.L.J. 1529

List of Acts

1. Indian Penal Code
2. Arms Act
3. Code of Criminal Procedure

List of Keywords

Unknown person; Section 161 Cr.P.C.; improved and changed evidence; wholly unreliable; doubtful and suspicious; no direct or circumstantial evidence; Section 313 Cr.P.C. completely blank; not sustainable in the eyes of law.

Appearances of parties

Counsel for Appellant(s) : Akash Dwivedi, Dinesh Kumar Sharma, Rajiv Lochan Shukla, Vinay Kumar; Counsel for Respondent(s) : G.A., Shiv Bahadur Singh, Sunil Kumar Singh.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the accused-appellant, Puneet, against the judgment and order dated 29.08.2022 passed by the learned Special Judge (SC/ST Act), Gautam Buddha Nagar, whereby the appellant was convicted and sentenced in Sessions Trial No. 536 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 1025 of 2018, under Section 302/34 IPC, Police Station Dadri, District Gautam Buddha Nagar, and in Sessions Trial No. 537 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 374 of 2019, under Sections 25/27 of the Arms Act, Police Station Dadri, District Gautam Buddha Nagar.

2. By the impugned judgment and order, the learned Special Judge (SC/ST Act), Gautam Buddha Nagar, convicted the appellant under Section 302/34 IPC and sentenced him to imprisonment for life with a fine of Rs.10,000/-, and in default of payment of fine, to undergo one month's additional imprisonment. Appellant was also convicted under Sections 25/27 of the Arms Act and sentenced to three years' rigorous imprisonment with a fine of Rs.5,000/-, and in default of payment of fine, to undergo fifteen days' additional imprisonment. Aggrieved by the said judgment and order of conviction and sentence dated 29.08.2022, the appellant has preferred the present criminal appeal before this Court.

3. According to the prosecution case, it is alleged that the informant, Mahesh Bhati, a resident of Village Luharli, stated that on 27.11.2018 his son, Mohit Bhati, aged about 25 years, was returning home from the Greater Noida Development Authority. At about 7:00 p.m., near Village Vasantpur (Naya Gaon), Mohit was shot by unknown persons, as a result of which he died. It is further alleged that the deceased's car bearing registration no. UP16 BE-7011 was found parked at the place of occurrence. Information regarding the incident was conveyed to the informant's younger son by unknown person. The injured Mohit Bhati was taken to Naveen Hospital, where he was declared dead by the attending doctors.

4. On the basis of a written report dated 27.11.2018 (Exhibit Ka-1) submitted by the informant, Mahesh Bhati (PW-1), a First Information Report dated 27.11.2018 (Exhibit Ka-4) was registered as Case Crime No. 1025 of 2018, under Section 302 IPC at Police Station Dadri, District Gautam Buddha Nagar, against an unknown person.

5. Investigating Officer, Ramsen Singh (PW-9) took charge of the investigation. He inspected the place of occurrence, collected blood-stained soil and simple soil from the place of occurrence, and prepared a recovery memo. He also prepared Supurdginama (handing over) (Exhibit Ka-2) of a car that was parked at the place of occurrence, to Sumit Bhati, son of the informant, Mahesh Bhati (PW-1) and brother of the deceased, Mohit Bhati. Investigating Officer, Ramsen Singh (PW-9), got the inquest report (Panchayatnama) as well as other police papers, such as, challannash, letter to CMO, and other necessary documents, prepared by Sub Inspector, Braj Singh Yadav (PW-8). After preparing the necessary documents, the dead body of the deceased Mohit Bhati, was sent for postmortem.

6. Investigating Officer, Ramsen Singh (PW-9) prepared a site plan (Exhibit Ka-11) of the place of occurrence. He recorded statements of witnesses under Section 161 CrPC. Thereafter, the First Investigating Officer, Ramsen Singh (PW-9) was transferred and investigation of the case was taken up by Inspector, Niraj Malik (PW-10). The Second Investigating Officer, Niraj Malik (PW-10) also recorded statements of witnesses under Section 161 CrPC.

7. Second Investigating Officer, Niraj Malik (PW-10), arrested accused-appellant, Puneet on 31.03.2019 and recovered one country-made pistol of 32 bore along with two live cartridges of 32 bore and one Swift car of white colour bearing Registration No. UP16 CA-1156, and prepared Fardbaramadgi'(Exhibit Ka-13). On the basis of recovery of country-made pistol of 32 bore along with two live cartridges of 32 bore, another case was registered against accused-appellant, Puneet as Case Crime No. 374 of 2019, under Sections 25/27 Arms Act, Police Station Dadri, District Gautam Buddha Nagar.

8. A bullet bearing size of 1.5 x 0.9 cm, was recovered from the body of the deceased, Mohit Bhati. The recovered bullet and country-made pistol of 32 bore along with two live cartridges of 32 bore, were sent to Forensic Science Laboratory, Uttar Pradesh, Agra for examination. After completing the necessary formalities of investigation, Second Investigating Officer, Niraj Malik (PW-10), submitted a charge sheet (Exhibit Ka-12) against accused-appellant, Puneet under Section 302 IPC.

9. Sub Inspector, Mahendra Singh (PW-11), investigated the Case Crime No. 374 of 2019, under Section 25/27 Arms Act. Investigating Officer, Mahendra Singh (PW-11), after completing all necessary formalities, including recording of evidence of prosecution witnesses under Section 161 CrPC, prepared a site plan of the place, where accused-appellant, Puneet was arrested with country-made pistol of 32 bore and two live cartridges of 32 bore. After completing all formalities, PW-11 submitted a charge sheet (Exhibit Ka-15), against accused-appellant, Puneet under Section 25/27 Arms Act.

10. Dr. Lalit Kumar Singh (PW-6), conducted autopsy of the deceased Mohit Bhati on 28.11.2018 and prepared postmortem report (Exhibit Ka-3). According to the postmortem report, the following injuries were found on the body of the deceased:

"Entry Wound

(i) Entry wound size 1 x 1 cm' x brain deep, pass through arm left side back of skull, 5 cm behind left ear. Blackening, tattooing, singeing of 3 x 3 cm in sizes around the wound (margin round) edges inverted.

(ii) Entry puncture wound size 1 x 1 cm x cavity deep over left side (sternal region) chest, 9 cm from left nipple at 10 o'clock position, margin round and edges inverted. Blackening, tattooing,'singing'3 x 3 cm of are on size, surrounding.

(iii) Entry wound size 1 x 1 cm x cavity deep, over left side front of chest, 6 cm above and medial to left axilla. Margins wound & punctured, edges inverted. Tattooing, Blackening and singing of area surrounding size 2 x 2 cm.

Exit Wound

(i) Exit wound of this wound that over Right side face, 2 cm below Right eye. Size 2 x 2 in size, margins are everted.

(ii) Exit wound size 2 x 2 cm over left side back of chest, 26 cm below C7 Vertebra margins everted.

(iii) Exit wound size 2 x 2 over left side back of chest, at the level of axilla, 7cm x 7cm medial and above (away) from left Axilla. One bullet stucked in the exit wound.'

11. Since, the case was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial.

12. The learned Trial Court framed charges against the accused-appellant on 30.09.2021 under Section 302/34 IPC. The accused-appellant denied the charges and claimed trial.

13. From a perusal of the record of the learned Trial Court, it is apparent that in the light of the order passed by the learned Trial Court on 11.12.2019, accused Gaurav was declared juvenile and his file was separated and sent to Juvenile Justice Board, Gautam Buddha Nagar for trial.

14. The prosecution, in support of its case, adduced twelve witnesses, such as, the informant Mahesh Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), Amit (PW-5), Dr. Lalit Kumar Singh (PW-6), Murari Lal (PW-7), Braj Singh Yadav (PW-8), Ramsen Singh (PW-9), Niraj Malik (PW-10), Mahendra Singh (PW-11), Sahil Kumar (PW-12). Apart from the oral evidence, the prosecution also relied upon the documentary evidence, marked as Exhibit Ka-1 to Exhibit Ka-15.

15. After recording the evidence of all the prosecution witnesses, the learned Trial Court fixed 21.04.2022 for recording the statement of the accused-appellant, Puneet under Section 313 of the CrPC.'However, on perusal of the record, it is clear that questions numbered 1 to 18 were typed and prepared in advance, leaving blank space below each question for recording the answers. These questions for recording the statement of the accused-appellant, Puneet, under Section 313 CrPC

were prepared in six pages bearing paper numbers 21Ka/1 to 21Ka/3. From a perusal of the statement recorded under Section 313 CrPC, it is evident that only the personal details of the accused, namely his name, age, father's name, profession and address, were filled in. Further, in paper numbers 21Ka/1 to 21Ka/3, no answer of the accused was recorded, and the columns meant for answers to question numbers 1 to 18 are completely blank. Only the signature of the accused-appellant appears on each page, along with the initials of the then Presiding Officer, Special Judge, SC/ST Act, Gautam Buddha Nagar, and a full signature on the last page dated 21.04.2022. Thus, it is apparent that although the questions under Section 313 CrPC were prepared, the answers of the accused-appellant were not recorded by the learned Presiding Officer.

16. The accused-appellant has not adduced any evidence in his defence. The learned Trial Court, after hearing arguments from both the parties, appreciated and evaluated the evidence on record and found the appellant guilty under Section 302/34 IPC and Section 25/27 Arms Act. The Trial Court convicted and sentenced the appellant to life imprisonment under Section 302/34 IPC with a fine of Rs.25,000/-, and in default, one month additional imprisonment. The Trial Court also convicted the appellant to three years imprisonment under Section 25/27 Arms Act along with a fine of Rs.5,000/-, and in default, fifteen days additional imprisonment. Both sentences were ordered to run concurrently. Aggrieved by the judgment and order of conviction and sentence dated 29.08.2022, the accused-appellant preferred this criminal appeal before this Court.

17. Learned counsel for the accused-appellant has submitted that the impugned conviction order passed by the learned Trial Court is based on surmises and conjectures. The prosecution has failed to prove its case against the accused-appellant beyond a reasonable doubt. The learned Trial Court has absolutely misread and misinterpreted the evidence and wrongly recorded finding of conviction against the accused-appellant. There are a lot of major and material contradictions in the statements of prosecution witnesses but the learned Trial Court has not given any heed/attention towards these major and material contradictions. There is no direct or indirect evidence against the accused-appellant. The sentence and conviction recorded by the learned Trial Court is absolutely perverse and deserve to be set aside. The appellant was not involved in the incident. The alleged recovery shown by the prosecution is false and planted one. The appellant is innocent and has been falsely implicated in the present case due to village politics and election rivalry. The learned Trial Court wrongly appreciated evidence against the accused-appellant.'

18. It is also submitted by learned counsel for the accused-appellant that, from the perusal of the oral and documentary evidence, it is amply clear that the appellant was not involved in the commission of the alleged crime. However, the learned Trial Court, by misreading and mis-appreciating the prosecution evidence and also against the settled principles of law, held the accused-appellant guilty for the commission of alleged crime. In view of the above points of argument, the learned counsel for the accused-appellant submitted that the present appeal filed by the accused-appellant is liable to be allowed and the judgment and order of conviction and sentence passed by the learned Trial Court is liable to be set aside.

19. Per contra, learned A.G.A. for the State and learned counsel for the complainant have submitted that the learned Trial Court, after perusing and appreciating all the prosecution evidence, held the accused-appellant guilty for the commission of alleged crime. It is also submitted that

direct evidence against the accused-appellant is available on record from the evidence of prosecution witnesses; informant Mahesh Bhati (PW-1), Chandrahas (PW-2),Sumit Bhati (PW-3), Krishna (PW-4), Amit (PW-5). The recovery of a country-made pistol of 32 bore, along with two live cartridges of 32 bore, and the report of Forensic Science Laboratory, Uttar Pradesh, Agra, prove the direct involvement of the appellant in the present case beyond reasonable doubt. A bullet recovered from the deceased Mohit Bhati's body during autopsy was found to be fired from the same country-made pistol, which was recovered from the possession of the accused-appellant, Puneet. It is also submitted that there was previous enmity and rivalry between the prosecution and defence sides.

20. Due to the previous enmity and village rivalry, the deceased was murdered by the accused-appellant, Puneet with foolproof planning. The learned Trial Court has rightly appreciated the evidence and applied all relevant laws, thereby holding the appellant guilty for the commission of alleged offence. Consequently, the criminal appeal filed by the accused-appellant is devoid of merit and lacks force and is, therefore, liable to be dismissed.

21. In the light of the above arguments and counter-arguments of both the sides, we have gone through the entire evidence available on record. We have also perused the judgment and order of conviction and sentence dated 29.08.2022 passed by the learned Special Judge (SC/ST Act), Gautam Buddha Nagar.

22. A perusal of the written report dated 27.11.2018 (Exhibit Ka-1) reveals that the deceased, Mohit Bhati, son of informant Mahesh Bhati (PW-1), was returning home from Greater Noida Development Authority on 27.11.2018. At about 7:00 p.m., near Village Vasantpur (Naya Gaon), Mohit was shot by unknown persons, as a result of which, he died. From a perusal of the written report (Exhibit Ka-1), it is also revealed that the car of the deceased, bearing registration no. UP16 BE-7711, was found lying/parked at the place of occurrence. The written report further indicates that information about the murder was given to the informant's younger son, Sumit Bhati by an unknown person. The injured Mohit Bhati was taken to Naveen Hospital, where he was declared dead by the attending doctors. Thus, from a perusal of the written report (Exhibit Ka-1) filed by the informant Mahesh Bhati (PW-1) after the alleged incident, it is clearly established that the informant has lodged the report against unknown persons. No one is named as an accused in the written report. The information about the murder of his son Mohit Bhati was received by the informant through his younger son, who had received it from some other person.

23. In his examination-in-chief, informant Mahesh Bhati (PW-1) has stated that "The incident occurred on 27.11.2018. The incident took place at 7:00 PM. The incident occurred near Naya Gaon, Vasantpur. I was informed about the incident by my son, Sumit. My son had a Kwid car, the number of which was UP16 BE-7011. I did not reach the place of the incident. Mohit was taken to the Naveen Hospital at Dadri by my younger son and his friend. Upon receiving the information, I reached Naveen Hospital, Dadri. I saw my son, Mohit, at the hospital. My son Mohit had been shot in the temple (side of the head) and the chest. I had a written report (Tehrir) prepared by Mahipal Bhati and I signed it. The witness identified the signatures on the complaint paper (Paper No. 4A/3). Paper No. 4A/3 was marked as Exhibit Ka-1. The police questioned me and recorded my statement twice. My brother, Umesh, also told me that he had gone to Ajayabpur to bring some

goods. While returning with the goods, he saw that Mohit's vehicle was parked ahead at the turn of Naya Gaon, and Puneet's vehicle was parked behind it. Puneet was sitting in the steering seat (driver's seat), and Mohit was sitting next to him, while other people were sitting in the back of the car. Alcohol was being consumed in the vehicle. As soon as he walked ten steps ahead, he heard the sound of a gunshot. When he looked back, Puneet had shot Mohit. He had reported this matter to the police."

24. In his cross-examination, the informant Mahesh Bhati (PW-1) has stated that many people from the village went to the police station to file the report, but Chandrahas did not go the police station. He further stated that "I did not give this statement to the police that 'unknown people shot and injured him.' If the aforementioned point is written in my statement, then I cannot explain the reason for it; that the police were in collusion with the accused, because the BJP MLA of the Dadri area is the maternal uncle of the accused, Puneet."

25. In his cross-examination, the informant, Mahesh Bhati (PW-1) further stated that I had given Puneet's name in writing in the FIR, but the police did not make him an accused. I had told the police in my statement that "I had filed a report against Puneet and his brothers regarding this murder, but due to pressure of the MLA, the police did not register the report. If police have not recorded the said fact in my statement, I cannot give any reason for it. I had given this statement to the police that 'my brother Umesh told me that ..... shot Mohit."If the police have not recorded this in my statement, I cannot give any reason for it. Because the police were under pressure."

26. In the light of the evidence as deposed by the informant, Mahesh Bhati (PW-1), it is necessary to peruse the evidence of First Investigating Officer, Ramsen Singh (PW-9). From a perusal of evidence of Ramsen Singh (PW-9), it is revealed that on 15.12.2018, statements of Mahesh Bhati, Chandrahas, Beg Raj, Subhash Nagar, Satish Bhati and Jaiveer Singh were recorded by PW-9. During his cross examination, this witness has stated that "After recording the statement of witness Sumit, son of Mahesh, it came to my knowledge that 'Sumit had received information regarding Mohit's murder through a Brahmin (Pandit) and a Gurjar boy.' No effort was made by me to search for the aforementioned Pandit and Gurjar boy who provided that information."

27. In his cross-examination, First Investigating Officer, Ramsen Singh (PW-9) further stated that "I recorded the statements of the informant Mahesh and witness Chandrahas, son of Rampal, on 15.12.2018. I have not recorded any reason in the case diary for not recording the statement of Chandrahas, son of Rampal, prior to 15.12.2018. I have not recorded any reason for not recording the statement of the informant Mahesh prior to 29.11.2018. On 08.01.2019, I recorded the statements of witnesses Krishna, son of Chandrahas, and Amit, son of Rajendra. Their statements were not recorded before 08.01.2019 because no information had been received about them; said himself that their statements were recorded once their details surfaced.'After recording the statement of witness Krishna, son of Chandrahas, on 08.01.2019, I came to know that Puneet had threatened Mahesh at the police station on 30.03.2018. I also came to know about the aforementioned threat from the statement of Amit, son of Rajendra. It is correct that the matter regarding Puneet threatening Mahesh, is not present in any police station records. Witness Chandrahas, son of Rampal, gave me this statement that; Sahab, on the date 27.11.2018, someone

shot and killed Mohit, son of Mahesh, from the village. Upon hearing this, I also went to Naveen Hospital, Dadri, where the body was kept. I had gone to the police station with Mahesh to file the report." Further, in his cross-examination, the First Investigating Officer, Ramsen Singh (PW-9) has stated that "The informant witness Mahesh gave me this statement that at around 7:00 pm unknown people shot and injured him."

28. Thus, from a perusal of the evidence of informant Mahesh Bhati (PW-1) and First Investigating Officer, Ramsen Singh (PW-9), it is evident that Mahesh Bhati is not an eyewitness to the alleged incident. The incident was not witnessed by informant Mahesh Bhati (PW-1). The information about the alleged incident was given to PW-1 by his younger son, Sumit Bhati. According to PW-1, a'Pandit and a Gurjar boy had given information about the incident to Sumit. PW-1; after receiving the information about the incident did not go to the place of occurrence. PW-1 went to Naveen Hospital, Dadri, where dead boy of his deceased son, Mohit was kept. The written report (Exhibit Ka-1) was lodged by PW-1 against unknown person, however, in the course of recording his evidence, PW-1 stated against accused-appellant projecting a new theory that his brother, Umesh Bhati had told to him that he had heard and seen the noise of the firing and shooting by accused-appellant Puneet at Mohit Bhati.

29. From the evidence as given by this witness, in his evidence, it appears that in his statement recorded under Section 161 Cr.P.C. given to the Investigating Officer, this witness has not named any person as an accused person. This witness has not named or expressed any doubt against accused-appellant, Puneet in his statement recorded under Section 161 Cr.P.C. given to the Investigating Officer. But during the time of recording of his evidence in the Court, this witness deposed that statement, which was not given by this witness to the Investigating Officer in his statement recorded under Section 161 Cr.P.C.

30. From a perusal of the evidence of PW-1, it is clear that this witness had deliberately improved and changed his statement in the Court and given a new statement in the Court whereby he tried to implicate the accused-appellant, Puneet for the commission of alleged crime. Apart from this, from the reference of the evidence of first Investigating Officer, Ramsen Singh (PW-9), this fact is fully corroborated that this witness has changed his statement in the Court against his statement given to the Investigating Officer under Section 161 Cr.P.C. In this way, this witness tried hard to project a new prosecution story implicating accused-appellant, Puneet in this case. However, from a perusal of the overall evidence of this witness in the light of the evidence of First Investigating Officer, Ramsen Singh (PW-9), it is clear that this witness has stated false and concocted facts. From the evidence of this witness, it is amply clear that major and material contradictions are present in the evidence of this witness, which is against the prosecution story. Thus, we find that there is no relevancy and veracity in the evidence of this witness. Evidence of this witness is totally unreliable and untrustworthy of credit.

31. Prosecution adduced Chandrahas as PW-2. This witness in his examination-in-chief has stated that "The incident have occurred at around 6:00 to 6:30 PM. It had become dark. I was returning from my aunt's village, Dadupur. A boy had dropped me off at Ajayabpur station on a motorcycle. From there, I started walking toward my village. I saw two cars parked on the road. Mohit and Puneet were sitting in one of the cars. Puneet was on the driver's side, and Mohit was on

the passenger (conductor) side. I did not speak to them. I had only walked about 10-20 steps toward the village when I heard the sound of gunfire. When I turned around and looked, Puneet had shot Mohit twice. Out of fear, I ran toward the village. Before I reached the village, there was already a commotion/noise. I do not know which car left, but Puneet's car had gone. After the chaos broke out in the village, I did not go to Mahesh's house to tell him about the incident. I went to the police station and also to the mortuary. The inquest report (panchayatnama) was filled out in my presence. I saw Mohit's body. Mohit had two bullet wounds in his chest and one in his neck.'On that day, I did not have any conversation with Mahesh because he was unconscious. I had told the police everything regarding the said incident. The police were under the pressure of the M.L.A."

32. In his cross-examination, Chandrahas (PW-2) has stated that "Before the incident with Mohit, I was in service. When I was in service, I did not keep a phone. I am aware that murder is a crime. Regarding the incident that happened with Mohit, I did not make any phone calls anywhere. I did not make any phone calls to either mine or Mahesh's relatives in connection with this incident, and I personally stated that I do not know how to use a phone. I did not tell the police about the fact that I do not know how to make calls, nor did the police ask me about it. I cannot state any reason for this matter not being told. After the incident with Mohit, I remained in my village at home for four and half months. During those four and half months, the police visited the village several times in connection with Mohit's murder. It is wrong to say that after four and half months, I was not ready to testify against Puneet in connection with Mohit's murder. He then himself said that he had informed the police and Mahesh about the incident after it occurred. I went to Dadri Police Station with Mahesh to file the report. Mahesh wrote the report at the station itself. Mahesh dictated the report and the writer wrote it. It is wrong to say that Mahesh was not unconscious at the time of filing the report. I was also a witness (Panch) in the written documentation of the inquest (Panchayatnama) of Mohit's body. Besides me, there were many other witnesses (Panchs). The police did not take any opinion from us witnesses (Panchs). I had told the police everything about the incident at the time of the Panchayatnama of the body. If the police have not written the things told by me in the inquest report (Panchayatnama) regarding Mohit's murder, then I cannot state any reason for it. The police recorded my statement at the police station the day after the incident and then again questioned me later. The second questioning was done 2-3 months after the incident. It is wrong to say that Puneet was falsely implicated in the murder of Mohit with due consideration and planning after four months after the incident due to village politics and election rivalry."

33. During the cross-examination of PW-2, a question was put to him by the defence suggesting that in his first statement given to the police he had stated that on 27.11.2018, Mohit, son of Mahesh, a resident of the village, was shot dead by someone and upon hearing this, he went to Naveen Hospital, Dadri, where the dead body was kept. He had accompanied Mahesh to the police station for lodging the First Information Report. In reply, PW-2 stated that the said facts did not form part of his statement and that he had not given any such statement to the police. He further stated that if the police had recorded such facts in his statement, he could not assign any reason for the same. PW-2 further denied having stated in his second statement dated 16.04.2019 that, after proceeding 50-60 steps forward, he heard the sound of 3-4 gunshots. He also denied having stated that on reaching home he came to know that Mohit had been shot and was taken to Naveen Hospital, Dadri. He reiterated that if these facts were recorded by the police in his statement, he could not explain the reason for the same.

34. In the light of the above evidence as given by Chandrahas (PW-2), it is judicious to peruse the evidence of the Investigating Officer so that it could be clear that whether this witness is stating true facts about the incident in the Court during his evidence or not.

35. First Investigating Officer, Ramsen Singh (PW-9) has deposed in his cross-examination that "I had recorded the statements of the informant Mahesh and witness Chandrahas, son of Rampal, on 15.12.2018. I have not recorded any reason in the case diary for not recording the statement of Chandrahas, son of Rampal, prior to 15.12.2018."

36. Second Investigating Officer, Niraj Malik (PW-10) has stated in his cross examination that "Witness Chandrahas had given me this statement that when he reached about 50-60 yards ahead, the sound of three or four fires was heard. Witness Chandrahas had also given the statement that upon reaching home, it came to his knowledge that Mohit had been shot and he had been taken to Naveen Hospital. Witness Chandrahas did not tell me in his statement that when he turned back, Puneet fired two bullets at Mohit. Witness Chandrahas did not give me a statement saying that Puneet was on the driver's side and Mohit was on the conductor's side of the vehicle. Instead, he stated that apart from Puneet, Mohit was sitting in the vehicle and Gaurav, the son of Rajendra's brother-in-law, was sitting in the back seat. Witness Chandrahas did not give me the statement that I had any conversation with them or not. Witness Chandrahas also did not give me the statement that he ran toward the village due to fear. Instead, he stated that he went straight to the village. Witness Chandrahas also did not give me a statement that there was noise and commotion in the village before he arrived. Instead, he gave a statement that by the time he reached the village, it became known that Mohit had been shot dead. Witness Chandrahas also has not given the statement that after the stampede broke out in the village, he did not go to Mahesh's house and inform him about the said incident. Instead, he had given the statement that he had not told anyone because of fear."'

37. In this way, from a perusal of the evidence of the prosecution witnesses and the First Investigating Officer, Ramsen Singh (PW-9), and also the Second Investigating Officer, Niraj Malik (PW-10), it is revealed that Chandrahas (PW-2) was projected by the prosecution as an eyewitness to the incident. However, from the evidence of Chandrahas (PW-2), it is clear that although in his examination-in-chief, PW-2 tried to depose himself in a way that he is an eyewitness to the alleged incident, but during his cross-examination by the defence, from the answers of this witness, it is revealed that PW-2 is stating a totally false and concocted story in the Court. This witness stated in his evidence a totally different and changed statement in the Court, which this witness had not stated before the Investigating Officer of the case in his statement recorded under Section 161 Cr.P.C.

38. This witness totally changed his statement at the time of recording of his evidence in the Court. What has been given and stated by this witness before the Investigating Officers of the case under Section 161 Cr.P.C. and in the Court in his evidence, it show that, in the evidence of this witness, material and major contradictions are present. This witness stated in the Court a totally false, fabricated, and afterthought prosecution story, thereby falsely implicating the accused-appellant in the alleged crime in this case. The falsity of this witness, that this witness has been

stating wrong and false facts in the Court, is now clear and proved by the evidence of the Investigating Officers in this case.

39. In view of the above discussion and appreciation of the evidence of this witness, we are legally unable to accept the evidence of this witness as true and reliable. In other words, the evidence of this witness is highly doubtful and suspicious. After the alleged incident, the prosecution tried to project this witness as an eyewitness, but from a perusal of the evidence of this witness, it is amply clear that the prosecution miserably failed in its attempt, therefore, the evidence of Chandrahas (PW-2) is fully unreliable and unworthy of credit.

40. Sumit Bhati was also produced by the prosecution as PW-3. This witness is the younger brother of deceased Mohit Bhati. PW-3 in his evidence has stated that "I received information about the incident at around 7:15 PM from two boys of the village. They told me that vehicle no. 7011 is parked on the road near the field and my brother has been shot and is lying dead in the field. I had went out for the place of incident on my bike with Pradeep, a boy from my neighborhood. On the way, I called Pradeep's father from Pradeep's phone.'My brother was lying dead straight in the field, his feet were towards the field and his head was towards the road. Among the boys, I mentioned as informants, one was a Pandit and other was a Gurjar. Both these boys were from our village."

41. Thus, from a perusal of the evidence of Sumit Bhati (PW-3), it is revealed that this witness is also not an eyewitness to the alleged incident. At the time of the incident, this witness was not present at the place of occurrence. This witness received information about the murder of his brother, Mohit Bhati, from two boys of the village, among whom one was a Pandit and the other was a Gurjar. After receiving information about the murder of his brother, Mohit Bhati, this witness, along with one Pradeep of his village, reached the place of the incident, and the dead body of his brother, Mohit Bhati, was taken to Naveen Hospital, Dadri, where he was declared dead by the attending doctor. Therefore, from the evidence of this witness, it is amply clear that this witness is not an eyewitness to the alleged incident. After the incident, this witness reached at the place of occurrence. From the evidence of this witness, we found no relevant fact by which the accused-appellant could be connected with the alleged crime.

42. The prosecution also produced Krishna as PW-4, who is the son of Chandrahas (PW-2). From a perusal of his evidence, it appears that in 2018, during a game of Kabaddi, a quarrel took place between him, Deepak, and Puneet. According to this witness, reports were lodged from both sides at the concerned police station, and both parties went to jail.'He further stated that the accused, Puneet, threatened Mahesh Bhati'at the Dadri Police Station, saying that you are supporting the other side and I would take revenge after returning from jail. However, it is clear from the evidence that neither this witness nor Mahesh Bhati made any complaint whether written or oral, at the Dadri Police Station.

43. From the evidence of this witness, it is revealed that the prosecution, with a considered and afterthought approach, tried to narrate the fact of previous enmity with the accused-appellant through this witness. It is amply clear that the prosecution attempted to project this witness to establish a motive and fact of enmity so that its story could gain force. However, from a perusal of

the evidence, we find no reliability or truthfulness in the statement of this witness. In view of the above, the evidence of this witness is not such that it could lend any support to the prosecution's story. Therefore, the statement and evidence of this witness are neither reliable nor trustworthy.

44. In the same manner as stated by Krishna (PW-4), prosecution witness Amit (PW-5) also narrated the fact of previous enmity, which had been mentioned by Krishna (PW-4). In his evidence, this witness stated that the quarrel occurred during a game of Kabaddi, and first information reports were lodged from both sides under Section 307 IPC, with the informant Mahesh Bhati supporting Krishna (PW-4) and Amit (PW-5). Due to this, Puneet threatened Mahesh Bhati, stating that he would suffer and that he would take revenge after returning from jail. According to this witness, when Puneet threatened Mahesh Bhati, a written complaint was lodged by him at the police station. However, in his cross-examination, he stated that he had received no receipt of the written complaint, kept no copy, and had no explanation for the absence of the complaint in the police records. He also stated that if the police had not recorded this fact in his statement, he could not provide any reason for it.

45. Thus, from a perusal of the evidence of Amit (PW-5), it is amply clear that the prosecution, after due consideration and deliberation, tried to project this witness in Court to introduce the fact of previous enmity and the quarrel between the parties in order to give force to the prosecution's story. However, from the overall evidence of Amit (PW-5), it is evident that he is narrating a fabricated, false, and concocted story in Court. For this reason, the evidence of this witness is fully unreliable and unworthy of credit.

46. From a perusal of the evidence of Head Constable, Murari Lal (PW-7), who registered the first information report (Exhibit Ka-4) on filing of the written report (Exhibit Ka-1) by the informant, Mahesh Bhati (PW-1), has deposed in his evidence that Vegraj, son of Chahtaram, Subhash Nagar, son of Surendra and Chandrahas, son of Ramphal, all residents of Village Luharli, P.S. Dadri, District Gautam Buddha Nagar, had come with the informant Mahesh Bhati (PW-1) to lodge the report. These three people who came with the informant Mahesh did not give me any statement regarding the murder of the deceased Mohit Bhati.

47. Prosecution witness S.I. Braj Singh Yadav (PW-8), who prepared the Panchayatnama of the dead body of deceased Mohit Bhati, has stated in his evidence during cross-examination that witness Chandrahas, a Panch, had not given any statement to him regarding the murder of Mohit.

48. Thus, from a perusal of the overall evidence of the prosecution witnesses, such as, the informant Mahesh Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), and Amit (PW-5), who are witnesses of fact as discussed above, and also from a perusal of the police witnesses, such as, Murari Lal (PW-7), S.I. Braj Singh Yadav (PW-8), First Investigating Officer Inspector Ramsen Singh (PW-9), and Second Investigating Officer Inspector Niraj Malik (PW-10), it is amply clear that the written report (Exhibit Ka-1) was lodged by the informant Mahesh Bhati (PW-1) at Police Station Dadri against an unknown person.

49. The prosecution witnesses, such as, PW-1, PW-2, PW-3, PW-4, and PW-5, have not named or implicated the accused-appellant, Puneet, in the alleged crime in their statements

recorded under Section 161 Cr.P.C. before the Investigating Officer. Even in their statements recorded under Section 161 Cr.P.C. before the Investigating Officer, these prosecution witnesses have not expressed or indicated any suspicion or doubt against the accused-appellant, Puneet, and also have not expressed any kind of enmity with the accused-appellant, Puneet. However, at the time of recording of their evidence in the Court, all the above prosecution witnesses, namely, PW-1, PW-2, PW-3, PW-4, and PW-5, totally changed their statements from those given before the Investigating Officer under Section 161 Cr.P.C. In the Court, during the recording of their evidence, all the above prosecution witnesses of fact, in a totally different manner, drastically changed their statements and have given improved and changed evidence before the Court by retracting from their statements as given before the Investigating Officer under Section 161 Cr.P.C. These above prosecution witnesses, in their statements before the Court, gave totally changed statements and, contrary to the settled principles of law, falsely implicated the accused-appellant, Puneet, for the commission of the alleged crime.'

50. Hon'ble Supreme Court in the case of ***Dhanna v. State of M.P.; (1996)*** 10 SCC 79 has held in para-12 that:

"The trial court which relied on the evidence of Nanuram (PW-6) pointed out that the witness did not refer to any role played by Dhanna when he gave statement to the police during investigation and hence a conviction for the offence of murder cannot be passed against Dhanna on the strength of improvement made at the trial. The said sound reasoning should not have been sidelined by the High Court without providing sufficient and convincing reasons. None has been given. We have scrutinized the evidence and we too are satisfied that PW-6 Nanuram has, in fact, omitted to mention anything about Dhanna when PW-6 was questioned by police and has later on tried to give an improved version."

51. Similarly, a Division Bench of this Court in the case of ***Munesh v. State of U.P.; 2004*** CRI.L.J. 1529 has held in para-16 that:

"16. We have no reservations in observing that if witnesses do not state about the core/substratum of the prosecution case in their statements under Section 161, Cr.P.C. and when during the course of their cross examination, in the trial Court, confronted with the omission, fail to give a plausible explanation for it, as is the case with Madan Lal P.W. 2 and Suresh Chandra P.W. 3, it would be extremely hazardous to accept their testimony, for there is always the lurking fear in the mind of the Court that in order to fill the lacuna in their evidence, they have made improvements. We make no bones in observing that in Criminal cases, evidence of witnesses can only be accepted, if on the core/substratum of the prosecution case their statement in the trial Court is consistent with their statement under Section 161, Cr.P.C. and where it is not, as is the case here, the Court would have no compunction in rejecting it."

52. In the light of the law as laid down by the Hon'ble Supreme Court in'Dhanna (supra) and the Division Bench of this Court in'Munesh (supra), we find that, in the present case at hand, the prosecution witnesses, namely, the informant Mohit Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), and Amit (PW-5), have completely changed and materially improved their statements from those given by them to the Investigating Officer during the course

of investigation, and have narrated wholly altered and improved versions in their evidence before the Court. Thus, the testimony of all the aforesaid prosecution witnesses is not consistent with their statements recorded by the Investigating Officer during the investigation of the case. In view of the above, the evidence of the aforesaid prosecution witnesses is wholly unreliable and is liable to be rejected outright.'

53. From a perusal of the evidence of the prosecution witnesses, we further find that the prosecution witnesses subsequently attempted to develop a story of enmity against the accused-appellant, Puneet. However, the prosecution witnesses have failed to establish the said allegation, and the attempted to falsely implicate the accused-appellant in the alleged crime.

54. From a perusal of the findings and reasoning recorded by the learned Trial Court on this aspect, we find that the learned Trial Court has failed to consider the evidence in a legal manner and in the light of settled principles of law applicable to appreciation of evidence. For this reason, the findings and reasoning recorded by the learned Trial Court on this point are not sustainable in the eyes of law and, accordingly, the same are liable to be set aside and are hereby rejected.

55. From a perusal of the evidence of the First Investigating Officer, Inspector Ramsen Singh (PW-9), it is apparent that till 09.02.2019 he was unable to trace the person who had committed the alleged crime. Thereafter, PW-9 was transferred, and the investigation of the case was taken over by the Second Investigating Officer, Inspector Niraj Malik (PW-10). From a perusal of the evidence of the second Investigating Officer (PW-10), it is evident that after a lapse of about four months from the alleged incident, the statement of one Umesh was recorded under Section 161 Cr.P.C. on 22.03.2019, and for the first time the name of the accused-appellant, Puneet, surfaced on the basis of the said statement. Subsequently, after about four months from the date of the incident, the accused-appellant, Puneet was arrested by PW-10 on 31.03.2019.

56. It is also revealed that on the basis of information provided by a police informer (mukhbir), so-called murder weapon i.e. a country-made pistol of 32 bore along with two live cartridges of 32 bore, was recovered from the possession of the accused-appellant. The recovery memo (Exhibit Ka-13) reveals that although the accused-appellant is shown to have been arrested on 31.03.2019, the recovery memo was prepared on 01.04.2019, as is evident from the signature of PW-10 dated 01.04.2019.

57. On the basis of the said recovery memo (Exhibit Ka-13), a separate case was registered against the accused-appellant as Case Crime No. 374 of 2019, under Sections 25/27 of the Arms Act at Police Station Dadri, District Gautam Buddha Nagar. Sub-Inspector, Mahendra Singh (PW-11), who investigated the Case Crime No. 374 of 2019, has stated in his cross-examination that no public witness was ready to be a witness to the arrest of the accused-appellant or the recovery of the country-made pistol and live cartridges. PW-11 further stated that the said place is situated at a distance of about 1.5 kilometres from village Luharli.

58. The absence of any public witness to support the prosecution version, clearly demonstrates that the arrest of the accused-appellant and the alleged recovery were effected without independent corroboration, despite the place of arrest and recovery being in close proximity to an inhabited area.

The arrest of the accused-appellant after about four months from the date of the alleged incident and the alleged recovery of the so-called murder weapon under such circumstances, render the prosecution case highly doubtful and suspicious.

59. In view of the aforesaid facts and circumstances, it appears that in order to work out the case and to pacify the public as well as the informant side, the police falsely arrested the accused-appellant, Puneet, and planted the alleged weapon, namely a country-made pistol of 32 bore along with two live cartridges of 32 bore, upon him. Consequently, the arrest of the accused-appellant and the alleged recovery are not free from doubt and cannot be relied upon.'

60. From the report of the Forensic Science Laboratory, Uttar Pradesh, Agra, it is further evident that the disputed bullet marked as 'EB-1', which was recovered from the dead body of the deceased, Mohit Bhati, was fired from a 7.62'25 mm pistol. It is also stated in the FSL report that cartridges of 7.62'25 mm could neither be loaded into the chamber nor fired from the disputed country-made pistol marked as '1/2021'. Thus, the prosecution story does not find support from the findings of the Forensic Science Laboratory report.

61. However, from a perusal of the findings and reasoning recorded by the learned Trial Court in paragraph-72 of the judgment and order of conviction and sentence dated 29.08.2022, it appears that the learned Trial Court relied only upon the presence of gunshot residue, i.e., nitrate, led, and copper, allegedly found on the recovered country-made pistol, and on that basis wrongly held that firing was made from disputed country made pistol (Material Exhibit-4) recovered from the possession of the accused-appellant, Puneet. This finding of the learned Trial Court is wholly contrary to the report of the Forensic Science Laboratory. Even if the findings of the Trial Court on that count are accepted, the same cannot be relied upon to convict the appellant because the recovery of the country made pistol and live cartridges, as held earlier, is suspicious and not supported by any independent witness.

62. Upon perusal of the oral as well as the documentary evidence, we find that there is no direct or circumstantial evidence against the accused-appellant, Puneet. The police failed to recover any incriminating object, article, or material from either the place of occurrence or the possession of the accused-appellant that could legally connect him to the alleged crime.

63. To hold a person guilty of a grave and heinous crime such as murder, the prosecution is duty-bound to adduce direct or indirect evidence, including circumstantial evidence or the last seen together theory, of such a nature as to connect the accused with the commission of alleged crime. It is the responsibility of the prosecution to prove its case against the accused beyond reasonable doubt.

64. However, from a perusal of all the evidence of prosecution as available on record, we find that there is no evidence against the accused-appellant by which he could be

connected with the alleged crime. The learned Trial Court in a very casual and cursory manner without appreciating and analyzing prosecution evidence only on the basis of surmises and conjectures convicted appellant for heinous crime like murder. Trial Court has not appreciated and discussed evidence of prosecution in reasonable and legal manner but only on the basis of surmises and conjectures held the appellant guilty for commission of alleged crime. Trial Court recorded finding of conviction and sentence against accused-appellant in a very causal and cursory manner, is also evident from this fact that the learned Presiding Officer, who recorded so-called statement of accused-appellant, Puneet under Section 313 Cr.P.C. has not filled any answer of accused-appellant. Meaning thereby, so-called questions, which were prepared by the then Presiding Officer of the Court are totally blank, having only signature of the appellant on every page and also the initials of the Presiding Officer/Special Judge, SC/ST Act (Prevention of Atrocities Act), Gautam Buddha Nagar on every page and signature on the last page dated 21.04.2022.

65. The learned Trial Court, while delivering the judgment and order of conviction and sentence dated 29.08.2022 against the accused-appellant, Puneet, has not perused the statement of accused recorded under Section 313 Cr.P.C. and failed to consider the material fact that the statement recorded under Section 313 Cr.P.C. is completely blank, as no answers were written or recorded by the then Presiding Officer of the Court.

66. In view of the foregoing discussions, we are of the view that the judgment and order of conviction and sentence dated 29.08.2022 passed against the accused-appellant, Puneet, under Sections 302/34 IPC and Sections 25/27 of the Arms Act, are not sustainable in the eyes of law. Hence, the criminal appeal preferred by the accused-appellant deserves to be allowed, and the impugned judgment and order of conviction and sentence dated 29.08.2022 is liable to be set-aside.

67. Accordingly, the present criminal appeal is allowed. The impugned judgment and order of conviction and sentence dated 29.08.2022 passed by the learned Special Judge (SC/ST Act), Gautam Buddha Nagar, in Sessions Trial No. 536 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 1025 of 2018, under Section 302/34 IPC, Police Station Dadri, District Gautam Buddha Nagar as well as in Sessions Trial No. 537 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 374 of 2019, under Sections 25/27 of the Arms Act, Police Station Dadri, District Gautam Buddha Nagar, are hereby set-aside.

68. Upon perusal of record, it appears that accused-appellant, Puneet is in jail, hence, we direct to release the appellant, **Puneet** forthwith, provided he is not wanted in any other case.

69. The lower Court records, along with the copy of this judgment be transmitted to the Court concerned forthwith.

70. Let a copy of this judgment be forwarded to the concerned Jail Authorities for necessary compliance.

(2026) 2 ILRA 1152
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Revision No. 808 of 2026

Vandana Gupta ....Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Issues for Consideration

(i) Whether the order allowing application under Section 233(2) B.N.S.S. for joint trial, passed at a belated stage of proceedings, was legally sustainable;
(ii) Whether concealment of material facts and stage of proceedings could vitiate the order directing joint trial
.

Headnotes

Criminal Procedure — Joint trial — Section 233(2) B.N.S.S. — Stage of proceedings — Exercise of discretion:

Held: The decision to conduct joint or separate trial is a matter of judicial discretion - ordinarily ought to be taken at the initial stage of proceedings — Where the trial in one case is at the verge of conclusion and the other case has not even commenced- directing a joint trial at such belated stage- improper and not in the interest of justice. [Paras 6, 15]

Criminal Procedure — Joint trial — Prejudice and delay — Consideration:

Held: The paramount considerations for directing joint trial-whether such course would cause prejudice to the accused or result in delay or wastage of judicial time — Where substantial evidence has already been recorded-joint trial would lead to delay- such direction is liable to be set aside. [Paras 6, 8, 15]

Criminal Procedure — Suppression of material facts — Effect:

Held: Suppression of material facts-including earlier proceedings and orders relating to joint trial-vitiates the subsequent order obtained on such concealment — a litigant who does not approach the Court with clean hands -not entitled to relief. [Paras 4–5, 15]

Criminal Procedure — Trial — Conduct of parties — Delay:
Held: Conduct of parties-not taking effective steps for expeditious disposal of proceedings-including failure to pursue mediation or deposit required amounts- relevant — Where such conduct results in delay and prolongation of trial-direction for joint trial would further prejudice proceedings. [Paras 10, 15]

Criminal Procedure — Fair trial — Article 21 — Speedy trial:
Held: Right to speedy trial is an integral part of Article 21 of the Constitution — Any direction which results in undue delay in conclusion of trial- particularly when evidence is almost complete- would amount to denial of justice. [Para 8]

Criminal Procedure — Revision — Interference:

Held: In view of concealment of material facts-stage of proceedings and likelihood of delay and prejudice-the impugned order allowing joint trial -unsustainable and liable to be set aside. [Paras 15–16]

Revision allowed. (E-14)

Case Law Cited

***Dalip Singh v. State of Uttar Pradesh and others*, (2010) 2 SCC 114 — relied on; *Nasib Singh v. State of Punjab*, (2022) 2 SCC 89 — relied on;**
***Mamman Khan v. State of Haryana*, 2025 INSC 1113 — relied on.**

List of Acts / Statutes

Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860; Dowry Prohibition Act, 1961; Constitution of India.

List of Keywords

Joint trial; Separate trial; Suppression of facts; Clean hands; Delay in trial; Prejudice; Speedy trial; Judicial discretion; Criminal revision**.**

Case Arising From

Order dated 19.01.2026 passed by Judicial Magistrate-III, Gorakhpur in Case No. 132791 of 2021 (State vs. Satish Sudarshan Gupta and others), arising out of Case Crime No. 55 of 2021.

Appearance for Parties

For the AppellantsSri Vineet Kumar Singh
For the Respondents: Sri Ranu Tiwari; Learned A.G.A.

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

1. Heard learned counsel for the revisionist, Sri Ranu Tiwari, learned counsel for opposite party no. 2 and the learned A.G.A. for the State.

2. Under challenge is the impugned order dated 19.01.2026 passed by the Judicial Magistrate-Third, Gorakhpur in Case No.132791 of 2021 (State Vs. Satish Sudarshan Gupta and Others) arising out of Case Crime No.55 of 2021 under Sections 498-A, 323, 354, 504, 406 IPC and Section 3/4 of the Dowry Prohibition Act, 1961, Police Station Mahila Thana, District Gorakhpur.

3. Learned counsel for the revisionist has argued that the impugned order dated 19.01.2026 passed by the Judicial Magistrate-III, Gorakhpur is wholly arbitrary, unsustainable in law, and has been passed without due application of judicial mind and, therefore, is liable to be set aside. He further submits that the learned trial court committed a patent error of law in allowing the application moved under Section 233(2) of the B.N.S.S. without taking into consideration the material fact that opposite party no. 2 did not approach the court with clean hands while filing the application dated 14.08.2025 under Section 233(2) B.N.S.S.

4. It is next submitted that the factum of filing a previous application seeking a joint trial, as well as the passing of the order dated 01.07.2025 by the learned Chief Judicial Magistrate, Gorakhpur, in Case No. 132791 of 2021, whereby such application was dealt with, was deliberately suppressed. As a result, it is manifest that the subsequent application dated 14.08.2025 under Section 233(2) B.N.S.S. was not maintainable.

5. Learned counsel for the revisionist has relied upon the law laid down by the Hon'ble Supreme Court in **Dalip Singh v. State of Uttar Pradesh and Others, (2010) 2 SCC 114,** wherein it has been held that a litigant who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance. It is, therefore, contended that the impugned order dated 19.01.2026 stands vitiated in law on account of concealment and suppression of material facts.

6. Learned counsel for the revisionist has further relied upon the judgment of the Hon'ble Supreme Court in **Nasib Singh v. State of Punjab, (2022) 2 SCC 89**, wherein it was held that the decision to conduct a joint or separate trial must ordinarily be taken at the outset of the proceedings and for cogent reasons. The paramount consideration in such decision-making is whether a joint trial would cause prejudice to the accused or result in delay or wastage of judicial time. It was further held that even where the conditions under Sections 219 to 223 Cr.P.C. are satisfied, ordering a joint trial remains a matter of judicial discretion.

7. It is further contended that the learned trial court failed to assess the conduct of the private opposite parties, who appear to be interested only in lingering on the outcome of the pending criminal trial arising out of the First Information Report dated 15.08.2021. It is contended that on the date of filing of the application dated 14.08.2025 under Section 233(2) B.N.S.S., only one prosecution witness remained to be examined.

8. It is next submitted that the learned trial court did not adequately consider that holding a joint trial at such a belated stage would cause serious prejudice and irreparable loss to the revisionist. It is urged that, due to the conduct of the private opposite parties, the evidence in Complaint Case No. 31475 of 2021 has not been concluded till date and, therefore, could not be read against the revisionist. Consequently, the impugned order is alleged to be violative of Article 21 of the Constitution of India, which guarantees the right to a speedy trial, and that the inordinate delay amounts to denial of justice.

9. By circumventing the order dated 26.08.2025 passed in Application under Section 528 BNSS No. 21730 of 2025, the impugned order dated 19.01.2026 came to be passed by the learned trial court, which is wholly unsustainable in law. The same has resulted in a miscarriage of justice and wastage of judicial time, particularly when substantial prosecution evidence has already been recorded in the criminal trial arising out of the First Information Report dated 15.08.2021, which is at the verge of conclusion. It is submitted that there is every likelihood of recording conviction of the opposite parties in view of the ample evidence available on record.

10. Learned trial court has also failed to consider the material fact that the mediation process, as directed by this Court in Application under Section 482 Cr.P.C. No. 10957 of 2022 vide order dated 28.07.2022 and in Application under Section 482 Cr.P.C. No. 18204 of 2023 vide order dated 23.05.2023, respectively, could not be undertaken. The said mediation did not progress due to non-deposit of the requisite amount of Rs. 30,000/- each at the instance of the private opposite parties, which indicates a lack of bona fide effort towards expeditious resolution of the dispute.

11. Learned counsel for opposite party no. 2 has contended that there is no illegality in the impugned order and that the trial of both cases ought to be conducted jointly.

12. The marriage of the revisionist was solemnized with opposite party no. 2 as per Hindu rites and customs on 08.03.2018. The FIR was lodged on 15.08.2021. After a detailed investigation, the charge sheet was filed against the accused persons. The trial in the said case is at its final stage, whereas Criminal Complaint Case No. 31475 of 2021 was filed by the revisionist against the opposite parties under Section 6 of the Dowry Prohibition Act. As per the order-sheet of Complaint Case No. 31475 of 2021, the trial therein is yet to commence.

13. It is further submitted that the opposite parties concealed the material fact before the concerned Judicial Magistrate, prior to passing of the impugned order dated 19.01.2026, that an application for transfer had been filed before the learned Chief Judicial Magistrate, Gorakhpur. The learned Chief Judicial Magistrate, Gorakhpur, vide order dated 01.07.2025, observed that at the stage of allowing the transfer application, it could not be concluded that both matters would be tried jointly and that both cases were merely transferred to a single court without any finding regarding joint trial. Thereafter, the accused persons filed the application under Section 233(2) B.N.S.S. before the Judicial Magistrate-III, Gorakhpur, on 14.08.2025, without disclosing the said order dated 01.07.2025.

14. Learned counsel for the revisionist has further relied upon the judgment of the Hon'ble Supreme Court in **Mamman Khan v. State of Haryana, reported in 2025 INSC 1113,** wherein, in paragraph 16, it was held that the principles governing the conduct of joint or separate trials have been elaborately dealt with by the Court in **Nasib Singh v. State of Punjab (supra).** The relevant paragraphs have been relied upon, particularly paragraph 51.2 & 51.3 are as follows:

"While applying the principles enunciated in Sections 218-223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The appellate court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix."

15. In view of the above, it is evident that complete facts were not placed before the learned trial court by the opposite parties. Case No. 132791 of 2021 (State v. Satish Sudarshan Gupta and Others), arising out of Case Crime No. 55 of 2021, is at a final stage where the evidence is almost complete, whereas the complaint case is yet to commence. The opposite parties have not taken effective steps for expeditious disposal of the complaint case. Though the matter was referred to mediation, neither was the amount directed by this Court deposited nor were any effective steps taken for a speedy trial. A joint trial at this stage would further delay the proceedings and would not be in the interest of justice.

16. In view of the foregoing discussion, the impugned order dated 19.01.2026 passed by the Judicial Magistrate-III, Gorakhpur, in Case No. 132791 of 2021 *(State v. Satish Sudarshan Gupta and Others),* arising out of Case Crime No. 55 of 2021 under Sections 498-A, 323, 354, 504, 406

IPC and Section 3/4 of the Dowry Prohibition Act, 1961, Police Station Mahila Thana, District Gorakhpur is hereby set aside.

17. The criminal revision is allowed accordingly.

(2026) 2 ILRA 1156
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Revision No. 811 of 2026

Surendra Kumar Sharma & Anr. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Issues for Consideration

(i) Whether the order summoning the revisionists under Section 319 Cr.P.C. on the basis of evidence recorded during trial was sustainable in law;
(ii) Whether vague and general allegations, in absence of strong and cogent evidence, justified exercise of power under Section 319 Cr.P.C.

Headnotes

Criminal Procedure — Section 319 Cr.P.C. — Summoning of additional accused — Nature of power:

Held: Power under Section 319 Cr.P.C.-discretionary and extraordinary- to be exercised sparingly — The Court must be satisfied-strong and cogent evidence has come on record-if unrebutted, would reasonably lead to conviction — Mere existence of prima facie case is not sufficient. [Paras 29–30]

Criminal Procedure — Section 319 Cr.P.C. — Basis of exercise — Evidence during trial:

Held: The expression "evidence" under Section 319 Cr.P.C.-refers to evidence adduced during trial- not material collected during investigation — Summoning of additional accused must be based on such evidence-degree of satisfaction required is higher than that at the stage of framing of charge. [Paras 24–25]

Criminal Procedure — Summoning — Vague and general allegations — Insufficiency:

Held: Where allegations against proposed accused-general and vague- without specific role or overt act-such evidence does not satisfy the threshold required for invoking Section 319 Cr.P.C. — Mere repetition of allegations without substantive corroboration is insufficient. [Paras 25, 34]

Criminal Procedure — Matrimonial offence — Over-implication of relatives:

Held: In cases arising out of matrimonial disputes- tendency to implicate entire family — In absence of specific allegations and credible evidence-summoning relatives of principal accused- abuse of process of law. [Paras 26–28]

Criminal Procedure — Effect of investigation — Exoneration:

Held: Where during investigation no material was found against the revisionists-they were exonerated- not charge-sheeted-no new strong evidence emerges during trial-summoning under Section 319 Cr.P.C. is unwarranted. [Paras 32–34]

Criminal Procedure — Stage of trial — Belated application:

Held: Filing of application under Section 319 Cr.P.C. at a stage -when trial is near conclusion- based on same set of evidence already available-without emergence of new incriminating material, is improper. [Paras 33–34]

Criminal Procedure — Revision — Interference:

Held: In absence of strong and cogent evidence -vague allegations and exoneration during investigation- the impugned order summoning the revisionists was unsustainable-liable to be set aside. [Paras 35–36]

Revision allowed. (E-14)

Case Law Cited

***Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 — relied on;**
***Sarabjit Singh v. State of Punjab*, AIR 2009 SC 2792 — relied on;**
***Brijendra Singh v. State of Rajasthan*, (2017) 7 SCC 706 — relied on;**
***Chhaya v. State of Maharashtr*a, (2018) 17 SCC 8 — relied on;**
***Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741 — relied on;**
***Omi @ Omkar Rathore v. State of Madhya Pradesh*, 2025 INSC 27 — relied on; *Shiv Baran v. State of U.P.*, Criminal Appeal No. 3008 of 2025 — relied on; State of Punjab Vs.Davinder Pal Singh Bhullar (2011) 14 SCC 770; Kalbharti Advertising Vs. Hemant Vimalnath Narchania (2010) 9 SCC 437, Mangal Prasad Tamoli Vs. Narvadeshwar Mishra (2005) 3 SCC 422, Badrinath Vs. Government of Tamil Nadu (2000) 8 SCC 395; Seth Ganga Dhar Vs. Shankar Lal and others, AIR 1958 SC 770; Amalendu Pal alias Jhantu Vs. State of West Bengal 2001 SCC 707, Sanju alias Sanjay Singh Sengar Vs. State of M.P. 2002(5) SCC 371, Netai Dutta Vs. State of W.B.; 2005 (2) SCC 659, State of Kerala and others Vs. S. Unnikrishnan Nair and others; (2015) 9 SCC 639, State of West Bengal Vs. Indrajit Kundu and another (2019) 10 SCC 188, Geo Varghese Vs. State of Rajasthan and another; 2021 SCC OnLine SC 873 and Shabbir Hussain Vs. State of Madhya Pradesh; 2021 SCC OnLIne SC 743; S Mohammed Ispahani V. Yogendra Chandak and others (2017) 16 SCC 226, Harjinder Singh V. State of Punjab and another; 2025 SCC Online SC 1029, Geeta Devi and another V. State of Punjab and another; 2004: PHHC: 000708, Y. Saraba Reddy V. Puthur Rami Reddy and another (2007) 4 SCC 773, Lok Ram V. Nihal Singh and another (2006) 10 SCC 192, Ramnarayan Ram Daroga and 2 others V. State of U.P. and another; 2025: AHC-165520, Shiv Baran V. State of U.P. and another SLP(Crl) No. 3993 of 2025, Shankar Vs. State of U.P. and others; 2024 SCC Online SC 730, and Smt. Rekha and 3 ors Vs. State of U.P. and 2 others; 2025: AHC-LKO: 918; Shueb Mahmood Kidwai @ Bobby Vs. State of U.P. in Application U/S 482/378/407 No. 3044 of 2017 decided 23.2.2021; Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 SC 1094; Ram Singh & Ors. v. Ram Niwas & Anr., (2009) 14 SCC 25; Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706.**

List of Acts / Statutes

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

List of Keywords

Summoning additional accused; Strong evidence; Vague allegations; Matrimonial dispute; Dowry demand; Exoneration; Trial stage; Abuse of process**.**

Case Arising From

Order dated 31.10.2025 passed by Additional Sessions Judge, Court No. 17, Agra in Session Trial No. 2243 of 2023 (State Vs. Jitendra Gond), arising out of Case Crime No. 96 of 2022.

Appearance for Parties

For the Appellants: Sri Manish Tiwari, Senior Advocate assisted by Sri Hitesh Pachori
For the Respondents: Sri Kamlesh Kumar Dwivedi, Sri Prashank Mishra, Learned A.G.A.

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

1. Heard Sri Manish Tiwari, learned Senior Counsel assisted by Sri Hitesh Pachori, learned counsel for the revisionists and Sri K.K. Dwivedi, learned counsel for the opposite party no.2, who has filed his vakalatnama. The same is taken on record.

2. The instant criminal revision has been preferred being aggrieved by the impugned order dated 31.10.2025, passed by the learned Additional Sessions Judge, Court No. 17, Agra (State Vs. Jitendra Gond), in Session Trial No. 2243 of 2023, relating to Case Crime No. 96 of 2022, under Section 306, 498A, 323 IPC, Police Station Nai Ki Mandi, District Agra, whereby the application under Section 319 Cr.P.C. has been allowed and the revisionists have been summoned to face trial under section 306 IPC.

3. The brief facts of the case is that the informant/opposite party no.2 has lodged the FIR stating that the marriage of his daughter-Prachi was took place on 29.1.2015 with Jitendra Gaur son of Surendra Kumar Sharma, wherein he had given dowry and articles more than his capacity. It is alleged that husband-Jitendra Gaur and his father and step mother-in-law Pushplata Sharma were not happy with the dowry given in the marriage and they were making additional demand of a car and Rs. 10 lakh cash and when daughter of the informant refused to succumb their demands, then all the aforesaid three persons used to beat her and whenever the deceased visited her Mayaka then she informed all the things to the family members. It is also alleged in the FIR that prior to the incident, the deceased Prachi informed her mother on phone that aforesaid persons were very much harassing her for dowry and they were committing Marpeet with her. On 27.8.2022 at about 3.00 a.m, Surendra Kumar Sharma, (revisionist no.1) who is father-in-law of the deceased informed the informant/opposite party no.2 through mobile that Prachi has hanged herself and upon this information, the informant alongwith his family members arrived at the spot then found that the dead body of the deceased Prachi was lying on floor in the drawing room and injury marks were there on her body.

4. The FIR has been lodged at the police station on 27.8.2022 at Case Crime No. 96 of 2022, under Section **323, 498A, 304-B IPC** against Jitendra Gaur (husband), Surendra Kumar Sharma, (father-in-law) and Smt. Pushplata Sharma, (step-mother-in-law). During the course of investigation, the statements of witnesses were recorded under Section 161 Cr.P.C and all the witnesses had affirmed the contents of the FIR and they got available the prima facie evidence against all the named accused persons. However, after investigation, the Investigating Officer dropped accusation under Section 304-B IPC and submitted charge sheet against sole accused Jitendra Gaur for the offence under Section 306, 498A, 323 IPC.

5. The postmortem of the deceased was conducted in which following ante-mortem injuries were found:-

"An oblique ligature mark of size 58 cm x 1.5 cm all around upper part of Neck with a gap of a 4 cm over right side neck gap is 5 cm away from right angle of mouth.

Ligature mark is 3 cm from right ear 4 cm from chin, 6 cm from left ear on cut section skin below, ligature mark is perchanand like doorling of salva from left angle of mouth present weage with above injuries."

6. During the course of trial when all the witnesses of facts have been examined, an application under Section 319 Cr.P.C. has been moved. The statement of PW-1 Vinod Kumar Sharma, father of the deceased was recorded and he supported the version of the prosecution in his examination-in-chief as well as in the cross-examination. He stated that the deceased was beaten for additional dowry and she was harassed mentally and physically upto the extent that she would end up her life. The statement of PW-3 Parikshit Bhardwaj, PW-4, mother of the deceased and PW-8 Bhabhi of the deceased have been recorded and they given evidence before the trial court, wherein they had given prima facie evidence against father-in-law and step mother-in-law alongwith the accused Jitendra Gond. This has further been noted in the said application that in the aforesaid session trial, the prosecution has adduced total eight witnesses and only the evidence of investigation officer is left.

7. Learned counsel for the revisionists has submitted the learned trial court has passed the impugned order dated 31.10.2025 without application of judicial mind, hence the same is liable to be set aside. He further contended that during the course of investigation, the Investigating Officer find that the marriage of deceased and Jitendra Kumar was solemnized on 29.1.2015 and more than 7 years have past and, therefore, Section 304-B was eloped. The investigation of said case crime was concluded and the names of the revisionists were exonerated and the closure report was submitted on 15.9.2023. The application under Section 319 Cr.P.C. was allowed in an arbitrary manner vide order dated 31.10.2025 against the material on record summoning the revisionists under Section 306 IPC. The FIR was not lodged under Section 3/4 of Dowry Prohibition Act nor the charge sheet was submitted against Jitendra Kumar Gaur under said sections nor the charges were framed against him under Section 3/4 of D.P. Act, which falsify the prosecution story as developed by the first informant in the FIR.

8. Learned counsel for the revisionists has further submitted that in the impugned order, the learned Judge himself observed **" this is important to note here that such version of a witnesses comes under the meaning of hearsay evidence, which normally does not wholly reliable...",** even though the revisionists have been summoned under Section 306 IPC on the same set of evidence. He further submitted that no material surfaced against the revisionists during investigation from the statements recorded under Section 161 Cr.P.C, as a result of which, the revisionists were exonerated and closure report was filed on 15.9.2023. He further submitted that the revisionists have been summoned merely on the suspicious grounds.

9. Learned counsel for the revisionists in support of his contentions has placed reliance on the judgments viz. **State of Punjab Vs.Davinder Pal Singh Bhullar (2011) 14 SCC 770, Kalbharti Advertising Vs. Hemant Vimalnath Narchania (2010) 9 SCC 437, Mangal Prasad Tamoli Vs. Narvadeshwar Mishra (2005) 3 SCC 422, Badrinath Vs. Government of Tamil Nadu (2000) 8 SCC 395 and Seth Ganga Dhar Vs. Shankar Lal and others, AIR 1958 SC 770. Learned counsel for the revisionist has further relied on Amalendu Pal alias Jhantu Vs. State of West Bengal 2001 SCC 707, Sanju alias Sanjay Singh Sengar Vs. State of M.P. 2002(5) SCC 371, Netai Dutta Vs. State of W.B.; 2005 (2) SCC 659, State of Kerala and others Vs. S. Unnikrishnan Nair and others; (2015) 9 SCC 639, State of West Bengal Vs. Indrajit Kundu and another (2019) 10 SCC 188, Geo Varghese Vs. State of Rajasthan and another; 2021 SCC OnLine SC 873 and Shabbir Hussain Vs. State of Madhya Pradesh; 2021 SCC OnLIne SC 743.**

10. Learned counsel for the revisionists has also placed reliance on **S Mohammed Ispahani V. Yogendra Chandak and others (2017) 16 SCC 226, Harjinder Singh V. State of Punjab and another; 2025 SCC Online SC 1029, Geeta Devi and another V. State of Punjab and another; 2004: PHHC: 000708, Y. Saraba Reddy V. Puthur Rami Reddy and another (2007) 4 SCC 773, Lok Ram V. Nihal Singh and another (2006) 10 SCC 192, Ramnarayan Ram Daroga and 2 others V. State of U.P. and another; 2025: AHC-165520, Shiv Baran V. State of U.P. and another SLP(Crl) No. 3993 of 2025, Shankar Vs. State of U.P. and others; 2024 SCC Online SC 730, and Smt. Rekha and 3 ors Vs. State of U.P. and 2 others; 2025: AHC-LKO: 918.**

11. On the other hand, learned counsel appearing for the opposite party no. 2/complainant has submitted that learned trial court has rightly passed the impugned order summoning the revisionists under Section 306 IPC. The revisionists have been summoned on the basis of evidence recorded during trial of the witnesses. Therefore, the revision is liable to be dismissed. He further submitted that even the charges have been framed against the revisionists on 14.1.2026 and thus, against the order framing charge, no revision would be maintainable. Hence, on this score too, the present revision is liable to be dismissed.

12. Learned counsel appearing for the opposite party no.2 has relied on Division bench judgement of this Court in Shueb Mahmood Kidwai @ Bobby Vs. State of U.P. in Application U/S 482/378/407 No. 3044 of 2017 decided 23.2.2021 to contend that the revision is not maintainable as charges in this case has already been framed.

13. In the said petition which was filed under Section 482 Cr.P.C. and was referred to Division Bench, it was observed that the there is a legal hurdle by virtue of Section 232 Cr.P.C which provides a remedy to the applicant, in entertaining this application under Section 482 Cr.P.C. Prima facie opinion was that after framing of charge without supervening development in the form of judicial order, interference with the proceedings of the trial under Section 482 Cr.P.C may not be permissible because prayer for quashing the entire proceedings initiated on charge sheet cannot be questioned as the trial court has already held by judicial order passed under Section 228 Cr.P.C that prima facie commission of offence is made out. The learned Single Judge has then observed that without questioning the correctness of that order, allowing an application for quashing of

proceedings would amount to falsifying the records of the Court where order directing charge to be framed stands unchallenged.

14. In this backdrop, the matter has been placed before the learned Bench and Court held that we cannot say that, in the eventualities mentioned in the referred order, in no circumstances would an application under Section 482 Cr.P.C be maintainable i.e it will not lie. Whether such an application is to be entertained or not is a question to be considered and answered in the facts of each case and no general proposition or straight jacket formula can be laid down/provided in this regard. The guiding principle is as to whether in the facts of a case continuance of proceedings amount to abuse of the process of the Court and/or whether interference of the High Court is necessary to secure the ends of justice or not? Based on these two principles the facts of each case are required to be assessed by the High Court when the power and jurisdiction under Section 482 Cr.P.C. is invoked.

15. The present subject matter is criminal revision. The scope and ambit and jurisdiction of criminal revision as well as inherent power of the High Court under Section 482, both are entirely and altogether different.

16. The learned trial court has considered the case in detail and mentioned that invoking the provisions of Section 319 CrPC is a discretionary power vested in the trial judge and hence it is not needed to hear from the side of the defence for the said particular purpose and also at the stage of consideration of the said application filed for the said purpose, no occasion arises to hear the stance of the persons going to be summoned as accused. At the outset, while attempting to move further while deciding the said application, it would be beneficial to reproduce here the provisions of Section 319 CrPC which is 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......"

17. Learned trial court has held in the impugned order that it is very much clear from this provision as noted above itself that, particularly regarding this instant case when it appears during trial of an offence from the evidence that any person who had not been shown in the charge sheet as an accused in the array of accused had committed that offence may be summoned by the Court for facing trial of such offence, that means upon the evidence the Court was satisfied enough that such person who was not shown as an accused by the police in its charge sheet had committed that offence. Meaning thereby level of satisfaction or degree of satisfaction while summoning any person as an accused invoking Section 319 Cr.P.C. is much more than the stage of framing of charge when the Court was to consider only prima facie case to further proceed on basis of materials produced by the prosecution at the stage of framing of charge.Regarding this, the trial court deemed it proper to refer certain principles laid down by the Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh Vs State of Punjab; AIR 2014 SC 1400,** which are noted herein following manner:-

*"**86**. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof."*

18. Learned trial court has relied on the judgement rendered in **Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 SC 1094**, in which a four-Judge Bench of this Court was concerned with the meaning of the word 'appear'. The court held that the appropriate meaning of the word 'appears' is 'seems. It imports a lesser degree of probability than proof. In **Ram Singh & Ors. v. Ram Niwas & Anr., (2009) 14 SCC 25**, a two-Judge Bench of this Court was again required to examine the importance of the word 'appear' as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

19. Learned trial court has placed reliance on **Sarabjit Singh & Anr. v. State of Punjab & Anr. AIR 2009 SC 2792**, wherein while explaining the scope of Section 319 Cr.P.C., a two-Judge Bench of this Court observed as under:

*"....For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.....Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case f*or sparingly (sic sparing) exercise of jurisdiction, would not be satisfied." *(Emphasis added).*

20. Learned trial court has recorded in the impugned order that PW3 Parikshit Bhardwaj, who is the brother of the deceased has stated in his examination-in-chief that marriage of his sister, the deceased had taken place on 29.01.2015 with the accused Jitendra Gond and this PW3 has also stated further in his examination-in-chief that after lapse of 4-5 months of marriage of his sister, her husband, father-in-law Surendra Sharma and mother-in-law Pushplata Sharma started making a demand of Rs. 10 lakh and one car as additional dowry. This has further been stated by this PW-3 in his examination-in-chief that on 23.10.2017, his deceased sister had visited his place along with her husband Jitendra Gond and till that time she was being harassed and was being subjected to physical and mental cruelty by her husband Jitendra Gond, Sasur Surendra Sharma and mother-in-law Pushplata Sharma and then his father Vinod Kumar Sharma had given Rs. 5 lakh cash to Jitendra Gond. This has further been deposed by this PW-3 in his examination-in-chief that on 25/

26.08.2022 his sister, the deceased had informed his mother on phone about her ordeal in the hands of her in-laws and thereafter on 27.08.2022 at 3:00 am his sister hanged herself as it was informed to his father by father-in-law of his sister Surendra Sharma.

21. It has also been recorded in the impugned order that PW-4, who is mother of the deceased has deposed in her examination-in-chief that on 26.8.2022 11:30 am she had received a phone call of her daughter, at that time she was crying and was telling that now she cannot live since these all persons are committing marpeet with her. At this very juncture this is very much important to note that the learned Advocate for the prosecution drawn attention of this Court about the CD Parcha No. 10 maintained by the concerned police during investigation, in which records of CDRs of this PW4 and mobile phone of deceased are noted. Thereupon, it appears that the version of the PW-4 cannot be kept aside plainly, wherein she had stated that her deceased daughter had talked to her on 26.08.2022. Without noting the detail contents of the cross-examination of PW4, the trial court has without hesitation noted that the point of harassment of the deceased by her husband, father-in-law and mother-in-law is not rebutted by the defence side.

22. The learned trial court has evaluated the evidence of PW-8 Aparna Bhardwaj wife of PW-3 Prakshit Bhardawaj. This shows that this PW-8 was bhabhi of the deceased. This PW-8 has also repeated the things about demand of additional dowry of Rs. 10 lakh and one car by accused Jitendra Gond and his father Surendra Kumar Sharma and mother Pushplata. This PW-8 has stated further in her examination-in-chief that her sister-in-law (deceased) used to tell her ordeal in the hands of her father-in-law and mother-in-law and her husband. Again this is important to note here that such version of a witness comes under the meaning of hearsay evidence which normally does not wholly reliable, but so far it is concerned regarding the cases in which main allegation is U/s 306 IPC, such version cannot be simply kept aside or ignored. Further, this PW8 has deposed in her examination-in-chief that in her presence and presence of all the family members her father-in-law had given about five lakh cash to the accused Jitendra Gond and at that time her father-in-law had urged to accused Jitendra Gond not to harass his daughter further. PW-8 has also deposed in her examination-in-chief that on 26.08.2022 her 'nanad', deceased had called her mother-in-law and at that time she had told her about ill treatment meted out her by her in-laws for demand of dowry and that time she (PW8) and her mother-in-law had tried to make the deceased understand and told her for waiting two days, but on 27.08.2022 itself they were informed that her 'nanad' had hanged herself. The trial court has minutely gone through the contents of cross-extimination of the PW-8 and without evaluating the same extensively, the trial court deems it proper to note here that qua the version of the PW-8 regarding commission of physical harassment of the deceased by her husband, father-in-law and mother-in-law could not be rebutted by the defence.

23. The cause of death of the deceased is due to asphyxia as a result of antemortem hanging. She died as per postmortem report due to antemortem hanging. The ligature marks were found on the body of the deceased.

24. It is held by the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92** that the word 'evidence' used in Section 319(1) Cr.P.C. indicates the word 'evidence' is limited to the evidence recorded during trial. It is further held by the Apex Court in **Omi @ Omkar Rathore Vs. State of Madhya Pradesh and another; 2025 INSC 27** 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.

25. It is held by the Hon'ble Supreme Court in **Shiv Baran Vs. State of U.P. and another decided on 16th July, 2025 in Criminal Appeal No. 3008 of 2025 (arising out of SLP (Criminal) No. 3993 of 2025** 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. It is also held in **Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706** that 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. Whereas, in the present case, there are only general and vague allegation against the revisionists being father-in-law and step mother-in-law of the deceased. Whereas, during investigation, no evidence has been found against the revisionists. There is no specific demand made by the revisionists about additional dowry during entire investigation. The statement recorded during trial of PW-1, who is father of the deceased had made only vague allegation that the revisionists were was also consented with their son, whereas PW-2, mother of the deceased has made general deposition that both have demanded additional dowry of Rs. 10 lacs and one car.

26. It is held by the Supreme Court in **Chhaya Vs. State of Maharashtra, (2018) 17 SCC 8** which reads as under:

"10. A perusal of the oral evidence of the parents of the deceased would indicate that only minor allegations are made against the appellant. Vague and cryptic allegations are found against her with no specific allegation in respect of demand for dowry or harassment in any manner. In the absence of definite evidence against the appellant, the Sessions Court and the High Court are not justified in convicting her even for the offence punishable under Section 498-A IPC."

27. It is held by the Supreme court in G**eeta Mehrotra Vs. State of U.P. (2012) 10 SCC 741** as under:

"18. Their Lordships of the Supreme Court in Ramesh case [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed."

28. It is further held in paragraph no. 25 of **Geeta Mehrotra (supra)** as under:-

"25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding."

29. It is held in **Hardeep Singh (supra)** that summoning of accused under Section 319 Cr.P.C. is settled, that this power is an extra ordinary 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 made out, or not, mere prima facie case is not sufficient.

30. The power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

31. In the said case, the FIR has been lodged under Section 498A, 304B, 323 IPC on 27.8.2022 on the date of incident itself by the opposite party no.2/complainant, who is father of the deceased. The FIR was lodged against husband, Jitendra Kumar Gond, Surendra Kumar Sharma, father-in-law and Smt. Pushplata Sharma, step mother-in-law. In the contents of the FIR, there are general allegation on all the named accused persons for demand of a Car and Rs. 10 lacs, whereas it is specifically mentioned in the said FIR itself that on 27.8.2022 in the night at 3.00 a.m, father-in-law of the deceased, Surendra Kumar Sharma had informed to the complainant from his mobile to his mobile that Prachi (decreased) has hanged herself. Hence , as soon as he got the information, he immediately informed and he has not concealed any fact. In the FIR it is mentioned that there were injuries found on the dead body of the deceased, whereas as per postmortem report, there were only ligature mark present on the neck of the deceased which are natural due to hanging of any body. The cause of death was asphyxia as a result of ante-mortem hanging. The viscera was preserved

and sent to Forensic Science Laboratory, hence there was no other external antemortem injuries on the body of the deceased.

32. The statement of the complainant was recorded under Section 161 Cr.P.C, who has made general allegation, wherein there was no complaint during entire marriage till the date of death either of cruelty or of any demand of dowry. The marriage was took place on 29.1.2015 and the death took place on 27.8.2022 after seven years of the marriage. There were two children born from the wedlock. The minor daughter of the deceased had been examined during investigation and she had not made any allegation of causing cruelty or demand of additional dowry by the revisionists. After complete investigation, neither the case of dowry death was not found nor complicity of the revisionists was found, hence the charge sheet was filed only against husband Jitendra Kumar Gond under Sections 323, 498A, 306 IPC. There was no offence found against the revisionists, hence they have been exonerated after investigation and no charge sheet has been filed against them.

33. It is very astonish that in the entire FIR, no offence has to be made under Section 3/4 of Dowry Prohibition Act, 1961. Neither the FIR was lodged under Dowry Prohibition Act, nor charge sheet was filed against any accused under the Dowry Prohibition Act. After framing of charge, the statementing of PW-1, Vinod Kumar Sharma was recorded on 25.4.2024 and his cross-examination was finally completed on 21.5.2024. He himself admitted that during entire period of marriage and till death, there was no complaint ever made by him about cruelty or additional demand of dowry, if any. PW-3, Parikshit Bhardwaj had recorded his evidence before the learned trial court on 4.7.2024. PW-4, Smt. Urmila, mother of the deceased had recorded her deposition on 23.8.2024 and her cross-examination was completed on 26.11.2024. The statement of PW-8, Aparna Bhardwaj, who is 'bhabhi' of the deceased had recorded her deposition on 28.2.2025 and her cross-examination was completed on 18.3.2025. There were no specific allegation either of cruelty or additional demand of dowry during entire subsistence of marriage by the revisionist.

34. After completion of fact evidences as well as formal evidence, the deposition of PW-1 was completed on 21.5.2025 and thereafter, the statements were recorded upto PW-8 and the session trial was almost near to the conclusion. Thereafter, an application under Section 319 Cr.P.C. has been filed on 4.4.2025 making general and vague allegation against the revisionists, whereas there was no specific allegation against them, neither in the FIR nor prior to the death of the deceased nor during entire investigation. They have been exonerated and no charge sheet was filed against them. The contents of application under Section 319 Cr.P.C are repetition of the same and the prayer was made to summon the revisionists under Section 319 Cr.P.C, whereas, ingredient of Section 319 Cr.P.C whatever is required as per settled law in **Hardeep Singh (supra)**, they were not fulfilled.

35. After consideration of all these facts and circumstances of the case and provisions of law, this Court is of the opinion that the impugned order dated 31.10.2025, passed by learned Additional Sessions Judge, Court No. 17, Agra in Session Trial No. 2243 of 2023 (State Vs. Jitendra Gond), cannot be sustained and same is hereby set aside and consequently all further orders passed on the basis of that order dated 31.10.2025 against the revisionists, is also hereby set aside. 36. In view of above, the criminal revision is allowed. However, the learned trial court is directed to decide pending session trial against other accused expeditiously in accordance with law.

(2026) 2 ILRA 1167
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.02.2026

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Criminal Revision No. 6391 of 2025

Pallavi Srivastava **....Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

(i) Whether the application under Section 125 Cr.P.C. filed by the wife at Gorakhpur was maintainable in view of Section 126(1) Cr.P.C.;
(ii) Whether the trial court was justified in rejecting the application for maintenance on the ground of lack of territorial jurisdiction.

Headnotes

Criminal Procedure — Section 125 Cr.P.C. — Maintenance — Territorial jurisdiction — Section 126(1) Cr.P.C.:
Held: Proceedings under Section 125 Cr.P.C. may be instituted at a place where the wife resides. The expression "resides" includes even a temporary residence, provided it is not casual. Permanent residence is not a pre-condition for conferring jurisdiction. [Paras 16–18]

Criminal Procedure — Maintenance — Residence of wife — Determination:
Held: Where the wife, after leaving her matrimonial home, resides at her parental house for a considerable period and not casually, such place constitutes her residence for the purpose of Section 126(1)(b) Cr.P.C. The wife cannot be denied remedy merely because her parents have another place of residence. [Paras 15, 20]

Criminal Procedure — Maintenance — Jurisdiction — Application of law to facts:
Held: Where the revisionist-wife, after being left by her husband, started residing at her parental house at Gorakhpur and also initiated criminal proceedings from there, the said place constituted her residence. Accordingly, the Family Court at Gorakhpur had jurisdiction to entertain the application under Section 125 Cr.P.C. [Paras 15, 20]

Criminal Procedure — Maintenance — Rejection on technical ground — Validity:
Held: Rejection of application under Section 125 Cr.P.C. on the ground of lack of jurisdiction without proper appreciation of evidence regarding residence of the wife is unsustainable. The trial court failed to consider relevant documentary and factual material. [Paras 8–9, 21]

Criminal Procedure — Revision — Interference — Scope:
Held: Where the findings of the trial court are contrary to statutory provisions and settled legal principles, interference in revisional jurisdiction is warranted. The impugned order rejecting the application was liable to be set aside. [Paras 21–22]

Criminal Procedure — Maintenance proceedings — Direction for expeditious disposal:
Held: The trial court was directed to decide the application under Section 125 Cr.P.C. on merits, without raising objection as to jurisdiction, by a reasoned order within stipulated time. [Para 23]

Revision allowed. (E-14)

Case Law Cited

***Smt. Jeewanti Pandey v. Kishan Chandra Pandey,* (1981) 4 SCC 517 — relied on; *Darshan Kumari v. Surinder Kumar, 1995* Supp (4) SCC 137 — relied on; *Amit Kapoor v. Ramesh Chander, (2012)* 9 SCC 460 — distinguished.**

List of Acts / Statutes

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

List of Keywords

Maintenance; Territorial jurisdiction; Residence; Temporary residence; Parental home; Wife's residence; Family Court; Revisional jurisdiction.

Case Arising From

Judgment and order dated 16.09.2025 passed by Additional Principal Judge, Family Court-II, Gorakhpur in Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava vs. Tarun Prakash Srivastava), rejecting application under Section 125 Cr.P.C. on the ground of jurisdiction

Appearance for Parties

For the Petitioner: Sri Kamlesh Kumar Tiwari
For the Respondents: Sri Tausif Ahmad, Sri Vijai Kumar Rai, Learned A.G.A.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Supplementary affidavit on behalf of the revisionist and the counter affidavit filed on behalf of opposite party no.2 in the Court today are taken on record.

2. Heard learned counsel for the revisionist, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

3. The instant criminal revision under Section 397/401 Cr.P.C. has been preferred by the revisionist with a prayer to quash/set aside the judgment and order dated 16th September, 2025 passed by the Additional Principal Judge, Family Court-II, Gorakhpur in Case No. Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava VS. Tarun Prakash Srivastava), under Section 125 Cr.P.C., whereby the trial court has rejected the application of the revisionist under Section 125 Cr.P.C. for grant of monthly maintenance allowance from the opposite party no.2 on the ground of jurisdiction.

4. It is the case of the revisionist that the marriage of the revisionist was solemnized with opposite party no.2 on 9th December, 2020 in accordance with the Hindu Rites and Rituals in which Rs. 10 lakhs cash and other ornaments were given to the family of the opposite party no.2 by her father as dowry. Total approximately, Rs. 30 lakhs of father of the revisionist were spent. After marriage the revisionist went to her in-laws place at Lucknow and lived there. On 24th December, 2020, revisionist's mother-in-law and sister-in-law took away all her jewellery in the name of keeping it safe in a bank locker and when she went out with her husband, i.e., the opposite party no.2, they accused her of losing the said jewellery. The brother-in-laws of the revisionist, namely, Satish Srivastava and Prabhat Srivastava has bad intention against her. The family members of

opposite party no.2 are habitual drinker and after drink they used to abuse the revisionist. Opposite party no.2 is doing job in Merchant Navy and he always came with wines. One day, the opposite party no.2 offered the revisionist to take drink but she refused, then he pushed her due to which she sustained injuries. When opposite party no.2 went to his duty, his family members used to harass her for loss of jewellery. The revisionist was suffering from abdomen illness and she has got operated on 22nd December, 2022 and second operation was scheduled to held in the month of February-March, 2023, the opposite party no.2 and his family members left her in the hospital and thereafter her parents had taken her care of. After getting her second operation undertaken, she discharged from hospital on 15th March, 2023, the parents of the revisionist called the elder brother of opposite party no.2 to take back to the revisionist at her matrimonial home but he has not responded, therefore, she has come at her parental house at Gorakhpur.

6. The contention of the learned counsel for the revisionist is that the father of the revisionist, namely, Krishna Kumar Srivastava was earlier working in Railway Department and during service, he lived at Lucknow and also purchased and constructed a house but after retirement he resides at Gorakhpur at his native place being Amit Aditya Tent House, Bichhiya, Jungle Tulsiram, Shahpur, Gorakhpur, U.P. In Gorakhpur, father of the revisionist has also ancestral property and he also use to withdraw his pension from the treasury office at Gorakhpur. He further submits that on 15th March, 2023, due to non-fulfillment of additional demand of dowry, opposite party no.2 has left the revisionist at her parental house i.e. Gorakhpur, where she has lodged first information report against her husband and her in-laws (total 7 in number) on 20th October, 2023 at Police Station-Mahila Thana, District-Gorakhpur which was registered as Case Crime No. 0057 of 2023 under Sections 498-A, 323, 504, 506, 406 I.P.C. and Section 3/4 of the D.P. Act, a copy of the said first information report has been enclosed at page no.24 ownards of the supplementary affidavit. Since 15th March, 2023, when her husband left i.e. opposite party no.2 has left the revisionist at her parental house at Gorakhpur, she had no other option but to reside there and since then she is living there.

7. In support of his case, learned counsel for the revisionist has drawn the attention of the Court to Voter List-2022 of Nagar Nigam, Gorakhpur which has been enclosed as Annexure No. S.A.-1 to the supplementary affidavit wherein the names of father of the revisionist and his family members have been mentioned. He has also referred to Kisan Bahi enclosed as Annexure No.S.A.-2 to the supplementary affidavit, issued by the revenue authorities of the district administration of Gorakhpur, wherein the name of father of the revisionist has been shown as permanent resident of District Gorakhpur. Besides the above, learned counsel for the revisionist has also enclosed the S.I.R. forms which have been filed by the father of the revisionist and his family members at Gorakhpur as Annexure No.S.A.-3 to the supplementary affidavit. A copy of the order issued by the Tehsildar Sadar, Gorakhpur dated 19th January, 1987 has also been brought on record as Annexure No.4 to the supplementary affidavit, whereby the name of the father of the revisionist has been mutated in the relevant revenue record after the death of his mother i.e. grand-mother of the revisionist.

8. On the basis of the aforesaid documentary evidence, learned counsel for the revisionist submits that the trial court has not considered the documentary as well as oral evidence adduced by the revisionist during the course of trial with regard to her living place i.e. at her parental house i.e.

Gorakhpur. The trial court has also misinterpreted the provisions of Section 126 (1) Cr.P.C. in the case of the revisionist, while the said provision is fully applicable in her case. The trial court passed by the judgment impugned rejecting the claim of the revisionist for grant of maintenance allowance is without application of mind and incorrect in appreciation of evidence.

9. On the above premise, learned counsel for the revisionist submits that without examining the aforesaid facts about the living place of the revisionist, the trial court has rejected the application of the revisionist under Section 125 Cr.P.C. on the ground of jurisdiction, which cannot be legally sustained and is liable to be set aside.

10. 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 trial court has not committed any illegality or infirmity in passing the impugned judgment and rejecting the claim of the revisionist, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

11. Besides the above, learned counsel for opposite party no.2 submits that after leaving her matrimonial house i.e. house of the opposite party no.2, the revisionist stays with her parents at Hydil Colony, Jairajpuri, Near Hanuman Mandir, Sarojani Nagar, Amausi, Lucknow as is evident from her Adharcard, a copy of which has been brought on record at page no. 45 of the counter affidavit. Apart from that, for showing the present address of the residence of the revisionist at Lucknow learned counsel for opposite party no.2 has also enclosed the copy of the marriage card of the brother of the revisionist, namely, Amit Srivastava, registration paper of four wheeler of father of revisionist, medical papers qua treatment of father of revisionist, marriage card of the revisionist voter I.D. card of the family of the parents of the revisionist of the year 2022 and 2024, bank pass-book and driving licence of the revisionist, SIR list and declaration of the revisionist and sale-deed dated 21st January, 2024, which has been purchased by the father of the revisionist in the name of her mother, have also been enclosed.

12. On the basis of the aforesaid documents, learned counsel for the opposite party no.2 submits that since after leaving her matrimonial house, the revisionist is residing at her parental house at Lucknow, therefore, the trial court has not committed any error in rejecting the application of the revisionist under Section 125 Cr.P.C. on the ground of jurisdiction. In support of his case, learned counsel for the opposite party no.2 has relied upon the judgment of the Apex Court in the case of **Amit Kapoor Vs. Ramesh Chander & Another** reported in (2012) 9 SCC 460.

13. On the premise, learned counsel for opposite party no.2 submits that since there is no illegality in the judgment impugned, the present criminal revision is liable to be dismissed.

14. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as perusal of record including the impugned judgment, this Court finds that it is an admitted case that the revisionist is legally wedded wife of the opposite party no.2.

15. From the perusal of the documents as relied upon by the learned counsel for the revisionist and learned counsel for opposite party no.2 qua the present living place of the revisionist, this

Court finds that the father of the revisionist has two places of stay, one his native place i.e. Gorakhpur and second his work place i.e. Lucknow from where he has retired from service, meaning thereby that the father of the revisionist has his constructed house at Lucknow as well as his native place i.e. Gorakhpur. As and when, as per his wishes and requirement, father of the revisionist stays at his own house either at Lucknow or at Gorakhpur. It is also but natural that after leaving her matrimonial house, she has no other option but to reside with her parents, wherever they reside. It is cropped up from the first information report dated 20th October, 2023 lodged by the revisionist against her husband and her in-laws (total 7 in number) at Police Station-Mahila Thana, District-Gorakhpur which was registered as Case Crime No. 0057 of 2023 under Sections 498-A, 323, 504, 506, 406 I.P.C. and Section 3/4 of the D.P. Act and also from the perusal of the impugned judgment, after discharge from hospital on 13th March, 2023, she went to her matrimonial house and thereafter on 15th March, 2023, she went to her parental house i.e. Bichhiya, Jungle Tulsiram, Aditya Tent House, Gorakhpur and since then she is living there.

16. In order to judge the correctness or otherwise of the judgment impugned in the present criminal revision, it would be worth to notice sub-section (1) of Section 126 Cr.P.C., which provides for venue of proceedings under Section 125 Cr.P.C. For ready reference, sub-section (1) of Section 126 Cr.P.C. is being quoted herein-below:

"126. Procedure.-(1) Proceedings under section 125 may be taken against any person in any district- (a) where he is, or (b) where he or his wife resides, or (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child."

17, A studied perusal of the above quoted provision would go to show that proceedings under Section 125 of the Cr.P.C. to be taken against a person in any district where the husband resides or where he is, or his wife resides, or where husband last resided with his wife or as the case may be, with the mother of illegitimate child.

18. In the matter of **Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey** reported in (1981) 4 SCC 517, the Hon'ble Supreme Court of India has defined the word " ?Resides?, which is as under:-

"12.....The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, for example, for health or business or for a change. If a person lives with his wife and children in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides."

19. Similar principle of law has been laid down by the Hon'ble Supreme Court of India in the matter of D**arshan Kumari (Smt) Vs. Surinder Kumar reported in 1995 Suppl. (4) SCC 137**, wherein it has clearly been held that the temporary residence of wife if not casual is sufficient to

confer jurisdiction on the magistrate at that place or district concerned to try the maintenance petition. The Relevant portion whereof is extracted here-under:

"3.....we find that Section 126 of the Code requires that the proceedings under Section 125 may be taken against any person in any district where he or his wife resides. The section does not require permanent residence at the said place. Even a temporary residence, so long as it is not casual, is sufficient to confer jurisdiction on the Magistrate at that place or of the district concerned. In this view of the matter, we are of the view that the High Court's finding was incorrect. The appellant was entitled to prosecute the application in the Court of the leaned Magistrate at Nuh where as per her averment in the application, she was residing and still resides. We, therefore, set aside the impugned decision of the High Court....."

20. In view of the facts as born out from the records, it is clear that at the time of filing of instant application under Section 125 Cr.P.C. the revisionist resided at her parental house i.e. Gorakhpur which is the native place of her father. Thus, applying the principles of law laid down in the above judgments of the Hon'ble Supreme Court of India and the simple reading of Section 126 (1) (b) Cr.P.C. to the facts of the case, this Court is of the considered opinion that after leaving her matrimonial house at Lucknow she is residing at her parental house at Gorakhpur, where she has also lodged first information report against her husband and his family members. As such, Section 126 (1) (b) Cr.P.C. is fully applicable in the case of the revisionist. The revisionist has not stayed at her parental house at Gorakhpur casually. Thus, this Court is of the considered view that the application made by the revisionist under Section 125 Cr.P.C. at Gorakhpur is maintainable and the trial court at Gorakhpur as per Section 126 (1) (b) Cr.P.C. has jurisdiction to hear and decide the said application.

21. In view of the above deliberation and discussion, this Court finds that the trial court has not considered such facts as observed above and has passed the impugned judgment while rejecting the claim of the revisionist under Section 125 Cr.P.C. on the ground of jurisdiction. The findings recorded by the trial court cannot be said to legal and correct in the eyes of law. The judgment relied upon by the learned counsel for opposite party no.2 in the case of **Amit Kapoor** (Supra) is not applicable in the facts of the present case.

22. Consequently, the judgment and order dated 16th September, 2025 passed by the Additional Principal Judge, Family Court-II, Gorakhpur in Case No. Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava VS. Tarun Prakash Srivastava), under Section 125 Cr.P.C. is quashed.

23. In order to achieve the real intent of the legislation, the trial court is directed to consider and decide the application of the revisionist under Section 125 Cr.P.C., which has been registered as Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava VS. Tarun Prakash Srivastava), under Section 125, on merits, in accordance with law, by means of a reasoned speaking order, without raising any objection with regard to jurisdiction or maintainability of the instant application, preferably within two months from the date of production of a certified copy of this order after affording opportunity of hearing to both the parties without granting any unnecessary adjournment to either of the parties, if there is no other legal impediment.

24. The present criminal revision is **allowed** subject to the directions/observations made above.

25. There shall be no order as to costs.

(2026) 2 ILRA 1173
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 29 of 2026

Smt. Zaibunisha **...Appellant**
Versus
Sanjeev Kumar **...Respondent**

Issue for Consideration

Matter pertains to whether a suit for permanent injunction simpliciter is maintainable, and relief thereof grantable, on the strength of an unregistered agreement to sell which does not confer any right, title, or interest in immovable property, in light of the bar u/s 41(h) of Specific Relief Act, 1963 and the statutory mandate regarding registration in the State of Uttar Pradesh.

Headnotes

Code of Civil Procedure, 1908 - s. 96 - Registration Act, 1908 - s. 49 - Specific Relief Act, 1963 - ss. 38, 41(h) - Permanent Injunction - Maintainability of - No enforceable right - Unregistered Agreement to Sell - The plaintiff - appellant instituted a suit seeking a decree of permanent injunction restraining the defendant from interfering with her alleged peaceful possession over the disputed immovable property and from alienating the same, asserting rights on the basis of an agreement to sell dated 16.01.2020, whereby the defendant had purportedly agreed to transfer the property for a total consideration of Rs. 65,00,000/-, out of which Rs. 5,00,000/- was paid as earnest money, with the stipulation that the sale deed would be executed by 15.09.2022 after obtaining requisite permission from the competent authority, the defendant being a member of a Scheduled Caste, however, upon the defendant's failure to execute the sale deed, the plaintiff, claiming readiness and willingness to perform her part of contract, sought to protect her possession through the instant First Appeal, which came to be dismissed by the High Court on the ground that the agreement to sell was unregistered and unstamped and, therefore, inadmissible in evidence and incapable of conferring any enforceable right.

Held: The trial court has considered all the facts and has rightly concluded that the plaintiff/appellant cannot be granted the relief of permanent injunction against the true owner on the basis of unregistered agreement to sell, which does not confer any right title or interest in the plaintiff/appellant regarding the disputed property - There is no perversity in the impugned judgment of trial court warranting interference by Court in exercise of its appellate jurisdiction - **Accordingly, the instant appeal meritless and dismissed at the admission stage**. [Paras 15, 16] (E-13)

Case Law Cited

Balram Singh v. Kelo Devi **(2024) 12 SCC 723;** *Prem Kumar and Others v. Gurudev Singh and others* **2024 SCC OnLine All 7420;** *Padhiyar Prahladji Chenaji (Deceased) Thr. LRS. v. Maniben Jagmalbhai (Deceased) Thr. LRS. And others* **(2022) 12 SCC 128;** *Yellapu Uma Maheshwari and another v. Buddha Jagadheeswararao and others* **(2015) 16 SCC 787;** *Vinod Kumar and others v. Sudha Land Ventures and Homes Pvt. Ltd.* **2015 SCC OnLine All 8778 - referred to**

List of Acts

Code of Civil Procedure, 1908; Registration Act, 1908; Specific Relief Act, 1963

List of Keywords

Appeal u/s 96 CPC; Permanent injunction; Peaceful possession; Encroachment; Alienation/transfer of property; Agreement to sell; Earnest money; Execution of sale deed; Readiness and willingness; Competent authority permission; Unregistered and unstamped document; Inadmissibility in evidence; No right title or interest; Defect in stamp duty; Specific performance as efficacious remedy; Simpliciter suit for injunction; Bar u/s 41(h) of Specific Relief Act; Applicability of ss. 38 and 41; True owner; No perversity; Meritless appeal; Dismissal at admission stage; O. XLI R. 11 CPC; Affirmation of trial court decree.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 29 of 2026

From Judgment and Decree dated 09.10.2025 passed by J.S.C.C./Civil Judge (S.D.), Saharanpur in O.S. No.108 of 2025 (Old Original Suit No.1330 of 2024)

Appearances for Parties

Adv. for the Appellant:
Birendra Kumar

Adv. for the Respondent:
Nil

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

1. The instant appeal has been filed by the plaintiff under Section 96 C.P.C. against the impugned judgment and decree dated 09.10.2025 passed by J.S.C.C./Civil Judge (S.D.), Saharanpur in O.S. No.108 of 2025 (Old Original Suit No.1330 of 2024) (Smt. Zaibunisha vs. Sanjeev Kumar) whereby the plaintiff's suit for the relief of permanent injunction for restraining the defendant from interfering in her peaceful possession and encroachment of the disputed property and for restraining the defendant from alienating or

2. Learned counsel for the plaintiff-appellant submitted that it was agreed upon between the plaintiff and defendant by agreement dated 16.01.2020 that the disputed property would be sold for a consideration of Rs.65,00,000/- to the plaintiff and out of that amount the plaintiff also paid Rs.5,00,000/- in cash towards earnest money to the defendant. It was also agreed that the defendant would execute the sale deed till 15.09.2022 but subsequently the defendant failed to execute the sale deed in favour of the plaintiff. It was further submitted that the defendant belongs to scheduled caste, as such, it was incumbent for the defendant to obtain permission from the competent authority for selling the disputed land and thereafter, the defendant was supposed to execute the sale deed in favour of the plaintiff, but the defendant failed to do so. It was further submitted that

the plaintiff always remained ready and willing to fulfill the terms of the contract but since the defendant failed to execute the sale deed in favour of the plaintiff, as such, in order to protect her possession of the disputed property, the plaintiff was compelled to file the suit for the relief of permanent injunction, which has been erroneously rejected by the trial court on the ground that the alleged agreement on the basis of which the plaintiff was asserting her rights in the disputed property was unregistered and unstamped, therefore, on its basis, the plaintiff cannot claim any right and interest in the disputed property. Learned counsel further submitted that the above finding of the trial court is perverse because even if the alleged agreement was unregistered even then, it was admissible for collateral purposes under Section 49 of the Registration Act, 1908 but this fact has not been considered by the trial court. With these submissions, it was prayed that the appeal be admitted for hearing.

3. I have heard the learned counsel for the appellant and perused the impugned judgment and documents submitted with the appeal.

4. The Apex Court in the case of ***Balram Singh vs Kelo Devi (2024) 12 SCC 723,*** wherin the plaintiffs sought relief of permanent injunction restraining the defendant from disturbing her possession in the suit property in Uttar Pradesh on the basis of unregistered agreement to sell, held as under:-

"6. At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent injunction only, which was claimed on the basis of the agreement to sell dated 23-3-1996. However, it is required to be noted that the agreement to sell dated 23-3-1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence.

7. ***Having been conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simpliciter for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance****.*

8. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counterclaim for getting back the possession which was allowed by the learned trial court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.

9. In view of the above and for the reasons stated above, both, the learned first appellate court and the High Court have committed a grave error in passing a decree for permanent

injunction in favour of the plaintiff as against the defendant and dismissing the counterclaim filed by the original defendant."

(emphasis supplied)

5. This Court in the case of ***Prem Kumar and Others vs Gurudev Singh and others 2024 SCC OnLine All 7420,*** held as under:-

"Re :- First Question : - Whether a decree for specific performance based upon an unregistered for sale dated 31.05.1977 is at all sustainable"

18. In view of the questions framed by this Court, it is not necessary to comment upon requirement or no requirement of getting the AFS re-registered in the State of U.P. and whether the plaintiff was obliged or not obliged to do that, is irrelevant as the Court has to examine validity of the decree based upon unregistered agreement, whatever might have been the reason behind its non-registration.

19. As regards requirement of registration of an AFS, it is to note that the U.P. Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act No. 57 of 1976) came into force w.e.f. 1-1-1977. This Act amended the Registration Act, 1908 as well as the Transfer of Property Act, 1882, besides several other enactments. Section 54 of the Transfer of Property Act, 1882, as applicable to the State of U.P., w.e.f. 1-1-1977, reads as under:

"Section 54. *"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made- *Such transfer, in the case of tangible immovable property [***], or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

Contract of Sale- *A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.

Such contract can be made only by a registered instrument."

20. Section 3 of the Transfer of Property Act, 1882 defines-

"Instrument- *as a non testamentary instrument*

"Registered- *means registered* ***in any part of the territories*** *to which this Act extends under the law for the time being in force regulating the registration of documents."*

21. Section 17 of the Registration Act, 1908 Act provides that certain documents are required to be compulsorily registered and, other documents are exempted from being registered. Section 17(1)(b) of the Registration Act, 1908, as applicable in the State of U.P., reads as under:

*"**Section 17(1)- The following documents shall be registered-** (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, 1877, or this Act came or comes into force, namely:"*

……..

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to in immovable property."

22. Section 17(2)(v) of the Act of 1908 reads as under:

"Section 17(2)- Nothing in clauses (b) and (c) of sub-section (1) applies to-

*(v) any documents other than documents specified in sub-section (1-A)] **[other than contract for sale]** not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest or;*

*The words **"other than contract for sale"** occurring in Section 17(2)(v) of the Registration Act have been inserted by U.P. Act No. 57 of 1976 w.e.f. 1-1-77.*

23. Section 4 of the Transfer of Property Act, 1882 reads as under:

*"4. **Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act. -** The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (IX of 1872).*

[And Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (XVI of 1908).]"

24. Thus, from a combined reading of Sections 3, 4 and 54 of the Act of 1882 and, Section 17 of the Act of 1908, as applicable to the State of U.P., as amended by U.P. Act 57 of 1976, it is clear that every contract of sale of an immovable property situated in any district of U.P. shall be made only by a registered instrument. Even though a contract for sale of immovable property does not by itself create any interest in or charge on such property and only creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest, nonetheless, the said contract for sale of an immovable property is required to be registered in the State of U.P. w.e.f. 1-1-1977.

25. The next question which arises for consideration is whether an unregistered document for sale of an immovable property, could still be enforced in a suit for specific performance. At this stage, the Court may refer to Section 49 contained in the Registration Act, 1908 alongwith U.P. Amendments made therein by U.P. Act No. 57 of 1976, w.e.f. 01.01.1977. A careful perusal of the amendments made would reflect that certain provisions relating to admissibility of an unregistered agreement in a suit for specific performance have been "omitted" and requirement of registration has been "inserted." The provision reads as under:"

Central Act

"49. Effect of non-registration of documents required to be registered.- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

***unless it has been registered**:*

*[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered **may be received as evidence of a contract in a suit for specific performance** under Chapter II of the Specific Relief Act, 1877 (3 of 1877) [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]*

In Uttar Pradesh:

In Section 49,-

*(i) in the first paragraph, after the words "or by any provision of the Transfer of Property Act, 1882", insert the words **"or of any other law for the time being in force";***

(ii) for clause (b), substitute the following clause, namely : -

(b) confer any power or create any right or relationship, or";

(iii) in clause (c), after the words "such power", insert the words "or creating such right or relationship";

*(iv) in the proviso, **omit** the words **"as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or."***

[Vide Uttar Pradesh Act 57 of 1976, sec. 34 (w.e.f. 1--1-1977).]"

26. The result of these amendments is, that, prior to 01.01.1977, an unregistered contract for sale qua immovable property situated in U.P. could be enforced in a suit for specific performance of a contract, but after the amendment in Section 49 of the Registration Act w.e.f. 01.01.1977, an unregistered agreement cannot be enforced in a suit for specific performance of a contract nor can it be read in evidence."

6. The Apex Court in the case of ***Padhiyar Prahladji Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128,*** held as under:-

"18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. ***In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner.*** *In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant " the true owner still be restrained from disturbing his/her possession and his/her possession be protected."*

(emphasis supplied)

7. The Apex Court in the case of ***Yellapu Uma Maheshwari and another vs. Buddha Jagadheeswararao and others (2015) 16 SCC 787***, while analysing Section 17 and 49 of the Registration Act,1908, has held that a document which has the effect of creating and taking away the rights in respect of an immovable property, is compulsorily registrable and if not registered, is not admissible in evidence, however, it can be relied upon for collateral purpose, subject to payment of stamp duty, penalty, proof and relevancy.

8. A Division Bench of this Court in the case of ***Vinod Kumar and others vs. Sudha Land Ventures and Homes Pvt.Ltd. 2015 SCC OnLine All 8778*** has also considered the issue whether on the basis of unregistered agreement to sell, temporary interim injunction under Order 39 Rule 1 CPC or perpetual injunction under Specific Relief Act,1963 can be granted to the plaintiff. The relevant paragraphs of the above judgment read as under:-

"14. In the case of K.B. Saha and Sons Pvt. Ltd. v. Development Consultant Ltd., [2008 (72) ALR 638 (SC).] the Hon'ble Apex Court noticed following facts as stated by Mulla in his Indian Registration Act, 7th Edition, at page 189.

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu and Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

15. The Apex Court culled out the following principles:

1. "A document required to be registered is not admissible into evidence under section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

16. The word, "collateral transaction" has been interpreted as transaction in itself not required to be effected by a registered document, i.e., a transaction creating any right, title or interest in immovable property of the value of Rs. 100/- and onwards.

17. Learned Counsel for the respondent contends that even if the two sale-deeds were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale-deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned Counsel tried to justify the impugned order.

18. This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed.

19. In our opinion, the contention that it could be used for collateral purpose for delivery of possession does not support the case of the plaintiff-respondent at all because by way of State

Amendment in Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., a bar has been created w.e.f. 1.2.1977.

20. In Rule 2, in sub-rule (2), the following proviso has been added by State Amendment:

"Provided that no such injunction shall be granted"

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963."

21. A bare perusal of Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., reveals that temporary injunction shall not be granted where no perpetual injunction could be granted in view of provisions of sections 38 and 41 of Specific Relief Act, 1963.

22. Section 38 of Specific Relief Act deals with provisions when temporary injunctions can be granted and section 41 deals with provisions when injunction can be refused.

23. Provisions of section 41 of Specific Relief Act is as under:

41. Injunction when refused.-An injunction cannot be granted"

"(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any Legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

(j) when the plaintiff has no personal interest in the matter."

24. A perusal of provisions of section 41(h) of Specific Relief Act reveals that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, then there is no ground to grant injunction."

9. The plaintiff-appellant has annexed with the appeal the copy of the alleged agreement to sell dated 16.01.2020, which was executed between the defendant/vendor Sanjeev Kumar and plaintiff/vendee Smt. Zaibunisha, which disclosed that it was agreed between the parties that for a sale consideration of Rs.65 lacs, out of which Rs.5 lacs was received as earnest money by the vendor, a sale deed regarding the disputed land would be executed by 15.09.2022, after obtaining the balance sale consideration of Rs.60 lacs by the vendor.

10. It is further apparent that since the vendor belongs to scheduled caste community, as such, as per the relevant statutory provisions, he was required to obtain permission from the competent authority for selling the disputed land to the vendee and after that, the sale deed was to be executed in favour of the vendee.

11. It is apparent that the above alleged agreement to sell is an unstamped and unregistered document, which is inadmissible in evidence, on the basis of which, no relief can be granted to the plaintiff. It is further apparent that the plaintiff could have cured the defect by making good the deficiency of stamp duty on the agreement and could have also got it registered and then the plaintiff was certainly entitled to file the suit for the relief of specific performance of the agreement to sell, but the plaintiff has not chosen to do so.

12. It is further apparent that after curing the defect in the agreement to sell, an equally efficacious remedy for specific performance of the agreement to sell was available to the plaintiff, but instead of availing that remedy, the plaintiff has filed the suit for the relief of permanent injunction, which is legally not maintainable and is barred under Section 41(h) of the Specific Relief Act,1963. It is further apparent that on the basis of the above alleged agreement, no right title or interest is vested in the plaintiff insofar as the disputed land is concerned.

13. It is apparent that in the instant case, since the provisions of Section 38 and 41 (h) of the Specific Relief Act, 1963 are attracted, as such, no perpetual injunction can be granted by any court.

14. It is further evident that the defendant is the true owner of the disputed property and against the true owner, the plaintiff is not entitled to the relief of permanent injunction more particularly when no right title or interest is vested in the plaintiff on the basis of the alleged unregistered and unstamped agreement to sell dated 16.01.2020.

15. The trial court has considered all the above facts and has rightly concluded that the plaintiff cannot be granted the relief of permanent injunction against the true owner on the basis of unregistered agreement to sell, which does not confer any right title or interest in the plaintiff

regarding the disputed property. There is no perversity in the impugned judgment of the trial court warranting interference by this Court in exercise of its appellate jurisdiction.

16. Accordingly, the instant appeal is meritless and is liable to be dismissed at the admission stage.

17. **The appeal is dismissed at the admission stage under Order 41 Rule 11 CPC.**

18. Consequently, the impugned judgment and decree dated 09.10.2025 is hereby affirmed.

(2026) 2 ILRA 1183
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 95 of 2026

Sachin Kumar **...Appellant**
Versus
Smt. Nidhi Dohre & Anr. **...Respondents**

Issue for Consideration

Matter pertains to whether the suit seeking mandatory injunction for execution of a sale deed in respect of property jointly held by husband and wife, essentially involving inter se property rights between spouses, is maintainable before a civil court, or is exclusively triable by the Family Court, and consequently, whether the impugned decree suffers from lack of inherent jurisdiction.

Headnotes

Code of Civil Procedure, 1908 - s. 96 - Family Courts Act, 1984 - s. 7 - Jurisdiction of Family Court - Validity of - Property dispute between spouses - Res judicata - Applicability - The plaintiff - appellant, husband of defendant No.1, instituted a suit seeking a decree of mandatory injunction directing defendant No.2 (the builder) to execute the sale deed of the disputed flat exclusively in his favour and restraining his estranged wife from causing obstruction, asserting that although the property was allotted in their joint names, the entire sale consideration was paid by him alone and the wife was included merely as a benami co-owner out of love and affection; it was further pleaded that the property had been purchased through a housing loan for which both were co-borrowers, but the loan was being repaid solely by the plaintiff, and following matrimonial discord and separation, the wife neither contributed financially nor cooperated in execution of the sale deed, compelling the plaintiff to institute the suit, which was dismissed by the trial court on the ground that the property stood in joint ownership and no direction could be issued to execute the sale deed solely in favour of the plaintiff.

Held:. In the instant case, the suit was not instituted before the Family Court but was adjudicated by the Court of Additional Civil Judge (Senior Division), Court No. 10, Ghaziabad, which lacked inherent jurisdiction to entertain and decide the matter - Accordingly, the judgment and decree passed by Trial Court is without jurisdiction and is a nullity, in the eye of law - On this ground alone, the impugned judgment and decree is

liable to be set aside - It is apparent that any finding recorded by a court lacking inherent jurisdiction, does not operate as res judicata, between the parties - Since the dispute relates to property rights between husband and wife, the suit is exclusively cognizable by Family Court - **Thus, appeal allowed and impugned judgment and decree dated 19.10.2024 set aside**. [Paras 17, 21, 22, 24] (E-13)

Case Law Cited

Prem Kishore and others v. Brahm Prakash and others **(2023) 19 SCC 244;** *Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Thr. LRS.* **(1990) 1 SCC 193 (By 3 Judges) - referred to**

List of Acts

Code of Civil Procedure, 1908; Family Courts Act, 1984

List of Keywords

Appeal u/s 96 CPC; Mandatory injunction; Execution of sale deed; Joint ownership/joint allottee; Benami co-owner; Real and absolute owner; Consideration amount; Allotment letter; Housing loan/co-borrower, Possession; Necessary party; Ex-parte proceedings; Substituted service; Dismissal of suit; Lack of documentary evidence; Entitlement to relief; Estranged wife; Pending litigations (divorce, maintenance, criminal proceedings), Property dispute between spouses; Inherent lack of jurisdiction; Family Court jurisdiction; s. 7 of Family Courts Act; Exclusive cognizance; Civil court lacking jurisdiction; Nullity of decree; Restoration of suit; Return of plaint ; Competent court; Adjudication on merits, Direction to decide suit afresh; Appeal allowed

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 95 of 2026

From the Judgment and Decree dated 19.10.2024 passed by the Additional Civil Judge (S.D.) Court No.10, Ghaziabad in O.S. No.544 of 2020

Appearances for Parties

Advs. for the Appellant:
Naveen Kumar, Raj Kumar Gupta, Satish, Shanu Bhatt

Advs. for the Respondent:
Gulab Chand Bharati, Ishwar Chandra Srivastava, Kaushlendra

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

1. The instant appeal has been filed under Section 96 CPC against the impugned judgment and decree dated 19.10.2024 passed by the Additional Civil Judge (S.D.) Court No.10, Ghaziabad in O.S. No.544 of 2020 (Sachin Kumar Vs. Smt. Nidhi Dohre and another), whereby the plaintiff's suit for the relief of mandatory injunction for directing the defendant No.2 Agrawal Associates (Promoters) Ltd, for executing the sale deed of the disputed property solely in favour of the plaintiff and for restraining the estranged wife-defendant No.1 from creating any hindrance, has been dismissed.

2. The appeal is admitted.

3. The factual matrix is that the plaintiff-appellant, Sachin Kumar, and defendant No.1, Smt. Nidhi Dohre, are husband and wife, whose marriage was solemnized on 14.02.2015 in accordance

with Hindu rites and rituals. After the marriage, they resided at Flat No. C-306, Neelgiri Apartment, Kaushambi, Ghaziabad.

4. It is the case of the plaintiff that in the year 2017 he booked flat No. K/C.A.1002, having a carpet area of 723.761 square feet, Type-4, in Block (A) on the tenth floor in Aditya World City, village Shahpur Bamheta, Ghaziabad, for a total consideration of Rs.26,11,607/- from defendant No.2. It was further averred that, since defendant No.1 was his wife, due to love and affection, he included her as a joint/benami owner of the said flat at the time of booking of the flat. Accordingly, an advance amount of Rs.1,46,250/- was paid through cheque on 15.11.2017, and thereafter, on 21.11.2017, the remaining amount was paid from the plaintiff?s bank account No. 072201501425 to defendant No.2. Subsequently, on 06.01.2018, an allotment letter with respect to the flat, hereinafter referred to as disputed property, was issued by defendant No.2.

5. It was further averred that the disputed property was purchased by obtaining a loan from Indiabulls Housing Finance Limited, Delhi, in which defendant no. 1 was co-borrower, since in the allotment letter she was benami joint owner. It was further averred that on 17.02.2018, an amount of Rs.22,56,536/- was paid by cheque/DD No. 663631, and further, on 27.03.2018, an amount of Rs.1,33,867/- was paid by cheque/DD No. 699666 to defendant No.2 by plaintiff. It was also averred that the housing loan was being repaid by the plaintiff alone through EMIs of Rs.22,097/-, from his salary account.

6. It is the case of the plaintiff that his wife/defendant No.1 has not paid any amount towards the purchase of the disputed property and that only due to love and affection he included her as a benami co-owner at the time of allotment, whereas he is the real and absolute owner of the property. Therefore, he claims entitlement to have the sale deed of the disputed property executed solely in his favour.

7. It was further averred that subsequently the intention of defendant No.1 turned malafide and ideological differences arose between the husband and wife, due to which on 05.12.2018 the defendant No.1 left the matrimonial home and deserted the plaintiff. Thereafter, criminal litigation was also initiated by the estranged wife against the plaintiff. It was also averred that the plaintiff filed a suit under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which is pending before the competent court. It was also averred that the plaintiff was in possession of the disputed property since 09.04.2019, which was handed by defendant no.2.

8. In this background, the plaintiff requested defendant No.2 to execute the sale deed of the disputed property solely in his favour. However, when defendant No.2 refused to do so, the plaintiff filed the present suit seeking the following reliefs:-

(i) That a decree of mandatory injunction be granted in favour of the plaintiff and against the defendants, directing defendant No.2 to execute the sale deed of the disputed property solely in favour of the plaintiff, and defendant No.1 be restrained from causing any hindrance therein;

(ii) That the cost of the suit be awarded to the plaintiff against the defendants; and

(iii) Any other relief which the Court may deem fit and proper in the facts and circumstances of the case.

9. The written statement was filed by defendant No.2 before the Trial Court, wherein it was averred that the disputed property is in joint ownership of the plaintiff and defendant No.1 and, therefore, defendant No.2 was legally bound to execute the sale deed in favour of both joint allottees. It was further averred that the plaintiff had no cause of action to file the suit against defendant No.2. Indiabulls Housing Finance Ltd. is a necessary party to the suit. The plaintiff and defendant no.1 are liable to pay outstanding amount of Rs. 4,64,189/- to it.

10. It is apparent from the record that defendant No.1 failed to appear before the Trial Court, and consequently substituted service was effected upon her through publication in a local newspaper, which was deemed sufficient. Thereafter, by order dated 06.02.2023, the suit was proceeded ex-parte against defendant No.1.

11. The Trial Court concluded that since the disputed property was purchased jointly by plaintiff and defendant No.1, the plaintiff was not entitled to seek execution of the sale deed solely in his favour, being bound by the terms and conditions of the agreement. The Trial Court further held that the plaintiff failed to produce any documentary evidence to establish payment of the entire sale consideration to defendant No.2. It was also held that, as the allotment of the disputed property was made jointly, defendant No.2 cannot be directed to execute the sale deed solely in favour of the plaintiff. On these grounds, the suit was dismissed.

12. Aggrieved by the said judgment and decree, the plaintiff has filed the present appeal.

13. It is undisputed that the disputed property stands in the joint names of the plaintiff and defendant No.1. The assertion of the plaintiff is that he purchased the property benami in the joint name of his wife purely out of love and affection and that the entire consideration was paid by him alone. The plaintiff seeks execution of the sale deed exclusively in his favour on this basis.

14. It is also apparent that several litigations relating to divorce, maintenance, and criminal proceedings regarding demand of dowry are pending between the husband and wife before different courts. The core dispute pertains to property rights between the spouses, and jurisdiction for adjudication of such disputes vests in the Family Court constituted under the Family Courts Act, 1984.

15. 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 circumstances 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.

16. Explanation (c) of Section 7(1) of the Family Courts Act,1984 provides that suits or proceedings between the parties to a marriage with respect to the property of the parties or of either of them, are only cognizable by the Family Court.

17. In the present case, the suit was not instituted before the Family Court but was adjudicated by the Court of the Additional Civil Judge (Senior Division), Court No. 10, Ghaziabad, which lacked inherent jurisdiction to entertain and decide the matter. In view of the above patent defect, this Court is not required to examine the impugned judgment on merits.

18. Learned counsel for the plaintiff/appellant submitted that the findings recorded by the trial court, be set aside, otherwise they will operate as res judicata.

19. The Apex Court in the case of ***Prem Kishore and others vs Brahm Prakash and others (2023) 19 SCC 244***, reiterating the essential principles for application of res judicata, held as under:-

*33. .....(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) t**hat these issues were adjudicated and finally decided by a court competent to try the subsequent suit;….***

(emphasis supplied)

20. The Apex Court in the case of ***Sushil Kumar Mehta vs Gobind Ram Bohra (Dead) Thr. LRS. (1990) 1 SCC 193 (By 3 Judges),*** held as under:-

*26. Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. **A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings**. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as res judicata even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of res judicata is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would operate as res judicata. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid*

despite prohibition by law it does not operate as res judicata. ***Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not res judicata in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction.*** *Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction.*

(emphasis supplied)

21. Accordingly, the judgment and decree passed by the Trial Court is without jurisdiction and is a nullity, in the eye of law. On this ground alone, the impugned judgment and decree is liable to be set aside. It is apparent that any finding recorded by a court lacking inherent jurisdiction, does not operate as res judicata, between the parties.

22. Since the dispute relates to property rights between husband and wife, the suit is exclusively cognizable by the Family Court.

23. In view of the aforesaid facts and circumstances, the appeal is liable to be allowed.

24. **Accordingly, the appeal is allowed. The impugned judgment and decree dated 19.10.2024 is hereby set aside.**

25. Original Suit No. 544 of 2020 is restored to its original number, and the Trial Court is directed to return the plaint to the plaintiff under Order VII Rule 10 CPC for presentation before the competent Family Court.

26. The concerned Family Court is directed to decide the suit afresh, within a period of six months, from the date the plaint is presented to it, without affording unnecessary adjournment to either of the parties, in accordance with law, on merits.

(2026) 2 ILRA 1189
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 168 of 2026

Smt. Usha **...Appellant**
Versus
Sri Kalau Ram & Ors. **...Respondents**

Issues for Consideration

(i) Whether the plaintiff was entitled to claim partition and injunction in respect of the disputed property during the lifetime of recorded tenure holder Kalua Ram;
(ii) Whether the provisions of the Hindu Succession Act, 1956 (as amended) were applicable to the disputed property at the relevant time?

Headnotes

U.P. Zamindari Abolition and Land Reforms Act, 1950 — Succession — Agricultural land — Applicability of personal law:

Held: Succession in respect of agricultural land governed by the provisions of U.P.Z.A. & L.R. Act is regulated by the provisions of the said Act and not by personal law; till the land retains its agricultural character, no right can be asserted on the basis of the Hindu Succession Act. [Paras 17–18]

Hindu Succession Act, 1956 (as amended) — Section 6 — Coparcenary rights — Applicability:

Held: The right of a female coparcener under Section 6 can be asserted only from 09.09.2005 and subject to applicability of the Act; where on the said date the property was still agricultural, the provisions of the Hindu Succession Act were not applicable and could not confer any right. [Paras 20, 22]

Property — Change of nature — Agricultural to Abadi — Effect:

Held: Where the disputed property was declared non-agricultural (Abadi) under Section 143 of U.P.Z.A. & L.R. Act on 30.05.2007, only thereafter the provisions of the Hindu Succession Act became applicable. [Para 19]

U.P. Zamindari Abolition and Land Reforms Act, 1950 — Section 171 — Devolution — Effect:

Held: Where the recorded tenure holder died when the property was agricultural, succession was governed by Section 171 of the Act and the son became Bhumidhar of the disputed land. [Paras 12, 23]

Property Law — Right to claim partition — During lifetime of owner:

Held: Where Kalua Ram was the absolute owner of the disputed property and was alive at the time of institution of suit, the plaintiff had no right to claim partition or assert ownership during his lifetime. [Paras 23–24]

Hindu Succession Act, 1956 — Section 8 — Devolution after death:

Held: After the death of Kalua Ram during pendency of appeal, and the property having become non-agricultural, succession would be governed by Section 8 of the Hindu Succession Act and the plaintiff could claim her share only thereafter in accordance with law. [Para 24]

Civil Procedure Code, 1908 — Appeal — Interference with findings:

Held: Where the trial court, on appreciation of evidence and applicable law, rightly concluded that the plaintiff had no right in the disputed property at the time of filing of suit, the findings did not suffer from perversity and did not warrant interference in appeal. [Para 25]

Civil Procedure Code, 1908 — Appeal — Dismissal at admission stage:

Held: Where no ground for interference was made out, the appeal was liable to be dismissed at the admission stage and the impugned judgment and decree affirmed. [Paras 26–27]

Appeal dismissed. (E-14)

Case Law Cited

***Smt. Anjali Kaul and another v. Narendra Krishna Zutshi and others,* 2013 SCC OnLine All 13843 — relied on; *Vineeta Sharma v. Rakesh Sharma and others*, (2020) 9 SCC 1 — relied on.**

List of Acts / Statutes

Code of Civil Procedure, 1908; U.P. Zamindari Abolition and Land Reforms Act, 1950; Hindu Succession Act, 1956.

List of Keywords

Partition; Agricultural land; Abadi land; Coparcenary; Female coparcener; Succession; U.P.Z.A. & L.R. Act; Hindu Succession Act; Bhumidhar; Appellate interference**.**

Case Arising From

Judgment and decree dated 07.10.2025 passed by Additional District Judge, Court No.7, Agra in Original Suit No. 21 of 2021 (Smt. Usha vs. Kalua Ram and others).

Appearance for Parties

For the Appellants: Sri Anuj Srivastava, Sri Devaang Savla
For the Respondents: Sri Narendra Kumar Chaturvedi, Sri Arvind Kumar Yadav

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

Order on Civil Misc.Substitution Application No.4 of 2026:-

1. Heard learned counsel for the appellants and learned counsel for the respondent Nos.1 & 7.

2. The substitution application has been filed in time for incorporating the fact that the defendant No.1 Kalua Ram has died on 06.01.2026 leaving behind his heirs who are already impleaded as party to the suit.

3. Learned counsel for the respondents submits that he has no objection to the above substitution application.

4. An affidavit has been filed in support of the substitution application, which is uncontroverted.

5. The substitution application is allowed.

6. Accordingly, in the memo of appeal after the name of defendant-respondent No.1 it be recorded that he has died during the pendency of appeal.

Order on appeal:-

1. The instant appeal has been filed by the plaintiffs under Section 96 C.P.C. against the impugned judgment and decree dated 07.10.2025, passed by the Court of Additional District Judge, court no.7, Agra, in Original Suit No. 21 of 2021 (Smt. Usha vs. Kalua Ram and others), whereby

the plaintiffs' suit seeking the relief of partition claiming her 1/8th share in the disputed property, permanent prohibitory injunction for restraining the defendants from interfering in her peaceful possession of the disputed property, for decree of mesne profit at the rate of Rs.2,50,000/- per month alongwith cost of legal notice has been rejected.

Plaint Case

2. Factual matrix is that the the plaintiff filed the O.S. No.21 of 2021 with the averments that her grandfather Ninua Ram was the recorded owner in possession of the disputed Khasra No.206 and 207 before the consolidation of holdings proceedings as per revenue records of Mauza Basai Mustqil, Chungi Andar, Tehsil and District Agra and after the commencement of the consolidation proceedings, the aforesaid khasra numbers were changed as Khasra No.2006 (min) area 0.2420 hectare and Khasra No.2007 (Min) area 0.2820 hectare situated at Mauza Basai Mustqil, Chungi Bahar, Tehsil and District Agra in Fasli year 1422 to 1427. It was further averred that Ninua Ram died leaving behind the defendants and plaintiff as co-owners of the above disputed property, which was declared as non agricultural vide order dated 30.05.2007 passed by the SDM, Sadar, Agra in Suit No.150 of 2006-07 (Kalua Vs. State of U.P). under Section 143 of U.P.Z.A. & L.R. Act.

3. It was further averred that the plaintiff and the defendants each have jointly 1/8th share in the above property on which a private Sabji Mandi is running, which was situated at Fatehabad Road, near Shanti Manglik Hospital, Agra and the rental income from the Sabji Mandi was about Rs.8 lacs per month, which was collected and kept by defendant No.1 Kalua Ram as co-owner and trustee on behalf of the plaintiff and defendants. It was further averred that when the plaintiff demanded her 1/8th share in the property alongwith Rs.1 lac per month from the rental income from the property, then it was refused by the defendants.

4. In view of the above backdrop, the plaintiff filed the suit claiming the following reliefs:-

(i) that by decree of partition of the property given at the foot of the plaint, holding the plaintiff has 1/8th share and possession be delivered to her of her lot prepared by meters and bounds by the court Amin.

(ii) that by decree of permanent prohibitory injunction against the defendants, in favour of the plaintiff restraining the defendants and their agents, associates, servants, etc. in any manner from interfering in the title and peaceful joint possession of 1/8th share in the suit property of the plaintiff over the property in suit, or the defendants be also restrained to transfer by will or any other instrument or alienate the property in suit to any other person, be passed in favour of plaintiff against the defendants.

(iii) that a decree of mesne profit of Rs.2.5 lac per month be passed against the defendants in favour of the plaintiff.

(iv) that the cost of legal notice of Rs.11,000/- and the suit be also awarded to the plaintiff against the defendants.

Written statement of the defendants

5. The defendant No.1 Kalua Ram filed his written statement before the trial court in which he denied the plaint averments. It was averred that the disputed property was the exclusive Bhumidhari land of the defendant in which no right, title and interest vested in the plaintiff and other defendants. It was further averred that after the death of Ninua Ram the defendant No.1 became the sole owner of the disputed property. It was further averred that the defendant was running Sabji Mandi on the disputed property which exclusively belongs to him, as such, the plaintiff or other defendants have got no right over the income, which was being generated from that business. It was specifically averred that the plaintiff has got no right to claim partition in respect of the suit property, since she has no right therein.

6. It was further averred that the plaintiff was not even in existence when U.P.Z.A. & L.R. Act came into force, as such, she cannot be said to be the co-owner of the disputed property. It was further averred that it was not an ancestral property of the plaintiff. The plaintiff's suit was barred under Section 34,38 and 41 of the Specific Relief Act and the plaint was liable to be rejected under Order 7 Rule 11 (d) CPC.

7. The defendant Nos.2 to 4 and 6 to 13 also submitted their written statement before the trial court in which they denied the plaint averments and averred that the plaintiff wants to usurp the suit property, who was having no right, title, interest and possession in it. It was further averred that the disputed property was the exclusive Bhumidhari land of the defendant No.1 wherein, the plaintiff and other defendants have got no right, title or interest and possession of any kind. It was further averred that the defendant No.1 was the sole owner of the disputed property who was running his private Sabji Mandi over the disputed land and he was the sole owner of the income generated from the above property. It was specifically averred that the plaintiff as well as the defendant Nos.2 to 13 have got no right title or possession over any part of the suit property because the disputed property was exclusively owned and possessed by the defendant No.1 which was not an ancestral property of the plaintiff.

8. The defendant No.5 also filed her written statement, which reiterated the averments earlier made by the other defendants before the trial court.

Issues framed and the evidence adduced

9. On the basis of pleadings of the parties, the trial court framed the following issues:-

(i) Whether the plaintiff is entitled to receive 1/8th share of the disputed property?

(ii) Whether the plaintiff is entitled to a permanent injunction against the defendants, prohibiting the defendants and their employees from interfering with the plaintiff's peaceful

possession and from transferring the disputed property through a sale deed, Will, or other agreement?

(iii) Whether the plaintiff is entitled to receive Rs.2,50,000/- per month during intermediate period?

(iv) Whether the suit is undervalued?

(v) Whether the Court fee paid by the plaintiff is insufficient?

(vi) Whether the Court has jurisdiction to hear the suit?

(vii) Whether the plaintiff is entitled to get other reliefs?

10. The plaintiff Smt. Usha examined herself as PW-1, her husband Bhim Singh as PW-2 and Hemant Kumar, Court Amin, as PW-3 whereas, the defendant No.1 Kalua Ram has examined himself as DW-1.

11. In documentary evidence, khasra, khatauni of the disputed land, declaration under Section 143 of U.P.Z.A. & L.R. Act, legal notices etc. were filed by the parties.

Reasoning of the trial court

12. The trial court after considering the evidence on record concluded that Ninua Ram, the grandfather of the plaintiff was the owner of the khasra No.2006 (M) area 0.2420 hectare and khasra No.2007 (M) area 0.2820 hectare, who died in the year 1998 and since the property was agricultural which was governed by the provision of U.P.Z.A. & L.R. Act 1950, as such, his son Kalua Ram became Bhumidhar of the disputed land in accordance with Section 171 of the Act, 1950. It was further concluded that the provision of Hindu Succession Act, 1956 were not applicable and Section 6 of that Act only became applicable from 09.09.2005 and prior to that the plaintiff could not have enforced her right in the disputed property. It was further concluded that the disputed property was declared Abadi and a declaration under Section 143 of the U.P.Z.A. & L.R. Act was made in the year 2007, as such, after that the provision of Hindu Succession Act became applicable on the disputed property.

13. In view of this, the trial court held that since the provisions of Hindu Succession Act were not applicable prior to 09.09.2005 as such, the plaintiff had no share in the disputed property. The trial court specifically recorded that Kalua Ram was the absolute owner of the disputed property in which the plaintiff has got no right during his lifetime and in view of this, it was held that the plaintiff has got no right to claim partition in the disputed property. On this basis, the suit was dismissed, aggrieved against which, the plaintiff has filed the instant appeal.

Submissions of the Learned Counsel

14. Learned counsel for the plaintiff-appellant submitted that the disputed property was the property of HUF and being the coparcener, in accordance with Section 6 of the Hindu Succession Act, the plaintiff was entitled to assert her right as coparcener from 09.09.2005 but the trial court has held otherwise. It was further submitted that since the plaintiff was a coparcener with Kalua Ram in the disputed property, the plaintiff could have filed the suit for partition for declaring her share and also for dividing it by meters and bounds. It was further submitted that the plaintiff also claimed for the relief of permanent injunction for restraining the defendants from alienating the disputed property which has been erroneously rejected by the trial court. With these submissions, it was prayed that the appeal be admitted for hearing.

15. Per contra, learned counsel for the defendants-respondents submitted that plaintiff's grandfather Ninua Ram was the absolute owner of the disputed property, whose name was recorded as Bhumidhar in the Khatauni in accordance with the provision of U.P.Z.A.&L.R. Act and after his death in the year 1998, the name of his son Kalua Ram was recorded as Bhumidhar in accordance with Section 171 of the Act. It was further submitted that at no point of time, the disputed property was the coparcenary property, in which the plaintiff has got no right and as such, the plaintiff's suit was rightly rejected. It was further submitted that since Kalua Ram has died on 06.01.2026 during the pendency of the appeal and the plaintiff, being the legal heir of Kalua Ram and more particularly since the disputed property has been declared as Abadi, under the provisions of U.P. Z.A.&L.R. Act,1950, as such, the plaintiff has become owner of 1/7th part of the disputed property, to which she is entitled to claim partition in accordance with law. He further submitted that the trial court has not erred in dismissing the plaintiff's suit. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed at the admission stage itself.

16. I have heard the learned counsel for the parties, perused the impugned judgment and documents submitted with the appeal.

17. A Division Bench of this Court in the case of ***Smt. Anjali Kaul and Anr. vs Narendra Krishna Zutshi and others 2013 SCC OnLine All 13843*** held as under:-

"19. A Full Bench decision of this Court in the case of Ramji Dixit v. Bhiruganath, AIR 1965 All 1 is worth quoting:

"An agricultural tenant has no religion and no personal law except as expressly provided in the Zamindari Abolition and Land Reforms Act. It applies to Hindus, Muslim, Christians etc. regardless of their religion and, therefore, regardless of their personal law except as regards succession in certain cases. It contains its own provisions regarding inheritance and transfers; and when it has left certain matters to be governed by the personal law it has done so by an express provision. Personal law has never been applied proprio vigore to questions of inheritance and transfer of tenancy rights as it has been applied to inheritance and transfer of proprietary rights."

20. This view was also adopted by this Court in another Full Bench decision of Ram Awalamb v. Jata Shankar, AIR 1969 All 526.

21. In the case of Madhuri Devi v. Board of Revenue, U.P. Lucknow, 2011 (29) LCD 2655 : (2012 (1) ALJ 94), this Court has held that "tenancy in this province is governed by the provision of U.P.Z.A. & L.R. Act and the succession is also governed by the provisions of the said Act and is not governed by the principles of Hindu Law or any personal law."

****

29. In the case Amar Singh v. Assistant Director of Consolidation, (1988) 4 SCC 143 (AIR-1988 SC 2020), Vijay Pal Singh v. Deputy Director of Consolidation, (1995) 5 SCC 212 : (AIR 1996 SC 146) & Audhar v. Chandrapati, (2003) 11 SCC 458 : (AIR 2003 SC 4389) Apex Court has held that personal law will not be applicable to the land governed by tenancy law.

30. We are in respectful agreement with this view and the view expressed by this court in "Smt Prema Devi v. Joint Director of Consolidation (AIR 1970 All 238) and hold that the words "interest in any immovable property of an intestate" do not include agricultural land of an intestate.

31. It needs hardly be said that U.P.Z.A. & L.R. Act is a special Act where provisions of Hindu Succession Act are not applicable inasmuch as rights of the parties are governed by U.P.Z.A. & L.R. Act. The U.P.Z.A. & L.R. Act is a self contained Code."

18. From the documents submitted with the appeal, it is undisputed that Ninua Ram was the absolute owner of the the disputed property of Khasra No.206 and 207 before the consolidation of holdings proceedings which became Khasra No.2006 (M) area 0.2420 hectare and khasra No.2007 (M) area 0.2820 hectare after the consolidation proceedings and after his death in the year 1998, his son/defendant no.1 Kalua Ram became Bhumidhar/recorded tenure holder of the disputed property, in accordance with Section 171 of the U.P. Z.A.&L.R. Act,1950. It is well settled that the provision of Hindu Succession Act are not applicable on U.P.Z.A.&L.R. Act as well as U.P. Revenue Code 2006, as such, on the basis of Hindu Succession Act no right can be asserted in any manner whatsoever till the property remains agricultural in the revenue records.

19. In the instant case, it is not disputed that the status of the disputed property was changed from agricultural to Abadi and a declaration under Section 143 was made on 30.05.2007 by the competent authority, as such, after that date the property lost its character of agricultural land and become Abadi land, regarding which the provision of Hindu Succession Act become applicable.

20. Section 6 of The Hindu Succession Act,1956, as amended by Act 39 of 2005, w.e.f. 09.09.2005 reads as under:-

***6. Devolution of interest in coparcenary property**.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 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 coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary 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, 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 coparcenary 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, 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, 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 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.

(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.

21. The Apex Court in the case of ***Vineeta Sharma vs Rakesh Sharma and others (2020) 9 SCC 1 (By 3 Judges),*** while considering the amended Section 6 of the Hindu Succession Act, held as under:-

"137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of

deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

22. It is apparent that as per Section 6 of the Hindu Succession Act, which was interpreted by the Apex Court in the case of Vineeta Sharma (supra) the female coparcener could have asserted her right only from 09.09.2005 and not prior to that date. It is further apparent that on 09.09.2005 the property was still agricultural as such, even on that date the provision of Hindu Succession Act were not applicable on the disputed property which only became applicable when the disputed property was declared Abadi on 30.05.2007.

23. It is further apparent that since Kalua Ram was the absolute owner of the property as such till the property remained agricultural the succession was bound to be effected in terms of Section 171 of the U.P.Z.A. & L.R. Act.

24. It is apparent that Kalua Ram has died during the pendency of the appeal on 06.01.2026 and after his death, since property has become non-agricultural, all his heirs are entitled to inherit the property in accordance with Section 8 of the Hindu Succession Act, if there is no Will regarding the disputed property. In view of this, the plaintiff can claim her share in accordance with law only after the death of Kalua Ram, and not prior to it. It is apparent that when the suit was filed by the plaintiff, Kalua Ram was alive as such, during the lifetime of Kalua Ram, the plaintiff could not have asserted her ownership in the disputed property, in any manner whatsoever.

25. In view of the above, there is no perversity in the judgment of the trial court in rejecting the plaintiff's suit, which does not warrant any interference by this Court in exercise of its appellate jurisdiction.

26. This appeal is meritless and is liable to be dismissed at the admission stage.

27. **Accordingly, the instant appeal is dismissed at the admission stage.** The impugned judgment and decree dated 07.10.2025 is affirmed.

(2026) 2 ILRA 1200
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.

First Appeal No. 317 of 2019
Alongwith
First Appeal No. 320 of 2019

Sonu Sirohi ...Appellant
Versus
Pushpendra Singh Sirohi & Anr. ...Respondents

Issue for Consideration

Matter pertains to whether a suit for mandatory injunction seeking eviction of a defendant, alleged to be in unauthorized occupation after revocation of licence, is maintainable in law or is barred u/s 41(h) of the Specific Relief Act, 1963 on the ground that an equally efficacious remedy of possession was available.

Headnotes

Specific Relief Act, 1963 - s. 41(h) - Transfer of Property Act, 1882 - ss.38, 52 - Protection of Women from Domestic Violence Act, 2005 - ss. 2(s), 12, 17, 19 - Mandatory Injunction - Mesne Profits - Determination - Illegal Possession - Eviction - Tripartite Agreement - Maintainability of Suit - Shared Household - Licence - Revocation - Title and ownership - Burden of proof - Transfer deed - Validity - The dispute arises out of two connected suits concerning a residential flat, wherein the husband (plaintiff of Suit No.1) asserted exclusive ownership on the basis of a tripartite agreement and registered lease deed executed in his favour, and alleged that his wife (defendant) was permitted to occupy or manage the property merely as a licensee, whose licence was subsequently revoked, rendering her possession unauthorized - Consequently, he instituted a suit for mandatory injunction seeking eviction and mesne profits, and during the pendency of disputes, he transferred the flat to a third party purchaser (plaintiff of Suit No.1), whereas the wife instituted a separate suit claiming co-ownership on the basis of alleged contribution from her stridhan, challenging the validity of transfer deed and seeking protection from eviction - Both suits were consolidated and decided together by the trial court, which decreed the suit for eviction and damages in favour of the purchaser and dismissed the wife's suit, leading to the instant appeals.

Held: On consideration of the facts and circumstances, and the arguments advanced, the Court find that the amount fixed by the Trial Court is reasonable at Rs. 60,000/- per month, especially considering that this was the rental income generated from the disputed flat when it was occupied by tenant Rohit Sharma (rent agreement dated 24.6.2008) - The appellant has been enjoying the property since a long time and there is every likelihood that the rental value of the flat in dispute would have substantially increased over the years, while she remained in possession - Be that as it may, Rs. 60,000/- per month is a fair measure of compensation for the loss suffered by the rightful owner (plaintiff no. 2) during the period of unlawful occupation by the appellant - From the discussion and perusal of oral and documentary evidence it is established that the Trial Court rightly decreed the Original Suit No. 1199 of 2009 and rightly dismissed the Original Suit No. 1187 of 2011 - **Thus, both the First Appeals dismissed.** [Paras 34, 35, 37] (E-13)

Case Law Cited

Hashmat Husain & others v. Inayat Ullah & others, **AIR 1958 Alld. 706;** *Bharat Heavy Electrical Rajapur Haridwar v. Sanju Paliwal,* **2013 (2) Uttrakhand 1137;** *Sant Lal Jain v. Avtar Singh,* **AIR 1985 SC 857;** *Bharat Bhushan Gupta v. Pratap Narain Verma & another,* **(2022) 8 SCC 333;** *Nedunuri Kameswaramma v. Sampati Subba Rao,* **AIR 1963 SC 884;** *Bhairab Chandra Nandan v. Runadhir Chandra Dutta*, **(1988) 1 SCC 383;** *Nirmala Devi v. Gurgaon Schedule Caste and Vimukta Agriculture Thrift and Credit Society Limited and Others* **(2021) 8 SCC 785 - referred to**

List of Acts

Specific Relief Act, 1963; Transfer of Property Act, 1882; Protection of Women from Domestic Violence Act, 2005

List of Keywords

First appeal; Mandatory injunction; Permanent injunction; Mesne profits/damages for use and occupation; Illegal possession; Licensor-licensee relationship; Revocation of licence; Trespasser; Ownership and title; Exclusive ownership; Stridhan; Absence of evidence; Registered lease deed; Tripartite agreement; Transfer memorandum; Transfer-cum-sale deed; Validity/legality of transfer deed; Consolidated suits - No objection certificate (NOC); Indemnity bond; Bona fide purchaser; Rights of residence; Domestic violence; Oral and documentary evidence; Maintainability of suit; s. 41(h) of Specific Relief Act; Appeal dismissed

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 317 of 2019

Connected with First Appeal No. - 320 of 2019

From the Judgment and Decree dated 11.12.2018 passed by the Civil Judge (Senior Division), Gautam Budh Nagar in Original Suit Nos. 1199 of 2009 and 1187 of 2011

Appearances for Parties

Advs. for the Appellant:
Kartikeya Saran, Rahul Sahai

Advs. for the Respondent:
Anand Kumar Tripathi, Archit Mehrotra, Atul Kumar Tiwari, Mrityunjay Pandey, Nipun Singh, Prashant Mishra, Rakesh Kumar Mathur, Sanjay Pandey, Siddharth Nandan

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

1. Since both the appeals arise out of common judgment and decree dated 11.12.2018 passed by the Civil Judge (Senior Division), Gautam Budh Nagar in Original Suit Nos. 1199 of 2009 and 1187 of 2011, as such, both the appeals are being decided by the present common judgment.

2. The facts giving-rise to the present dispute are that an Original Suit No. 1199 of 2009 was instituted by Pushpendra Singh Sirohi and Smt. Poonam Agarwal against Smt. Sonu Sirohi for mandatory injunction, directing the defendant to vacate the flat and restore the possession to the plaintiff. A further prayer was made for mesne-profit @ Rs.80,000/- per month from the date of Institution of the suit till actual physical possession is delivered to the plaintiff. For the sake of brevity, the present suit is being referred hereinafter as Suit No. 1 and plaintiff of aforesaid suit are being referred hereinafter as plaintiff nos. 1 & 2 of Suit No. 1. The defendant, namely, Smt. Sonu Sirohi is being referred hereinafter as defendant of Suit No.1.

3. The facts as stated in the plaint are that the defendant of suit no. 1 was married with plaintiff no.1 of suit no. 1. A tripartite agreement dated 15.6.2006 between NOIDA, M/s A.T.S. Infrastructure Pvt. Ltd and plaintiff no.1 of suit no. 1 was executed and thus the plaintiff no. 1 of suit no. 1 became owner of Flat No. 1201, Ground Floor, ATS Green Village, Noida, District Gautam Budh Nagar (hereinafter referred as "flat in dispute").

4. It is further alleged that the defendant of suit no.1 being married wife of plaintiff no. 1 of suit no.1, was authorized to realize the rent of disputed flat. In due course of time, the relation between the plaintiff No.1of suit no. 1 and defendant of suit no. 1 became strained and various litigations, including proceedings under Protection of Women from Domestic Violence Act, 2005, were initiated by the defendant of suit no.1.

5. It is further alleged that a license to realize the rent of disputed flat was given to the defendant of suit no. 1, which was revoked on 17.11.2009. Thus, after revocation of License, the plaintiff No.1 of suit No. 1 is entitled for possession of flat in dispute and the possession of defendant of suit No.1 over disputed flat is illegal. Accordingly, the relief of mandatory injunction and mesne-profit have been prayed for by instituting Suit No. 1199 of 2009.

6. It is further alleged in the plaint that the plaintiff no. 1 of suit no. 1 decided to sell the disputed flat to the plaintiff no. 2 of suit no. 1 and therefore on 8.2.2011, M/s ATS Infrastructure Pvt. Ltd issued no objection certificate for transfer of flat in dispute in favour of the petitioner no. 2 of suit no. 1. On 17.2.2011, the plaintiff no. 1 filed transfer application with NOIDA and on 24.3.2011, on execution of indemnity bond by plaintiff no.1 and plaintiff no. 2 in favour of NOIDA, permission for the transfer was granted and accordingly, the transfer memorandum and transfer-cum-sale deed was executed between plaintiff no. 1 and plaintiff no. 2 of suit no.1 for sale consideration of Rs. 95 lacs.

7. The defendant of suit no. 1, namely, Smt. Sonu Sirohi instituted Original Suit No. 1187 of 2011 (Smt. Sonu Sirohi Vs. Smt. Poonam Agarwal, Pushpendra Singh Sirohi, ATS Infrastructures and Noida Authority. The suit is being referred as suit no. 2. In the aforesaid suit, a relief of permanent injunction, restraining the defendant from evicting the plaintiff Smt. Sonu Sirohi, from the flat in dispute was prayed for. By way of amendment, a decree for declaring the transfer deed dated 25.3.2011, executed in favour of the plaintiff no.2 of suit no.1 as void, with a further prayer of declaration against no objection certificate granted by Noida Development Authority and ATS Infrastructure was prayed for. In short, the claim set-up by Smt. Sonu Sirohi in suit no. 2 was that she has also invested stridhan in purchase of the flat in dispute and proceedings under Protection of Women from Domestic Violence Act, 2005 as well as other proceedings are pending before various Courts and in view of the aforesaid, she is entitled to reside in the flat in dispute.

8. Since the subject matter of both the suits was the same property, as such, both the suits were consolidated and decided by a common judgment and decree dated 11.12.2018.

9. The trial Court had framed issues separately in both the suits. In suit no. 1, the first issue was whether the plaintiffs of suit no. 1 are owners of flat in dispute. The first issue in Suit no. 2 was whether the plaintiff of suit no. 2 (defendant of suit no. 1 Smt. Sonu Sirohi) is owner of flat in

dispute. Issue nos. 2, 7, 10 & 11 of suit no. 2 also related to ownership of flat in dispute as well as the legality of transfer deed dated 25.3.2011.

10. The issue no. 1 of both the suits had been decided by the learned trial Court, holding that the owner of flat in dispute was plaintiff No.2 of suit no. 1 and subsequently transfer deed dated 25.3.2011 executed by plaintiff of suit no. 1 in favour of the plaintiff no. 2 is lawful transfer deed and accordingly, plaintiff no. 2 of suit no. 1 namely Smt. Poonam Agarwal is the lawful owner of flat in dispute. It has been further decided by the trial Court that the possession of defendant of suit no. 1 w.e.f. May 2011 is illegal.

11. The trial Court has further decided the issue holding that the plaintiff no. 2 of suit no. 1 is entitled for damages/mesne-profit for use and occupation @ Rs. 60,000/- per month from May 2011 till the time actual physical possession is delivered to plaintiff no. 2 of suit no. 1. Thus, suit no.1 has been decreed and suit no. 2 has been dismissed.

12. Being aggrieved with the aforesaid judgment and decree, the present two First Appeals have been filed, mainly on following grounds:

(A) That the impugned judgment suffers from manifest errors apparent on the face of

(B) That the suit of Plaintiff No. 2 was liable to be dismissed, which was otherwise wrongly decreed by the trial court;

(C) That the disputed flat was purchased out of joint funds (Stridhan) contributed by both the Appellant and Plaintiff No. 1, and therefore Plaintiff No. 1 alone could not have alienated it;

(D) That the Sale Deed dated 25.03.2011 is patently null and void, and no right flows to the alleged vendee;

(E) That the Appellant, residing permanently in the disputed flat with her children, who also have a claim therein, could not have been directed to vacate;

(F) That the Appellant has substantive rights under the Protection of Women from Domestic Violence Act, 2005;

(G) That Plaintiff No. 1 colluded with the builder and NOIDA to circumvent the rights of the Appellant under the said Act;

(H) That the Transfer Deed issued by NOIDA contained a precondition binding the parties to pending suits, which was mischievously ignored;

(I) That the trial court wrongly held that the lease deed was executed exclusively in favour of Plaintiff No. 1 alone;

(J) That the trial court erroneously held that the Appellant failed to produce documentary evidence of financial contribution;

(K) That case laws cited by the Appellant were misconstrued;

(L) That the imposition of damages at Rs. 60,000 p.m. is unjust, given the Appellant's meagre maintenance of Rs. 75,000/-;

(M) That allowing the impugned judgment would occasion failure of justice and cause irreparable loss.

13. On the basis of the grounds mentioned above and the argument raised by the learned counsel for the appellant, following points/issues for determination have been framed.

(A) Suit No. 1 for mandatory injunction is barred under section 41(h) of Specific Relief Act, 1963, which provides that an injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceedings except in case of breach of trust.

(B) The findings that the plaintiff no. 1 of suit no. 1 was absolute owner of flat in dispute are perverse and contrary to evidence on record.

(C) The transfer deed dated 25.3.2011 is illegal.

(D) Award of damage @ Rs. 60,000/- per month is contrary to evidence on record.

Point No. 1-Preliminary Objection

14. The appellant has raised a preliminary objection to the maintainability of Suit No. 1, contending that the suit for mandatory injunction is barred under section 41(h) of the Specific Relief Act, 1963, which provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

15. The learned counsel for the appellant has argued that the plaintiff of suit no.1 in plaint has indicated that the defendant is trespasser over flat in dispute, thus, the suit for mandatory injunction is not maintainable and the plaintiff should have filed suit for possession. The learned counsel for the appellant has also relied upon a case of ***Hashmat Husain & others Vs. Inayat Ullah & others, AIR 1958 Alld. 706 and also a case of Bharat Heavy Electrical Rajapur Haridwar Vs. Sanju Paliwal, 2013 (2) Uttrakhand 1137.***

16. On the other hand, the learned Senior Counsel for plaintiff of suit no.1 stated that it was specifically argued before the trial Court that the defendant was residing in flat in a capacity of licensee and this fact was admitted by her. This admission on her part clearly established the relationship of licensor and licensee, as provided under Indian Easement Act, 1882. The license was terminated by plaintiff no. 1 of suit no. 1 by giving notice dated 17.11.2009 to remove his

possession from the house within 15 days. He has relied upon AIR 1985 SC 857 Sant Lal Jain Vs. Avtar Singh. The Court has observed:

"In a suit, where a mandatory injunction for possession is sought by a licensor from a licensee who has terminated the license, the suit is not barred merely because it takes the form of a suit for mandatory injunction. The object of the suit is possession, and the relief sought is possession which the plaintiff may be found to be entitled."

In case of ***Bharat Bhushan Gupta Vs. Pratap Narain Verma & another, (2022) 8 SCC 333,*** the Hon'ble Supreme Court has reaffirmed the position that when a licensor-licensee relationship exists and the licensor can seek mandatory injunction for possession without being barred under section 41 (h) of the Specific Relief Act.

17. The learned trial Court, after appraisal of evidence recorded findings that the plaintiff no. 1 of suit no. 1 has permitted appellant to collect rent as an agent and to enter and exit the premises for limited purpose only. The trial Court has further recorded findings that the permission for revocation was granted on 17.11.2009 and thus she has no legal right to continue occupying the disputed flat in question.

18. Thus, in view of the law laid down by the Apex Court, as referred above, the suit for mandatory injunction was maintainable.

Point No. 2-Onwership and title of plaintiff no.1 of suit no. 1

19. The learned trial Court has recorded finding that the plaintiff of suit no. 1 is owner of flat in dispute, in view of the registered lease deed dated 16.6.2006 executed exclusively in favour of plaintiff no. 1 of suit no. 1. The trial Court has recorded finding that the plaintiff no. 1 of suit no. 1 has taken loan from HSBC Bank and NOC was issued by the bank and this fact was admitted by the defendant of suit no. 2, namely, ATS Infrastructure Ltd. and Noida Development Authority.

20. The appellant, (defendant of suit no. 1) has filed her affidavit in evidence, stating therein that she has contributed obtaining lease/ownership of flat in dispute by selling her stridhan and thus she is co-owner of flat and accordingly, the transfer deed executed by plaintiff no.1 of suit no. 1 is without authority.

21. Though an affidavit was filed by defendant of suit no. 1, being plaintiff of suit no. 2, but she never appeared for examination, despite repeated opportunities provided to her to appear for cross-examination. In absence of cross-examination, the affidavit in evidence filed by the appellant has rightly not been relied upon by the trial Court and the contention of the appellant that she has contributed funds in purchase/lease of flat in dispute has rightly been disbelieved. No documentary evidence whatsoever has been adduced by the defendant of suit no.1 to establish that she has contributed in obtaining the transfer deed dated 16.6.2006 of flat in dispute.

22. It is further argued by the learned counsel for the appellant that no separate issue was framed by the trial Court, as such, appellant could not lead evidence to the fact that joint funds

were invested in purchase/lease of flat in dispute and thus, the invested appellant was prejudice of proper opportunity to lead evidence on the said issue.

23. From perusal of record and the oral evidence adduced by the parties, it is established that the defendant of suit No.1 has not let any documentary or oral evidence to establish that she has contributed in purchase of flat in dispute. The only evidence adduced by her, during trial is an affidavit of evidence but as she had not turned up despite various opportunities provided by the Court for cross-examination, as such, the affidavit filed by her, cannot be accepted in absence of cross-examination. On the other hand, the plaintiff of suit n?. 1 has adduced ample evidence i.e. statement of loan taken by plaintiff no. 1 of suit no. 1 from HSBC Bank and subsequent NOC issued by the bank. Thus, it is established that it is the plaintiff no. 1 who made investment in purchase of flat. The learned counsel for the appellant has failed to Indicate any document to suggest that any amount was invested by her in purchase of flat in question.

24. The learned trial Court has framed issues with regard to ownership of flat in dispute and it was open to appellant to establish that the ownership of plaintiff no. 1 of suit no. 1 was not exclusive, but was joint ownership, but no evidence was led to establish joint ownership. Thus, argument raised by the learned counsel for the appellant that her right was prejudiced to lead evidence in absence of proper issue, is wholly misconceived and not tenable in law, especially when the parties have full knowledge about the case and have not pleaded but have led evidence with respect to their ownership.

In ***Nedunuri Kameswaramma Vs. Sampati Subba Rao, AIR 1963 SC 884,*** it has been held by the Hon'ble Supreme Court that when the parties are ad idem on the fact involved in the suit and have pleaded about the same as well as led evidence with respect to the same, it is not necessary for the trial Court to have framed separate issues, as the Court has effectively disposed off the point in its judgment.

In ***Bhairab Chandra Nandan Vs. Runadhir Chandra Dutta, (1988) 1 SCC 383,*** the Hon'ble Supreme Court held that where evidence has been led by parties with respect to certain facts, despite the absence of a formally framed issue, the findings returned by the trial Court on such facts are not rendered nugatory.

25. The trial Court has further recorded findings:

"उपरोक्त िविध व्य वस्थाओं के आलोक में उभयपक्षों के अिभवचनों में यह स् पश् ट रूप से स् वी कृत तथ्य है िक िववाि◌दत फ़् लै ट अग्र णी वाद के वादी सं0-1 पुश्पेन्द्रिसह िसरोही को आवंि◌टत हु आ था, न िक आवंटन प्र ि◌तवाि◌दनी के साथ संयुक्त रू पसे हु आ था। अग्र णी वाद की पत्रा वली पर उपलब्ध प्र पत्र सं0-80ग 1 व 81ग1 केअवलोकन से भी यह दिषत होता है िक िववाि◌दत फ़् लै ट के सम् बन् ध में पंजीकृतलीज डीड वादी सं0-1 पुश्पेन्द्र िसह िसरोही के पक्ष में िनश् पा ि◌दत की गयी थी।इसके अितिरक्त पत्रा वली पर उपलब्ध प्र पत्र 79ग1 के अवलोकन से यह दिशतहोता है िक पुष्पेन्द्र िसरोही द्व ा रा एच.एस.बी.सी. से ऋण ि◌लया गया था ि◌जसकेसम् ब नध में नोड्यू ज प्र माण पत्र प्रस् तु त िकया गया है। प्र ि◌तवादी सं0-2 के पक्ष मेंमूल आवंटन के तथ्य को पष्चा तवतीर् वाद के प्र ि◌तवादी सं0-3 -ए०टी०एस०FAPL No. 317 of 20198इन्फाट्रेक् ट र ि◌ल० व प्र ि◌तवादी सं0-4 नोएडा ि◌वकास प्र ा ि◌धकरण द्व ा रा अपने प्रितवादं पत्र में स् वी कार िकया गया है। इस प्र कार स् पश् ट तः वादी सं०-1 ि◌ववाि◌दत फ़्लै ट का मूल आवंटी व स् वा मी बतौर पट्टा धारी था। यह भी स् वी कृत तथ्य है

िकअिग्र णी वाद की वाि◌दनी सं0-2 श्र ◌ी मती पूनम अग्र वाल द्व ◌ा रा ि◌ववाि◌दत फ़् लै ट कोजिरये पंजीकृत बैनामा वादी सं0-1 से पष्चा तवतीर् वाद के प्र ि◌तवादी सं०-३ए०टी०एस० इन्फाट्रेक् च र ि◌ल० से एन०ओ०सी० ि◌दनांक-08-02-2011 को एवं प्रितवादी सं0-4. नोएडा ि◌वकास प्र ◌ा ि◌धकरण से टी०एम० ि◌दनांक-25-03-2011को प्र ◌ाप् त कर वादी सं0-1 से क्र य ि◌कया गया है। प्र ि◌तवादी सं०-3 द्व ◌ा रा अपने प्रितवाद पत्र में यह स् पष्ट कथन ि◌कया गया है ि◌क ि◌ववाि◌दत फ़् लै ट की स् वा ि◌मनीअिग्र णी वाद की वादी सं0-2 श्र ◌ी मती पूनम अग्र वाल दजर् कागजात हैं। इस सम् बन् धमें अिग्र णी वाद की प्र ि◌तवाि◌दनी व पश्चा तवतीर् वाद की वाि◌दनी का क्रमषः अपने प्रितवाद पत्र व वाद पत्र में मुख्य रू प से यह कथन है ि◌क चूंि◌क ि◌ववाि◌दत फ़् लै ट कोअग्र णी वाद के वादी सं0-1 पुश्पेन्द्र ि◌सह ि◌सरोही के साथ क्र य करने में उसके द्व ◌ा राअपनी व्य ि◌क्त गत सम् प ि◌त्त (स्त्री धन, स् व णर् आभूश्णों की ि◌वक्री आिद) के ि◌वक्र य से प्राप् त सम् प ि◌त्त से भी भुगतान में सहयोग प्र दान ि◌कया गया है, एवं नोएडा ि◌वकास प्रा ि◌धकरण की पोि◌लसी के अनुसार नोएडा प्र ◌ा ि◌धकरण के क्षेत्र में -ि◌कसी आवंटीके पित/पत्नी व अव्यस् क बच्चों के नाम एक से अिधक 31 सम् प ि◌त्त नहीं होसकती, इस कारण ि◌ववाि◌दत फ़् लै ट की वह तथा उसके बच्चे संहस् वा मी वांदीं सं0-1 पुश्पेन्द्र ि◌सह ि◌सरोही के साथ हैं तथा उसकी अनुमित के ि◌बना वादी सं०-1पुश्पेन् द ि◌सह ि◌सरोही को अग्र णी वाद की वाि◌दनी सं0-2 श्र ◌ी मती पूनम अग्र वाल कोि◌ववाि◌दत पलैट का ि◌वक्र य नहीं ि◌कया जा सकता था। यह तथ्य की अग्र णी वाद की प्रितवाि◌दनी द्व ◌ा रा ि◌ववाि◌दत पलैट के क्र य करने में वादी सं0-1 को अपनी ि◌नजीसम् प ि◌त्त (स्त्र ◌ी धन, स् व णर् आभूश्णों की ि◌बक्र ◌ी आिद) के द्व ◌ा रा भुगतान में अंशदान /सहयोग ि◌कया गया था, सा◌िबत करने का भार अग्र णी वाद की प्र ि◌तवाि◌दनी वपष्चा तवतीर् वाद की वाि◌दनी पर है। परन् तुं इस सम् बन् ध में उसके द्व ◌ा रा बतौरमौ◌ि◌खक साक्षी मुख्य परीक्षा शपथ पत्र प्र पत्र प्रस् तु त ि◌कया गया, परन् तु स् व यं को न्या यालय द्व ◌ा रा पयार्प्त अवसर प्र दान ि◌कये के जाने के पश्चा त भी परी◌ि◌क्ष त नहींकराया गया, न ही कोई दस्ता वेजी साक्ष्य अपनी व्य ि◌क्त गत सम् प ि◌त्त के सम् बन् ध में प्रस्तु त ि◌कया गया है। जब ि◌क इसके ि◌वपरीत यह स् वी कृत तथ्य है ि◌क ि◌ववाि◌दतपलैट का आवंटन वादी सं०-1 पुष्पेन्द्र ि◌सह ि◌सरोही के नाम हु आ था तथा इससम् बन् ध में लीज डीड भी उसी के नाम से ि◌नष् पा ि◌दत हु ई थी। इस प्र कार पत्रा वलीपर उपलब्ध साक्ष्यों के आधार पर स् पष्ट है ि◌क ि◌ववाि◌दत पलैट को क्र य करने केसम् बन् ध में भुगतान अग्र णी वाद के -वादी सं0-1 पुश्पेन्द्र ि◌सह ि◌सरोही द्व ◌ा रा स् व यंअकेले ि◌कया गया था एवं वह अकेले उक्त ि◌ववाि◌दत पलैट का स् वा मी था तथाउसको पलैट ि◌वक्र य करने का पूणर् अिधकार एक मात्र स् वा मी होने के कारणFAPL No. 317 of 2019
9ि◌विधनुसार प्र ◌ाप् त था।"

26. Thus, the findings recorded by the trial Court on the issue are perfect and the said finding is not perverse and is based on cogent evidence.

Point No. 3-Transfer deed is illegal

27. The Appellant contends that the transfer of the disputed flat was made to Plaintiff No. 2 during pendency of suit proceedings, wherein the rights of the Appellant had to be determined and hence the said transfer could not have been executed without taking permission of the concerned Court, thereby violating Section 52 of Transfer of Property Act. The counsel further submitted that the Sale Deed is null and void because the disputed flat was purchased from joint funds, the NOIDA Transfer Memorandum contained a precondition that parties must comply with pending matrimonial proceedings and that the said transfer mischievously took place without the Appellant's knowledge or consent. The Counsel vehemently argued that the transfer deed executed between the Plaintiff of suit no.1 has a false declaration recorded by Plaintiff No.1 that the property sought to be transferred is free from all disputes and litigations pending in any court of law and the said recital has not been objected to by the vendee Plaintiff No.2, which establishes that both the Plaintiffs are complicit and are deliberately hand in glove to defraud the Appellant.

28. Objecting to Appellant's submissions, the learned Senior Counsel for Plaintiff No.2 submitted that the disputed premises was rightfully and lawfully transferred only after issuance of

No Objection Certificate (NOC) by the developer M/s. ATS Infrastructure Pvt. Ltd. For transfer of the flat in question on 08.02.2011, Indemnity Bond was executed by Plaintiff No.2 in favour of Noida showing her willingness to purchase the flat in question on 24.03.2011. Transfer Memorandum was issued by Noida permitting the transfer of the flat in question in favour of Plaintiff No.2 on 25.03.2011, before finally a Transfer Deed-cum-Sale Deed was executed by the Plaintiff No.1 in favour of Plaintiff No.2 of the flat in question for a total consideration of Rs. 95.00 Lacs.

29. The Senior Counsel vehemently submitted that aforesaid facts establish that all requirements of transfer between the parties were complete and the Transferor recorded with Noida his Sub-lease transferring his rights absolutely in favour of the Plaintiff No.2. Admittedly, in the deed that was executed in the year 2006, the name of the Appellant was not recorded with Noida. The said deed is dated 15.06.2006 and is a Tripartite Agreement between the Noida, ATS Infrastructure Pvt. Ltd., and the Plaintiff No.1.

30. It is submitted by Sri Goyal, learned Senior Counsel, that Objection is to the effect that a letter was issued by Noida to the Plaintiff No.2 where-after the Plaintiff No. 2 executed the Indemnity Bond as well as an affidavit mentioning the pendency of the proceedings between the Plaintiff No.1 and the defendant of suit no. 1 before the Court of ACMM, Patilala House, New Delhi. This objection on the face of it is untenable as mere pendency of the said case had no bearing on the execution of the Transfer Deed in favour of Plaintiff no.2. The pendency of the proceedings does not indicate that the Plaintiff No.2 is not bonafide purchaser. Rather it indicates that the Plaintiff No.2 has carried out due diligence before purchasing the lease hold rights and the super structure and has shown her bonafides by putting it on record by understanding the consequences of such case.

31. Moreover, it is evident from the pleading of the Defendant that she claimed her own right of residence in the house that was occupied only with effect from 11.07.2009 at a point of time when her license was terminated by the Plaintiff No.1. It is further argued that in terms of the provisions contained in Section 38 of the Transfer of Property Act, 1882, the Plaintiff No.2 conducted due diligence, used reasonable care to existence of ascertain the circumstances and has acted in good faith before purchasing the property in question. By no stretch of imagination can it be stated that the property in question stood affected by operation of the Protection of Women from Domestic Violence Act, 2005 inasmuch as Section 2(s) read with Section 12, 17 and 19 uses the word "shared household" and does not apply to more than one household. Evidence has already been led and it has come on record that there was more than one household between Plaintiff no.1 and the Defendant, namely another flat in the same group housing, being Flat No. 1083 ATS Green Village Section 934, Noida. Once the intention of the legislature is to restrict the provision to a single household and not extent it beyond one household, the flat in question could not be included in the proceedings that were pending on the date when the Transfer-Cum-Sale Deed came to be executed.

32. In my view, the Indemnity Bond executed by Plaintiff No. 2 on 24.03.2011 was a separate arrangement between Plaintiff No. 2 and NOIDA and not a condition affecting the validity of the Sale Deed. Plaintiff No. 2 undertook to thereby indemnify NOIDA against any adverse outcome of

the domestic violence proceedings, assuming the risk. This does not invalidate the sale deed. Moreover, since the plaintiff no. 1 is the sole owner of the disputed flat, having purchased it with his own funds and without any contribution from the appellant, he had full authority to execute a valid sale deed in favour of the plaintiff no. 2. The sale deed dated 25.3.2011 is therefore valid and effective, and all rights pertaining to the disputed flat have rightly vested in plaintiff no. 2.

Point No. 4- Award of damages

33. The appellant's main argument on the the imposition of aforesaid issue is that imposition of damages at the rate of Rs. 60,000/- per month is harsh and unjust, particularly when she receives only Rs. 75,000/- as monthly maintenance from her estranged husband. The relevant findings given by the Trial Court read as follows:-

"अग्र णी मूलवाद में वाद िवन्दु सं०-1, 5 व पष्चा तवतीर् मूलवाद क' बाद िवन्दु सं0-1, 2, 7, 10, व 11 के िनस् ता रण से यह स् पष्ट है िक अग्र णी वाद की प्र ितवाि◌दनी31 श्र ी मती सोनू िसरोही का िववाि◌दत पलैट पर अन्त रण िवलेख ि◌दनांक-25-03-2011 को िनष् पा ि◌दत होने के पश्चा त् तथा माह मई 2011 में पलैट खाली करने हेतुवाि◌दनी सं०-2 श्र ी मती पूनम अग्र वाल द्व ा रा कहे जाने के पश्चा त् से कब्जा अवैध हैतथा श्र ी मती पूनम अग्र वाल िववाि◌दत पलैट के सम् बन् ध मे प्र ितवाि◌दनी सोनू िसरोहीसे हजार् इस्ते माली प्र ाप् त करने की अिधकाि◌रणी है। हजेर् के सम् बन् ध में वाद पत्र मेंयह अिभकथन िकया गया है िक वाद संि◌स्थ त करने की ि◌तिथ से वाि◌दनी80,000/- रू पये प्र ितमाह हजार् प्र ाप् त करने की अिधकारी हैं। इस सम् बन् ध मेंपत्रा वली पर जिरय सूची पत्र 75ग1 प्र पत्र 82ग छायाप्र ित लीज डीड ि◌दनांक-22-05-2014 बावत् पलैट सं0-1001 ए०टी०एस० ग्र ी न िवलेज, सैक् ट र 93ए,नोएडा प्रस् तु त की गयी है। ि◌जसमें ि◌कराया 80,000/- रू पये प्र ितमाह दिशत है।परन् तु उक्त दस्ता वेज छायाप्र ित हैं जो साक्ष्य में ग्र ा हय नहीं है। इस तथ्य काउल्ले ख मुख्य परीक्षा शपथ पत्र में ि◌कया गया है। परन् तु बतौर पी०डब्लू ०-1 साक्षीFAPL No. 317 of 201912श्री मती पूनम अग्र वाल ने अपनी ि◌जरह में पृष्ठ 6 पर यह अिभकथन ि◌कया है ि◌क "इस पलैट में वषर् 2009 से ि◌करायेदार रोि◌हत शमार् रहा करता था ये 60 हजार रूपया प्र ितमाह का ि◌कराया देता था।" इस प्र कार उसके द्व ा रा स् वी कार ि◌कया गयाहै ि◌क िववाि◌दत पलैट पहले 60,000/- रू पये प्र ितमाह ि◌कराये पर ि◌दया गया थाइस तथ्य के िवपरीत प्र ितवाि◌दनी श्र ी मती सोनू िसरोही की ओर से कोई िवपरीतसाक्ष्य प्रस् तु त नहीं ि◌कया गया है। ऐसी दशा में वाि◌दनी श्र ी मती पूनम अग्र वाल प्रितवादनी सोनू िसरोही से मई 2011 से कब्जा ि◌दये जाने की ि◌तिथ तक प्र ितमाह60,000/- रू पये प्र ितमाह की दर से हजार् इस्ते माली प्र ाप् त करने की अिधकाि◌रणीहैं। वाि◌दनी सं0-2 श्र ी मती पूनम अग्र वाल का वाद सव्य य तदनुसार आज्ञप् त ि◌कयेजाने योग् य है।

34. On consideration of the facts and circumstances, and the arguments advanced, I find that the amount fixed by the trial Court is reasonable at Rs. 60,000/- per month, especially considering that this was the rental income generated from the disputed flat when it was occupied by tenant Rohit Sharma (rent agreement dated 24.6.2008). The appellant has been enjoying the property since a long time and there is every likelihood that the rental value of the flat in dispute would have substantially increased over the years, while she remained in possession. Be that as it may, Rs. 60,000/- per month is a fair measure of compensation for the loss suffered by the rightful owner (plaintiff no. 2) during the period of unlawful occupation by the appellant.

35. From the discussion made above and also from perusal of oral and documentary evidence it is established that the trial Court has rightly decreed the Original Suit No. 1199 of 2009 and has rightly dismissed the Original Suit No. 1187 of 2011.

36. The Apex Court in case of ***Nirmala Devi Vs. Gurgaon Schedule Caste and Vimukta Agriculture Thrift and Credit Society Limited and Others (2021) 8 SCC 785*** has held that the findings of facts recorded by the trial Court particularly relating to ownership and possession of immovable property should not be disturbed in appeal unless there is compelling reason to do so. In the present appeal, no compelling reason has been brought on record. The learned counsel for the appellant has to demonstrate that any finding recorded by the trial Court, especially with regard to ownership and award of damages is perverse and contrary to evidence on record.

37. Thus both the First Appeals are hereby dismissed and the judgment and decree dated 11.12.2018 passed by the Civil Judge (Senior Division), Gautam Budh Nagar in Original Suit No. 1199 of 2009 and Original Suit No. 1187 of 2011 are affirmed.

38. Registry is directed to return the original records of the aforesaid appeals to the Court below within a week.

(2026) 2 ILRA 1210
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 702 of 2025

Nagar Nigam Ghaziabad & Anr. ...Appellants
Versus
Indra Mohan Sachdev ...Respondent

Issues for Consideration

(i) Whether the trial court was justified in decreeing the suit for mandatory injunction directing mutation of the plaintiff's name in municipal records on the basis of an earlier ex parte decree;
(ii) Whether the earlier decree dated 31.05.2022 passed in O.S. No.1126 of 2019 was a nullity having been passed against a dead person;
(iii) Whether payment of house tax or entries in municipal records confer title;
(iv) Whether the impugned judgment and decree suffered from perversity warranting interference in the appeal.

Headnotes

Civil Procedure Code, 1908 — Decree — Passed against dead person — Effect:
Held: Where the earlier suit was filed and decreed against a person who had died prior to institution of the suit, such decree is a nullity and does not confer any right, title or interest, and its invalidity can be set up whenever it is sought to be enforced. [Para 38]

Civil Procedure Code, 1908 — Ex-parte decree — Reliance — Validity:

Held: Where the trial court decreed the suit solely relying upon an earlier ex-parte decree which itself was a nullity, the impugned decree based thereon was legally unsustainable. [Paras 34, 43]

Evidence — Documentary evidence — Death certificate — Admissibility:

Held: Where copy of death certificate was part of judicial record and supported by earlier proceedings in which substitution had taken place, rejection of such document merely on the ground of being a photocopy was unjustified. [Para 36]

Property Law — Title — Proof — Mutation and tax entries:

Held: Mere payment of house tax or entry in municipal records does not confer ownership, and title must be established independently in accordance with law. [Para 41]

Property Law — Adverse possession — Tenant — Claim:

Held: A person who entered into possession as a tenant cannot claim ownership by adverse possession against the landlord, as such possession is permissive and the tenant is bound to restore possession to the owner. [Para 42]

Civil Procedure Code, 1908 — Mandatory injunction — Mutation — Entitlement:

Held: Where the plaintiff failed to establish title and the property records did not disclose ownership of the alleged predecessor, no direction could be issued to municipal authorities to mutate the plaintiff's name. [Para 39]

Civil Procedure Code, 1908 — Findings of trial court — Perversity:

Held: Where the trial court ignored material evidence, relied upon a void decree and granted relief contrary to settled legal principles, the findings were perverse and unsustainable. [Paras 36, 43]

Civil Procedure Code, 1908 — Appeal — Interference:

Held: Where the impugned judgment and decree were based on a nullity and suffered from perversity, the appellate court was justified in setting aside the decree and dismissing the suit. [Paras 45–46]

Appeal allowed. (E-14)

Case Law Cited

Vikram Bhalchandra Ghongade v. State of Maharashtra and others, **2025 SCC OnLine SC 2360 — relied on;** ***Ashok Transport Agency v. Awadhesh Kumar,*** **(1998) 5 SCC 567 — relied on***; Brij Narayan Shukla (Deceased) through LRs v. Sudesh Kumar,* **(2024) 2 SCC 590 — referred to***; Commissioner, Bruhath Bangalore Mahanagara Palike v. Faraulla Khan,* **2021 SCC OnLine SC 3633 — referred to***; P. Kishore Kumar v. Vittal K. Patkar,* **(2024) 13 SCC 553 — referred to***; State of Punjab v. Bhagwantpal Singh,* **(2024) 15 SCC 139 — referred to.**

List of Acts / Statutes

Code of Civil Procedure, 1908.

List of Keywords

Nullity of decree; Dead person; Ex-parte decree; Mutation; House tax; Adverse possession; Tenant; Mandatory injunction; Perversity**.**

Case Arising From

Judgment and decree dated 13.05.2025 passed by Civil Judge (Senior Division), Ghaziabad in O.S. No. 960 of 2024 (Indra Mohan Sachdev vs. Nagar Nigam Ghaziabad and another).

Appearance for Parties

For the Appellants: Smt. Shreya Gupta
For the Respondents: Sri Shivam Yadav

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

(1) The instant appeal has been filed by the defendants under section 96 CPC against the impugned judgment and decree dated 13.5.2025 passed by the court of Civil Judge(Senior Division), Ghaziabad in O.S. No. 960 of 2024 Indra Mohan Sachdev vs. Nagar Nigam Ghaziabad and another whereby, the plaintiff 's suit for mandatory injunction has been decreed.

Plaint case

(2) The plaintiff filed O.S. No. 960 of 2024 against the defendants with the averments that he is the owner in possession of plot no. 9, Anand Industrial Estate, GT Road, Ghaziabad, on the basis of judgment and decree dated 31.5.2022 passed by the Additional Civil Judge (Senior Division) Court No. 4, Ghaziabad in O.S.no.1126 of 2019 Indra Mohan Sachdev vs.Smt. Sushila Mehra. The plaintiff further averred that the above O.S. no.1126 of 2019 was decreed ex-parte and he was declared the owner of the above plot on the basis of adverse possession and it was further decreed by the court that the plaintiff was not to be evicted, except by adopting due procedure of law.

(3) The plaintiff further averred that the judgment and decree passed in O.S.no.1126 of 2019 has attained finality since it has not been challenged by anyone in a court of law, as such it is binding and effective.

(4) It was further averred by the plaintiff that he has deposited tax of the above property amounting to ₹ 28,690/- on 15.6.2022 with the defendant Nagar Nigam Ghaziabad, which was accepted by it without any objection, and thereafter, the plaintiff was regularly making payment of tax.

(5) It was further averred by the plaintiff that since he is the owner in possession of the disputed plot, he was entitled to get his name entered as a owner regarding the disputed plot in the records of Nagar Nigam, Ghaziabad and for doing so, he moved an application dated 13.6.2022 for entering his name in the property register of the Nagar Nigam ,Ghaziabad, which was supported by his affidavit and the certified copy of the judgment dated 31.5.2022 passed by the court in the above mentioned case, and he also personally met the Tax Supdt. and requested him to enter his name in the records of Nagar Nigam ,Ghaziabad but no action was taken by him. It was further averred that he gave a legal notice through his Advocate Parvinder Kumar on 17.9.2022 under section 571 of the Nagar Nigam Act to the defendants, which was also received by them, but even then, his name has not been entered in the property register of the defendant Nagar Nigam, Ghaziabad.

(6) It was further averred by the plaintiff that currently, the above plot is registered as property no. 12/9 poultry house, having PIN no. 31329 and the mobile number 9350237758 of his security guard Hemant is registered on this property, in the records of the Nigam Ghaziabad. In this

backdrop, when the plaintiffs name was not registered as owner in the records of the defendants, the plaintiff was compelled to file the instant suit, for the following relief:-

''By decree of mandatory injunction granted in favour of the plaintiff against the defendants, the Nagar Nigam, Ghaziabad be directed to enter the name of plaintiff as owner of property no. 9, new no. 12/9 Anand Industrial Estate, GT Road, Ghaziabad within a time fixed by the Court."

Case of the defendants

(7) The defendants filed the written statement before the trial court in which they denied the plaint averments. It was averred that in O.S. no. 1126 of 2019, Nagar Nigam Ghaziabad was not impleaded as a party to the suit, hence the defendants are not aware of the correct facts of that case. It was further averred that in Miscellaneous Case No. 29 of 2022 Indra Mohan Sachdev vs. Nagar Nigam, Ghaziabad, which was pending before Additional Civil Judge (Senior Division) Court No. 4 Ghaziabad, Nagar Nigam, Ghaziabad was impleaded as a party, in which it came to know that Smt. Sushila Mehra has died on 02.04.1996 in Heritage Medical Centre,Hyderabad, Andhra Pradesh, whose death certificate was provided to it by the owner of Muraga Khana, which was issued by Municipal Corporation, Hyderabad. It was further averred that mutation in the records of the Nagar Nigam is made according to the legal provisions. It was averred that the plaintiff has concealed the facts of Miscellaneous Case no. 29 of 2022. It was further averred that the plaintiff has filed the suit on wrong facts by concealing the true facts. It was further averred that the plaintiff had obtained the decree in O.S. no.1126 of 2019 by concealing true facts.

(8) It was further averred that when an objection was filed by Nagar Nigam, Ghaziabad in Miscellaneous Case no. 29 of 2022 then, the plaintiff absented himself and in his absence, the case was dismissed on 21.2.2023. The plaintiff 's suit was barred by res- judicata and also under Order 7 Rule 11 CPC. It was further averred that previously litigation took place in Delhi High Court between Nandkishore Mehra and Sushila Mehra which was O.S. no. 339 of 1992, in which Nandkishore Mehra was declared as the owner of the disputed property. It was further averred that currently the disputed plot is registered as Muraga Khana, in its property records. Sushila Mehra was not recorded as a owner of the above property. With these submissions, it was prayed that the suit be dismissed with special costs under Section 35-A CPC.

Issues framed and evidence on record

(9) On the basis of the pleadings of the parties, the following issues were framed by the trial court:-

(i)Whether on the basis of plaint averments, the plaintiff is entitled to get the decree of mandatory injunction, for getting his name registered as owner of the disputed property no. 9, new no.12/9 Anand Industrial Estate, GT Road, Ghaziabad in the property register of the defendant ?

(ii)Whether the plaintiff ' s suit is under valued ?

(iii)Whether the court fee paid by the plaintiff is insufficient ?

(iv)Whether the suit is barred under Order 7 Rule 11 CPC ?

(v)Whether defendants are entitled to special costs of ₹50,000/- under Section 35-A CPC from the plaintiff ?

(vi) To what relief the plaintiff is entitled ?

(10) In documentary evidence the plaintiff has filed the certified copy of the decree dated 31.5.2022 , copy of the notice dated 13.6.2022 given to Nagar Nigam, Ghaziabad,copy of legal notice, receipt of house tax deposited with the Nagar Nigam Ghaziabad ,etc. The defendants have filed the copy of the death certificate of Sushila Mehra, plaint of suit no.339 of 1992 Nandkishore Mehra vs. Sushila Mehra, written statement of Sushila Mehra filed in suit no. 339 of 1992, substitution application moved by Nandkishore Mehra in suit No. 339 of 1992, ex-parte judgment of the High Court of Delhi in suit no. 339 of 1992 dated 7.5.1999.

(11) Before the trial court, the plaintiff Indra Mohan Sachdev examined himself as PW-1 and his son Tarun Sachdev as PW-2. On behalf of defendants, Kailash Chand was examined as DW-1.

(12) The plaintiff Inder Mohan Sachdev PW-1 in his cross-examination deposed that his father obtained the disputed plot on a rental of Rs.450/- per month, and after the death of his father, he continued to deposit the rent. He paid the rent till the year 1996 to Sushila Mehra , and thereafter, he stopped making payment because his possession became adverse, on the disputed property. He admitted that after the year 1996 he did not meet Sushila Mehra . He feigned ignorance that Sushila Mehra died in the year 1996. He also feigned ignorance that the legal heir of Sushila Mehra has filed an application for setting aside the ex-parte decree, which was pending for disposal.

(13) The plaintiffs son Tarun Sachdev PW-2 in his cross examination deposed that he deposits the house tax of the disputed property with Nagar Nigam, Ghaziabad. He admitted that currently, the house tax is deposited in favour of Muraga Khana, since he is its owner.

(14) Kailash Chand DW-1 deposed in examination-in-chief that the disputed property is recorded as Muraga Khana in the property records of the Nagar Nigam, Ghaziabad, whereas, in O.S.no.1126 of 2019, no such order was passed by the court to record the name of plaintiff as owner of Muraga Khana, as such, the plaintiff must prove on what basis he is claiming ownership of Muraga Khana.

Reasoning of the trial court

(15) The trial court on the basis of decree dated 31.5.2022 passed in O.S. no.1126 of 2019 concluded that plaintiff was the owner in possession of the disputed property, which has not been set-aside by any competent court, which was not challenged by the defendants before the appellate court, as such, the defendants were bound to obey the decree passed in that suit. It was further concluded that the alleged death certificate of Sushila Mehra was not proved in accordance with

law, as such, it was inadmissible. It was further concluded that the defendants should have verified the death of Sushila Mehra, but they have not done so. It was further concluded that since the defendants were realising the tax of the disputed property, as such, they cannot refute the ownership of plaintiff in the disputed property. It was further concluded that the plaintiff was regularly paying the tax of the disputed property, being its owner. The trial court rejected all the documentary evidence of the defendants on the ground that it was photo copy, and in the absence of corroborative evidence, it was inadmissible in evidence.

(16) The trial court blindly relying on the decree dated 31.5.2022 has rejected all the objections of the defendants, and has accordingly, decreed the suit by impugned judgment dated 13.5.2025, which has been challenged by the defendants by filing the instant appeal under section 96 CPC.

Submissions of the learned counsel of the parties

(17) Ms.Shreya Gupta learned counsel for the defendant-appellants submitted that the ex-parte decree dated 31.5.2022 was obtained by the plaintiff in O.S. no. 1126 of 2019 by suppressing true and material facts from the court , which was obtained against dead defendant Sushila Mehra, as such, the decree was a nullity, which was not binding on any person, leave alone defendants, but still, the trial court has overlooked this fact deliberately and has passed the impugned decree, which is unsustainable, illegal and on the basis of which no right, title and interest in the disputed property has accrued in favour of the plaintiff.

(18) Learned counsel further submitted that the trial court was not right in rejecting the documentary evidence of the defendants, which was part of the judicial record of the High Court of Delhi, which could have been verified and which also included the copy of the death certificate of Sushila Mehra, which was admissible in evidence, but even that document was ignored by the trial court, which is the height of perversity.

(19) She further submitted that on the basis of payment of house tax, a person cannot be presumed to be the owner of the disputed property, as such, merely on this ground that the house tax payment made earlier by the plaintiff was accepted by the defendants, is not a ground to grant any relief to the plaintiff.

(20) It was further submitted that plaintiff averred in O.S.no. 1126 of 2019 that previously Sushila Mehra was the owner of the disputed property but from the documentary evidence submitted by the defendants, it was proved that she was not the registered owner in the property record of the Nagar Nigam Ghaziabad, and this property was registered as Muraga Khana.

(21) She further submitted that as per the oral evidence of plaintiff, he was a tenant of the disputed property, who acquired ownership of it on the basis of adverse possession, which was legally impermissible. She submitted that the plaintiff could never have acquired ownership of the disputed property, on the basis of adverse possession, but this fact was overlooked by the trial court, which insisted for compliance of the decree, which was a nullity.

(22) She further submitted that under no circumstances the suit could have been decreed in favour of the plaintiff and the trial court has certainly, for extraneous considerations, decreed the suit illegally against all legal provisions. With these submissions, it was prayed that the appeal be allowed and the impugned judgment and decree be set aside and further disciplinary proceedings be also initiated against the trial judge for passing such perverse order.

(23) In support of her submission, learned counsel has relied upon the case law of the Apex Court titled ***Vikram Bhalchandra Ghongade vs. The State of Maharashtra and others 2025 SCC OnLine SC 2360.***

(24) Shri Shivam Yadav learned counsel for the plaintiff respondent very fairly admitted that Sushila Mehra has died on on 2.4.1996, as such, the decree passed against her in O.S. no.1126 of 2019 was a nullity, on the basis of which, the plaintiff has not acquired any right title and interest in the disputed property. It was further submitted that the plaintiff was not aware of the death of Sushila Mehra, as such, no fraud was committed by him on the court.

(25) I have heard the learned counsel of both the sides and perused the record of the trial court.

Precedents applicable

(26) The Apex Court in the case of ***Vikram Bhalchandra Ghongade*** (supra),while considering the situation where the defendant appellants died during the pendency of appeal, whose legal heirs were not substituted on record, concluded that since the appeal decided after the death of appellants was a nullity, as such, the decree of the trial court in favour of plaintiff was executable. The relevant paras of the judgment are as under:-

"10. Having heard the appellant-in-person as well as the learned counsel for the respondents, we are of the view that the executing Court erred in dismissing the execution petition as not maintainable. The decree passed by the first appellate Court having been passed in an appeal, where both the appellants had expired prior to the appeal being heard, its decree in favour of dead persons was a nullity. The decree passed by the trial Court, therefore, is liable to be executed.

11. It is not in dispute that the suit filed by the predecessors of the appellant was decreed on 14.08.2006. The trial Court declared the original plaintiffs as owners of the suit land that had been allotted to Mr. Arjun Thakre. The plaintiffs were held entitled to receive possession of the said lands. The subsequent allotment of the same land in favour of defendant Nos. 3 to 5 was held to be illegal. The defendant No. 3 did not choose to challenge this decree. It is only the defendant Nos. 4 and 5, who preferred an appeal under Section 96 of the Code. During pendency of that appeal, the defendant No. 4 expired on 27.10.2006, while the defendant No. 5 expired on 20.09.2010. The record indicates that the appeal was heard on 28.09.2010. As per the provisions of Order XXII Rule 6 of the Code, if a party expires between the conclusion of hearing and pronouncement of the judgment, the same does not result in abatement of such proceedings and the judgment on being pronounced, would have the same force and effect as if it had been pronounced before the death of such party took place. In view of the fact that the defendant Nos. 4 and 5 had died prior to the

appeal being heard on 28.09.2010, it is evident that the proceedings in the said appeal are not saved by the provisions of Order XXII Rule 6 of the Code. In effect, the appeal was decided notwithstanding the death of both the appellants, who had preferred the appeal.

12. According to the executing Court, since the appeal was decided on 20.10.2010, which was prior to expiry of a period of ninety days from the death of defendant No. 5 on 20.09.2010, the appeal could not have been disposed of as abated. It is correct that the abatement of a proceeding cannot take place prior to expiry of the prescribed period of limitation of ninety days under Article 120 of the Limitation Act, 1963 for bringing on record the legal heirs. Notwithstanding this position, the fact remains that prior to the appeal being heard and thereafter decided, both the appellants who had filed the said appeal were no more. The judgment pronounced in the first appeal on 20.10.2010 was, thus, in favour of the parties who were no more alive. The said adjudication, therefore, amounted to a nullity and the same did not have the force of law. This position is not in doubt and we may only refer to the decisions in Rajendra Prasad v. Khirodhar Mahto 1994 Supp(3) SCC 314 and Amba Bai v. Gopal 2001 INSC 263 in this regard. The appellant, therefore, is justified in contending that the decree passed by the first appellate Court was a nullity as it was passed in favour of the appealing parties, who had expired prior to the appeal being heard and decided. As a result, the only decree that could be enforced was the one passed by the trial Court on 14.08.2006.

13. In our view, therefore, the appellant is justified in seeking execution of the decree passed by the trial Court on the premise that the decree passed by the first appellate Court was a nullity having been passed in favour of dead persons. We are fortified in this view by the decision in Bibi Rahmani Khatoon v. Harkoo Gope (1981) 3 SCC 173, wherein it was held as under:

"If a party to a proceeding either in the trial Court of any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final."

These observations though made in the context of abatement of proceedings, the same position would arise when the appellant/s expires prior to hearing of the appeal, which is subsequently allowed without the legal heirs being brought on record. In the case in hand, the judgment in favour of the deceased appellants would be a nullity in the absence of the legal heirs being brought on record and the judgment of the trial Court would be the one that would govern the rights of the parties. Hence, the decree passed by the trial Court would revive for being executed.

14. The execution proceedings herein could not have been dismissed on the ground that the decree passed by the trial Court was superseded by the decree passed by the first appellate Court and was modified. Since the decree of the first appellate Court was a nullity, the plaintiffs were entitled to execute the decree passed by the trial Court. It is well settled that if a decree is a

nullity, its invalidity can be set up whenever and wherever it is sought to be enforced, even at the stage of execution as held in Kiran Singh v. Chaman Paswan 1954 INSC 45."

(27) The Apex Court in the case of ***Ashok Transport Agency vs. Awadhesh Kumar and another (1998) 5 SCC 567,*** while considering a case, where suit was instituted against a dead person and the decree was also passed against a dead person held that, the decree was nullity which could not be executed.

(28) The Apex Court in the case of ***Brij Narayan Shukla (Deceased) through LR's vs. Sudesh Kumar alias Suresh Kumar (Deceased) through LR's and others (2024) 2 SCC 590,*** while considering a case where tenant was inducted into the tenancy prior to the year 1944, who was claiming ownership on the basis of adverse possession but the disputed sale deed was executed in his favour only in the year 1966, in such circumstances, it was held that since the possession of the tenant was permissive against the landlords, no question arises of them claiming any adverse possession.

(29) The Apex Court in the case of Commissioner, ***Bruhath Bangalore Mahanagara Palike and Another vs Faraulla Khan and Another 2021 SCC OnLine SC 3633 (By 3 Judges),*** held as under:-

"2. ....It is well settled that mutation entries do not by themselves confer title which has to be established independently in a declaratory suit."

(30) The Apex Court in the case of ***P. Kishore Kumar vs. Vittal K.Patkar (2024) 13 SCC 553*** has held that revenue records are not documents of title, mere mutation of revenue records would not divest the real title owners of a land of their right, title and interest in the land. It was further held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question and the mutation entry in the revenue record is only for the fiscal purpose.

(31) The Apex Court in the case of ***State of Punjab and Others vs Bhagwantpal Singh alias Bhagwant Singh (Deceased) through LR"s (2024) 15 SCC 139,*** held as under:-

"27. ...In the present case, merely because the name of the plaintiff continued in the revenue records (jamabandis), it would not confer any title upon him. Revenue records (jamabandis) are only entries for the purpose of realising tax by the Municipal Corporations or land revenue by Gram Sabhas. The plaintiff having failed to claim relief of declaration, the suit itself would not be maintainable....."

Conclusion by this Court

Analysis of decree passed in O.S.no.1126 of 2019

(32) From the perusal of the earlier judgment of the trial Court dated 31.5.2022 passed in O.S. no.1126 of 2019 Indra Mohan Sachdev vs.Smt. Sushila Mehra it appears that it was filed by the plaintiff for the relief of declaration and permanent injunction with the averments that his father Parmanand was a licensee in the disputed property from 07.07.1969 for monthly rent of ₹ 450/-, which was refused by the defendant in the year 1990, and since then the plaintiff proclaimed himself to be the owner in possession of the disputed property. He claimed that the defendant since the year 1969 never gave him any legal notice to vacate the disputed premises, since then, his possession was open,hostile and continuous and as such, he has acquired ownership of the disputed property by adverse possession. The plaintiff further claimed that since the year 1991 he is regularly depositing house tax and water tax with Nagar Nigam, Ghaziabad. The plaintiff admitted that previously the defendant had filed P.A.Case No. 64 of 1984 Sushila Mehra vs.Indra Mohan under Section 21 of UP Act No. 13 of 1972, which was dismissed on 7.1.1989, an appeal no. 42 of 1989 was preferred by Sushila Mehra against him, which was also dismissed. Plaintiff claimed that some anti social elements came to his disputed property on 25.9.2019 and threatened him to forcibly evict, as such, the plaintiff filed the suit for declaration that he be declared the owner in possession of the disputed property on the basis of adverse possession and further, by decree of permanent injunction granted in his favour, against the defendant, the defendant be restrained from interfering in this peaceful possession.

(33) Service on the defendant Sushila Mehra was deemed sufficient on 16.12.2021 and when she failed to appear and submit her written statement before the trial court, then by order dated 28.3.2022, suit was proceeded ex-parte against her and finally decreed ex-parte on 31.5.2022. The trial court concluded that since plaintiff was in continuous possession of the disputed property since 1990, he was entitled to be declared owner in possession of the disputed property by adverse possession.

Proceedings of this suit

(34) It is very much apparent that the trial court has relied on the earlier ex-parte decree passed in O.S. no.1126 of 2019, for decreeing the plaintiff 's instant suit.

(35) The defendants/appellants filed the copy of death certificate of Sushila Mehra and the photo copy of documents related to suit no. 339 of 1992 Nand Kishore Mehra vs. Sushila Mehra, which disclosed during the pendency of the above suit, she died on 02.4.1996, and for bringing her legal heir on record substitution application was filed by her husband Nand Kishore Mehra in the above suit which was allowed, and ultimately the suit was also decreed ex-parte by the High Court of Delhi on 7.5.1999.

(36) The trial court has rejected the photo copy of the death certificate of Sushila Mehra on the ground that it was inadmissible in evidence, forgetting that on the basis of that certificate, substitution has already been effected in the suit No. 339 of 1992 and the suit has also been decided. It is pertinent to mention here that death and birth certificates are never filed in the original because they always remain with the person concerned or his/her legal heirs, and in a judicial or quasi-judicial proceeding, only a true copy of them is filed. It is further pertinent to mention here that the defendants being the 3rd parties, could never have benefitted from filing the

false death certificate of Sushila Mehra. In view of this, there was no justifiable reason for the trial court to ignore the copy of the death certificate of Sushila Mehra.

(37) It is further apparent that after the passing of the above ex-parte decree dated 31.5.2022 in O.S.no. 1126 of 2019, Miscellaneous Case No. 13 of 2023 has already been filed by Amod Mehra , being the legal heir of deceased Sushila Mehra under Order 9 Rule 13 CPC for setting aside the above ex-parte decree, on the ground that Sushila Mehra died on 2.4.1996, before the filing of the suit, which was proved from the death certificate issued on 4.4.1996 by Municipal Corporation of Hyderabad, a copy of which was filed by the defendants in the instant suit before the trial court, which was ignored on the ground of being photo copy, being inadmissible in evidence. The question is whether the defendants are claiming ownership of the disputed property, which is certainly not, then what would the defendants gain by claiming that Sushila Mehra has died on 02.04.1996 ? Sushila Mehra being dead or alive, the defendants are not going to acquire / inherit the ownership of the disputed property, as such, there was no justifiable reason to doubt the copy of the death certificate of Sushila Mehra submitted by the defendants.

(38) It is apparent that O.S. no.1126 of 2019 was filed in the year 2019, which was decided on 31.5.2022, but much prior to the filing and decision of the suit, Sushila Mehra had previously died on 2.4.1996, as such, applying the ratio laid down by the Apex Court in the cases Vikram Bhalchandra Ghongade (supra) and Ashok Transport Agency (supra), the decree passed in O.S.no.1126 of 2019 was a nullity, which did not confer any right title or interest in the disputed property in the plaintiff and as such, wherever and whenever the decree was sought to be enforced by the plaintiff, it could have been resisted by the defendants on the ground of being a nullity, which does not act as res-judicata, in any manner whatsoever.

(39) The plaintiff has himself averred and proved that the disputed property is recorded as Muraga Khana in the property records of Nagar Nigam,Ghaziabad, whereas it should be in the name of Sushila Mehra . The plaintiff 's name can only be entered in the property register if the previous owner was Sushila Mehra , which was not proved from the documentary evidence submitted by the plaintiff before the trial court. The extract of the property ledger as well as, the house tax/water tax/Sewer tax bill only disclose that the disputed property is Muraga Khana. Who is the owner of Muraga Khana is not mentioned in the above documents, as such, even on the basis of the ex-parte decree passed in O.S.no. 1126 of 2019, plaintiffs name could not have been entered as the owner in possession of the above property, but the trial court has deliberately overlooked this fact.

(40) It is further apparent that the plaintiff has filed house tax receipts of the disputed property in order to prove that he is regularly paying the house tax and other taxes of the disputed property to the Nagar Nigam, Ghaziabad being the owner, and on the basis of these receipts, he has tried to prove his ownership of the disputed property.

(41) It is well settled that merely on the basis of payment of house tax of the disputed property, neither any one acquire its ownership nor can proclaim to be its owner, and merely on the basis that the person is recorded as owner in the property register of Municipal Corporation, does

not become the owner of the disputed property. Such person has to prove his/her ownership in accordance with law.

(42) It is apparent that the plaintiff's father Parmanand took the disputed property on rental from Sushila Mehra in the year 1969, and according to the plaintiff till the year 1996 he paid rent to Sushila Mehra,but thereafter, since he became owner due to adverse possession, he did not pay any rent to Sushila Mehra . It is pertinent to note that it was Sushila Mehra who gave possession of the disputed property to the plaintiff's father, which was never handed back to Sushila Mehra or her legal heirs, as such, the plaintiff was not entitled to claim ownership of disputed property on the basis of adverse possession, but still, original suit no.1126 of 2019 was filed and decreed on this ground by the trial court on 31.5.2022. It is well settled that once having entered the disputed property as a tenant, the tenant is not entitled to claim its ownership on the basis of adverse possession, because the tenant is bound to hand over the vacant possession of the disputed property to the landlord/owner and he cannot deny the title of his landlord in the disputed property.

(43) It is apparent that the trial court has in total disregard of the legal provisions and evidence on record, has decreed the plaintiff 's suit by impugned judgment , merely on the basis of earlier decree dated 31.5.2022 passed in O.S. no.1126 of 2019, which was a nullity, which conferred no right title or interest in the plaintiff regarding the disputed property, but still the trial court has relied on this void decree, to grant relief to the plaintiff, which is inexplicable and legally unsustainable.

Conduct of the trial Judge

(44) The reason assigned by the trial court for ignoring the death certificate of Sushila Mehra is shocking, perverse and tainted with extraneous considerations. The trial court purposely in order to cause illegal gain to the plaintiff has ignored it, which needs to be deprecated. The conduct of the trial Judge is not above board, who has either due to extraneous reasons or due to lack of competence, has passed the impugned decree, which cannot be legally justified in any manner whatsoever. It is a case of deliberate judicial misconduct, which renders the integrity of the Judge doubtful.This is a case which shocks the conscience of this Court that how could a Judge act in this manner, in order to cause wrongful gain to the plaintiff. The facts of the case speak for themselves, the blatant manner in which law has been flouted and justice has been denied. It is a case of daylight judicial murder.

(45) Accordingly, the appeal has got merit and is liable to be allowed.

(46) **The appeal is hereby allowed**. Consequently, the impugned judgment and decree dated 13.5.2025 is set aside. Plaintiffs original suit no. 960 of 2024 stands dismissed with costs throughout.

(47) Office is directed to place this file before the Hon'ble the Chief Justice for taking appropriate action on the administrative side against Trial Judge Shri Jasveer Singh Yadav, the then Civil Judge (Senior Division), Ghaziabad for passing such blatant, dishonest and illegal order.

(2026) 2 ILRA 1222
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Second Appeal No. 777 of 1981

Shri Devi Dayal ...Appellant
Versus
Nagar Mahapalika Kanpur ...Respondent

Issues for Consideration

(i) Whether the findings of the courts below that the plaintiff was a licencee and thereafter a trespasser, and not a tenant or asami, suffered from any illegality warranting interference in second appeal under Section 100 CPC;
(ii) Whether the questions framed by the appellant constituted "substantial questions of law" within the meaning of Section 100 CPC.

Headnotes

Civil Procedure Code, 1908 — Section 100 — Second Appeal — Substantial question of law — Scope:

Held: A second appeal is maintainable only on a substantial question of law. A question of law must be debatable, not settled- must have material bearing on the rights of the parties. Questions not arising from pleadings or based on findings of fact-cannot be treated as substantial questions of law. [Paras 16, 25, 28]

Civil Procedure Code, 1908 — Second Appeal — Concurrent findings of fact — Interference:

Held: The High Court will not interfere with concurrent findings of fact recorded by the courts below unless such findings are perverse, based on no evidence- suffer from misapplication of law. Where findings are based on appreciation of evidence, no interference is warranted. [Paras 29]

Property/Tenancy Law — Licencee vis-à-vis tenant — Proof of tenancy:

Held: Mere payment of lagan and production of receipts without any document of lease or tenancy does not establish tenancy rights. Where possession was initially permissive for a limited period. Such possession is that of a licencee. Thereafter, if continued, it becomes that of a trespasser. [Paras 4, 26]

Pleadings — Proof — Evidence beyond pleadings:

Held: No evidence can be led beyond pleadings. Where the plaintiff's case was based on tenancy and not on status as 'asami'. Such plea cannot be subsequently relied upon to claim rights. Findings must be confined to pleadings. [Paras 25, 27]

Admission — Nature — Order XII Rule 6 CPC:

Held: An admission must be clear, unequivocal and unconditional to be acted upon. Observations in pleadings or findings which do not amount to such admission- cannot confer any right upon the plaintiff. [Para 27]

Second Appeal — Re-framing of questions of law — Validity:

Held: Questions framed by the appellant not properly worded- not arising from pleadings or findings of fact-do not constitute substantial questions of law. Such questions cannot be considered for adjudication in second appeal. [Paras 12–13, 25]

Civil Procedure Code, 1908 — Second Appeal — Result:

Held: In the absence of any substantial question of law, concurrent findings that the plaintiff was only a licensee for a limited period, thereafter a trespasser, the second appeal was liable to be dismissed. [Paras 28–30]

Second appeal dismissed. (E-14)

Case Law Cited

Chandrabhan (Dead) through LRs v. Saraswati, **2022 SCC OnLine SC 1273 — relied on**; Santosh Hazari v. Purushottam Tiwari, **(2001) 3 SCC 179 — referred to**; Srinivas Raghwendrarao Desai v. V. Kumar Vamanrao @ Alok, **2024 INSC 165 — relied on**; Rabindranath Panigrahi v. Surendra Sahu, **2025 INSC 333 — relied on**; Murthy v. C. Saradambal, **(2022) 3 SCC 209 — relied on**; Hero Vinoth v. Seshammal, **(2006) 5 SCC 545 — relied on**.

List of Acts / Statutes

Code of Civil Procedure, 1908; Specific Relief Act, 1963

List of Keywords

Second appeal; Substantial question of law; Concurrent findings; Licencee; Tenant; Trespasser; Lagan receipts; Pleadings; Admission; Interference.

Case Arising From

Judgment dated 29.05.1976 passed by Trial Court in Suit No. 2154 of 1971 and judgment dated 18.12.1980 passed by Second Additional Civil Judge, Kanpur in Civil Appeal No. 275 of 1976**.**

Appearance for Parties

For the Appellant: Sri P.D. Kaushik, Sri R.C. Sinha, Sri Yadvesh Yadav
For the Respondents: Sri Lalji Sinha, Sri Ramesh Upadhyay, Sri Shashi Shekhar Mishra

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

1. This is a plaintiffs's Second Appeal, filed against the judgment dated 29.5.1976, whereby a suit filed by him was dismissed and appeal thereof was also rejected by the First Appellate Court by a judgment dated 18.12.1980.

2. The plaintiffs/appellant has filed a Suit bearing No.2154 of 1971, for permanent injunction against the defendants nos. 1 and 2 (Respondent nos.1 and 2) restraining them from cutting down the crops and also from disturbing his possession over the disputed plots.

3. The appellant/plaintiff has set up a case that he was a tenant in the agricultural plots (plots in suit) of Nagar Mahapalika, Kanpur (defendant no.1), the owner.

4. Later on, admittedly, suit land was transferred to Kanpur Development Authority. Plaintiff's claim was basically based on an averment that suit land was orally given to him as a tenant by Defendant No.1 for agriculture and his possession continued thereafter for many years and he paid Lagan also, and receipts thereof were issued, though admittedly except receipts, plaintiffs has not brought on record any document, such as lease (Patta) that he was the tenant of agricultural plots.

5.Per contra, the defendants have mentioned in their Written Statement that plaintiff was a licensee for one fasli year and subsequently he was in possession of land in suit as trespasser. Para 14 of Written Statement being relevant is mentioned hereinafter:

14. That the plaintiff is a trespasser and is not entitled to claim any injunction. The plaintiff has no right to claim any interest over the land in dispute. The suit is barred by section 41 of the Specific relief Act.

6. The learned Trial Court framed 9 issues and issue no.2 being most relevant is mentioned hereinafter:-

" Whether the plaintiff is the tenant of the plots in suit as alleged by him or whether the plaintiff is licencee as alleged by the Nagar Palika in paragraph no. 14 of Written Statement"

7. Learned Trial Court vide judgment dated 29.5.1976 dismissed the suit with a cost and returned a finding that plaintiffs came into possession in the disputed plots with permission of defendant no.1, for only one year, therefore, plaintiffs' was a licencee of the defendant no.1 and not a tenant.

8. The plaintiffs/appellant being aggrieved by the judgment dated judgment dated 29.5.1976 filed a First Appeal before Second Additional Civil Judge, Kanpur bearing No.275 of 1976, which was dismissed vide judgment dated 18.12.1980 and finding returned by learned Trial Court that plaintiffs/appellants were tenant of defendant was upheld. It was also specifically held that plaintiffs/appellant does not claim himself to be Sirdar, Bhumidhar or Asami, though it was noted that in some of the revenue records in regard to some portion of the land in suit, plaintiffs' were shown as Asami though admittedly it was not the case of the appellant.

9. The best case would be that defendant has given his land in suit as a licencee in the year 1372 Fasli for cultivation for only one year, though a finding returned that plaintiffs could be an Asami of defendant for one year, but even said rights were not continued. Otherwise, the First Appellate Court was of the view that such observation would not be sufficient to prove that plaintiffs became Asami and finally First Appellate Court has declared that plaintiffs' were neither tenant nor Asami of the land in suit and plaintiffs' possession of disputed land would only be of a tresspasser.

10. The judgment dated 18.12.1980 passed by the First Appellate Court is under challenge by way of present Second Appeal Second, filed in the year 1981, i.e., pending for last 45 years.

11. A co-ordinate Bench of this Court has admitted, the present Second Appeal vide an order dated 9.9.1981 on substantial questions of law as formulated in paragraph nos.1 and 2 of the Appendix annexed to the memo of appeal.

12. In above background, Court perused the appendix of Appeal and substantial questions of law framed at Serial Nos.1 and 2 are reproduced hereinafter:

"SUBSTANTIAL QUESTIONS OF LAW

1. Because admittedly the plaintiff was asami and the learned courts below have committed material illegality on the face of the record in not decreeing the suit even after recording the finding that the plaintiff had been conferred asami rights over the plots in dispute by the defendants themselves.

2. Because the plaintiff's suit should have been decreed on the admissions made by the defendants themselves and the defendants were stopped from challenging the tenancy rights of the plaintiff on the facts and circumstances of the present case."

13. Court finds that the word used in the above referred questions of law are not in proper format, since it starts with the word 'Because' whereas it ought to have started with 'Whether'.

14. Sri R.C.Sinha, learned counsel for the appellants submitted that though above referred substantial questions of law are not happily worded, still it can be reformulated.

15. None appears on behalf of contesting respondents, therefore, Court proceeds to consider as to whether above referred substantial questions of law are in fact substantial questions of law or not.

16. Before I proceed to consider above referred issue, I take note of a judgment passed by Supreme Court in the case of **Chandrabhan (deceased) through Lrs. And others Vs. Saraswati & ors, 2022 SCC OnLine SC 1273,** wherein law in regard to what would be the substantial question of law for purpose of a Second Appeal was discussed and relevant part of it is reproduced hereinafter:

"*31. To be 'substantial', a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding*

prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v.Purushottam Tiwari, (2001) 3 SCC 179] .)

32. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

32.1. An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

32.2.The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

32.3.The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

33.In this case, it cannot be said that the first appellate court acted on no evidence. The respondents in their second appeal before the High Court did not advert to any material evidence that had been ignored by the first appellate court. The respondents also could not show that any wrong inference had been drawn by the first appellate court from proved facts by applying the law erroneously.'

17. Original records of this case are before this Court.

18. In the plaint filed by the plaintiffs/appellants, he has claimed himself to be tenant of 'land in suit' and that Nagar Mahapalika Kanpur was owner and that it was let to plaintiff for agricultural purpose for yearly Lagan basis.

19. Plaintiff has not placed their case by virtue of letting and payment of Lagan, he became Asami of land in suit.

20. In the aforesaid circumstances, Court takes note of Written Statement filed on behalf of Nagar Mahapalika, Kanpur Nagar i.e. defendant no.1 wherein it was categorically denied that plaintiffs were tenant of said defendant and in the additional plea it was also stated that suit land was acquired for development scheme of Kanpur Nagar as per land acquisition award dated 20.4.1946, as such right title and interest of the land in suit exclusively vests with defendant.

21. The defendant has given land in suit as a licenscee in 1372 Fasli for cultivation for only one year, for which plaintiff/appellant has paid rent, but plaintiff was subsequently in possession of land in suit in an illegal manner as trespasser.

22. Defendant has not accepted that plaintiffs were Asami in Written Statement.

23. Learned Trial Court has dismissed the suit by returning a specific finding that plaintiffs were licencee of defendants for one fasli year and thereafter his status was of a trespasser liable to be evicted.

24. Aforesaid findings were upheld by First Appellate Court, though an issue of Asami was considered, though said issue was beyond pleadings that plaintiff was Asami only for Fasli Year 1372 and subsequent nature of possession was only trespasser.

25. After taking note of aforesaid concurrent findings returned by learned Trial Court and the First Appellate Court, questions of law formulated by the appellants and admitted by this Court could not be considered as substantial questions of law, since plaintiff has never declared himself to be an Asami. His case was that he was a tenant and has never disputed ownership of defendants, therefore, it was not a case of admission of defendants that plaintiff was a Asami.

26. It was an observation of First Appellate Court only on basis that defendant has let out land in suit to plaintiff for a short period of 1372 Fasli and not thereafter. Otherwise also, plaintiff has not placed on record any document which could be considered as a lease, therefore, only on basis of Lagan receipts, plaintiff cannot be considered to be a tenant. Their possession at best can be termed as licencee for a particular period and thereafter his possession was as a trespasser, therefore, Court finds that above referred two questions of law are not substantial questions of law.

27. It was not a case of admission by defendant that plaintiff was a Asami. It is also well settled that no evidence could be led beyond pleadings. (See **Srinivas Raghwendrarao Desai (Dead) By Lrs. Vs. V. Kumar Vamanrao @ Alok and Ors. 2024 INSC 165)**. Otherwise also, admission if any at behest of defendant is not an 'admission' as required under Order 12 Rule 6 Code of Civil Procedure,1908 as it should be clear, unambiguous, unequivocal and unconditional, which is not the case in hand and First Appellate Court has dealt with the issue in detail and there is no illegality that a finding was returned that plaintiff was a licencee only.

28. Court also examined above referred questions of law at the anvil of **Chandrabhan** (Supra) and finds that above referred two questions of law are not substantial questions of law, which could be considered in present second appeals.

29. Court also takes note of a judgment passed by Supreme Court in the case of **Rabindranath Panigrahi Vs. Surendra Sahu, 2025 INSC 333,** and is of view that in the facts and circumstances of present case, no circumstances exist to overturn concurrent findings returned by learned Trial Court as well as by First Appellate Court (also see **Murthy & Ors. Vs. C. Saradambal & Ors, (2022) 3 SCC 209** and **Hero Vinoth (Minor) Vs. Sheshammal, 2006 (5) SCC 545**).

30. Present Second Appeal is accordingly **dismissed.** Interim order, if any, stands vacated.

(2026) 2 ILRA 1228
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 934 of 2025

Irfan Quraishi ...Appellant

Versus

U.P. State Industrial Development Authority Ltd. & Anr. ...Respondents

Issue for Consideration

Matter pertains to whether the trial court was justified in rejecting the plaint at the threshold under O. VII R. 11 CPC on the grounds of absence of cause of action, bar of law, and insufficiency of court fees, based solely on the averments contained in the plaint.

Headnotes

Code of Civil Procedure, 1908 - ss. 80, 96, O. 7 R. 11, O. 39 R. 1, 2, O. 41 R. 11 - Specific Relief Act, 1963 - ss. 38, 41 - Registration Act, 1908 - ss. 17, 49 - Rejection of plaint - Oral Agreement - Immovable property - Insufficient court fees - Barred under Law - Maintainability - The plaintiff - appellant instituted a civil suit seeking reliefs of permanent injunction to protect his alleged possession over the disputed industrial plot and mandatory injunction directing defendant No.2 to complete formalities for execution of sale deed in his favour, asserting that he had entered into an oral agreement with the predecessor-in-interest (father of defendant No.2) for purchase of the property for a consideration of ₹70 lakhs, out of which substantial amounts were allegedly paid partly through demand drafts and partly in cash, and that possession was delivered to him in part performance, however, after the death of the original owner, the defendant, despite assurances, refused to execute the sale deed, leading to institution of the suit, which was opposed by the defendants through an application under O. VII R. 11 CPC contending inter alia absence of any written agreement, lack of cause of action, bar of law, non-joinder of necessary parties, and insufficiency of court fees, whereupon the trial court allowed the said application and rejected the plaint at the threshold, giving rise to the instant first appeal.

Held:. It is apparent that the reliefs claimed by the plaintiff were legally unenforceable and plaintiff's suit was clearly barred by law - Even assuming that the defect relating to payment of court fees was curable, since the suit itself was barred by law, the trial court committed no error in allowing the defendant's application under O. 7 R. 11(d) CPC and rejecting the plaint at the threshold - The impugned order does not warrant any interference by High Court in exercise of its appellate jurisdiction - **Accordingly, appeal dismissed at the**

admission stage, thus, impugned judgment and decree dated 23.07.2025 affirmed. [Paras 36, 37] (E-13)

Case Law Cited

Balram Singh v. Kelo Devi **(2024) 12 SCC 723;** *Prem Kumar and Others v. Gurudev Singh and others* **2024 SCC OnLine All 7420;** *Irfan Qureshi v. UP State Industrial Development Authority and Another* **2024 SCC OnLine All 6776;** *Yellapu Uma Maheshwari and another v. Buddha Jagadheeswararao and others* **(2015) 16 SCC 787;** *Vinod Kumar and others v. Sudha Land Ventures and Homes Pvt.Ltd.* **2015 SCC OnLine All 8778;** *Padhiyar Prahladji Chenaji (Deceased) Thr. LRS. v. Maniben Jagmalbhai (Deceased) Thr. LRS. And others* **(2022) 12 SCC 128;** *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 - - referred to**

List of Acts

Code of Civil Procedure,1908; Specific Relief Act, 1963; Registration Act, 1908

List of Keywords

First appeal u/s 96 CPC; Rejection of plaint; O. VII R. 11 CPC; Barred by Limitation; Want of cause of action; Insufficiency of court fees; Oral agreement to sell; Absence of written agreement; Payment of part consideration; Demand drafts and Cash payment; Alleged possession; Execution of sale deed; Permanent injunction; Mandatory injunction; Enforcement of agreement; Non-joinder of necessary parties/legal heirs; ss 17 and 49 of Registration Act, 1908 (as amended in U.P.); Unregistered document; No enforceable right/title/interest; Bar u/ss. 38 and 41(h) of Specific Relief Act; Equally efficacious relief; Specific performance; Notice u/s 80 CPC; Res-judicata; Appellate jurisdiction; Appeal dismissed

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 934 of 2025

From the Judgment and Order dated 23.07.2025 passed by the Judge Small Causes, Bulandshahr in O.S. No.1054 of 2022 (Old No.790 of 2022)

Appearances for Parties

Advs. for the Appellant:
Ashish Kumar Singh, Rahul Pandey

Advs. for the Respondent:
Rahul Kumar Jadaun, Vibhu Rai

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

1. The instant appeal has been filed by the plaintiff under Section 96 C.P.C. against the impugned order dated 23.07.2025 passed by the Judge Small Causes, Bulandshahr in O.S. No.1054 of 2022 (Old No.790 of 2022) Irfan Quraishi Vs. U.P. State Industrial Development Authority Limited & others, whereby the application of the defendant No.2 Smt. Aparna Bajpai under Order VII Rule 11 CPC has been allowed and consequently, the plaintiff's suit has been dismissed on the ground of being barred by law, want of cause of action as well as, due to the insufficient court fees paid.

2. The factual matrix is that the plaintiff'appellant filed a suit, being O.S. No. 1054 of 2022, with the averments that father of defendant no.2, Late Chandradutt Bajpai, was the owner in possession, and proprietor of M/S CDS Chemicals, situated at C-4, Industrial Area (Jokhabad),

Sikandrabad, District Bulandshahr. It was further averred that an oral agreement was entered into between the plaintiff and the father of defendant no.2 for the sale of the aforesaid plot for a consideration of Rs.70 lacs. Out of the said consideration, a sum of Rs.29 lacs was paid through three demand drafts and a further sum of Rs.6 lacs was paid in cash on 10.07.2008. It was also averred that since then, the plaintiff was in possession of the disputed plot.

3. It was further averred that the plaintiff repeatedly requested the father of defendant no.2 to execute the sale deed in respect of the disputed plot; however, he continued to defer the same on one pretext or the other. Subsequently, the father of defendant no.2 died due to Covid-19 in the year 2021, leaving behind defendant no.2 as his legal heir.

4. It was further averred that thereafter, the plaintiff remained in contact with defendant no.2 and requested her to execute the sale deed in respect of the disputed plot, however, defendant no.2 continued to assure the plaintiff that she would execute the sale deed in his favour after completing due formalities; however, when she ultimately refused to execute the sale deed, the plaintiff was compelled to file the present suit seeking the following reliefs:-

(a) that by decree of permanent injunction granted in favour of the plaintiff against the defendant no.2, the defendant No.2 be restrained from dispossessing him, interfering in the peaceful possession of the plaintiff or in any other manner whatsoever.

(b) that by decree of mandatory injunction granted in favour of the plaintiff against the defendant no.2, the defendant No.2 be directed to complete the necessary formalities in the office of defendant no.1, for transferring the disputed plot No. C-4, Industrial Area (Jokhabad), Sikandrabad, District Bulandshahr by receiving the balance sale consideration from the plaintiff.

(c) any other relief which in the facts and circumstances of the case, the Court may deem appropriate to grant in favour of the plaintiff.

5. During the pendency of the suit, defendant no.2 Smt. Aparna Bajpai moved an application 72-C2 under Order VII Rule 11 CPC on the ground that no oral or written agreement in respect of the disputed property was ever entered into between her father and the plaintiff. It was further averred that the plaintiff has instituted the suit on the basis of photocopies of the alleged demand drafts, which was not legally maintainable. It was also averred that the date of alleged agreement and duration during which it was to be performed, was not disclosed by the plaintiff.

6. It was further averred that the suit should have been filed for the relief of specific performance of a contract, for which ad valorem court fees was required to be paid; however, the plaintiff has deliberately claimed the relief of mandatory injunction. It was also averred that the plaintiff was neither the owner of the disputed property nor any cause of action arose in his favour, and the suit was barred by limitation. The suit was undervalued and the court fees paid was insufficient.

7. It was further contended that there was neither any oral nor written agreement between the plaintiff and the defendant no.2, and that the suit, having been filed solely on the basis of an alleged

oral agreement, was not legally maintainable. It was further averred that the suit was barred by the provisions of Section 80 CPC, since no prior notice was given to the U.P. State Industrial Development Authority Limited defendant no.1, who was a functionary of the State.

8. It was further averred that the father of defendant no.2 died leaving behind defendant no.2, her sister, and her mother as his legal heirs; however, the other legal heirs had not been impleaded as parties to the suit. It was also averred that the plaintiff had earlier moved an application for temporary injunction under Order 39 Rules 1 and 2 CPC, which was rejected by the trial court vide order dated 31.05.2024, wherein it was concluded that the plaintiff was not entitled to any relief on the basis of the alleged oral agreement.

9. With these averments, it was prayed that since the plaintiff has concealed material facts and has not approached the Court with clean hands, as such, the plaint was liable to be rejected under Order VII Rule 11 clauses (a), (c), and (d) CPC. It was further averred that the suit was barred under Sections 38 and 41 of the Specific Relief Act.

10. The aforesaid application filed by defendant no.2 under Order VII Rule 11 CPC was opposed by the plaintiff on the ground that, in the facts and circumstances of the case, the provisions of Order VII Rule 11 CPC were not applicable. It was further averred that the issue of limitation is a mixed question of fact and law, which cannot be decided at the threshold stage.

11. It was further submitted that the findings recorded by the trial court while deciding the application under Order 39 Rules 1 and 2 CPC could not influence the final adjudication of the suit, which is required to be decided on its own merits. It was also averred that no legal notice under Section 80 CPC was required to be served on defendant no.1 in the present case.

12. The trial court, by the impugned order dated 23.07.2025, has allowed the defendants' application under Order VII Rule 11 CPC, holding that the plaintiff was asserting his rights in respect of the disputed property solely on the basis of an oral agreement, which is unenforceable in law in view of the specific provisions of Sections 17 and 49 of the Registration Act, 1908, as applicable in the State of Uttar Pradesh. The trial court further concluded that, on the basis of such an oral agreement, no cause of action has arisen in favour of the plaintiff to institute the present suit.

13. The trial court also held that the suit, having been filed for specific performance of an agreement, required payment of ad valorem court fees, which was not paid by the plaintiff, and on this ground as well, the trial court decided the issue against the plaintiff.

14. The above order of the trial court has been challenged by the plaintiff by filing the instant appeal under Section 96 CPC.

15. Shri Ashish Kumar Singh, learned counsel for the plaintiff-appellant submitted that the suit filed by the plaintiff was maintainable, as there was an admission on the part of defendant no.2 that her late father had accepted the consideration in respect of the disputed property. On the basis

of such admission, it was contended that the plaintiff was at least entitled to refund of the consideration paid, which was not considered by the trial court.

16. It was further submitted that the issues raised by the defendant no.2 could not have been decided at the threshold stage, as they required evidence to be adduced, and therefore the plaintiff's suit was legally maintainable. It was also submitted that even if the court fees paid was insufficient, the plaintiff ought to have been afforded an opportunity to make good the deficiency; however, no such opportunity was granted and the plaint was straightaway rejected, which is illegal. With these submissions, it was prayed that the appeal be admitted for hearing.

17. Per contra, learned counsel for respondent no.1 UPSIDA submitted that, in respect of the disputed property, a lease was executed by the authority in favour of the father of defendant no.2. He further submitted that, upon obtaining no-objection certificates from the other legal heirs of the deceased Chandradutt Bajpai, the leasehold rights in the disputed plot were transferred in favour of the wife of the deceased, Smt. Sunita Bajpai, on 18.09.2024, and now she is in possession of the disputed plot. He further submitted that the plaintiff never remained in possession of the disputed plot.

18. Sri Vibhu Rai, learned counsel for respondent no.2, submitted that the defendants have never admitted that any part consideration was paid by the plaintiff either to the father of the deceased defendant or to defendant no.2. It was further submitted that there was no written agreement between the parties and, as such, no right could be inferred in favour of the plaintiff.

19. It was further submitted that in the absence of any written agreement, the plaintiff was not entitled to any relief of permanent or mandatory injunction in respect of the disputed property. It was also submitted that the plaintiff's application for temporary injunction under Order 39 Rules 1 and 2 CPC had earlier been rejected by the trial court by order dated 31.05.2024, which was challenged by the plaintiff by filing FAFO No. 1648 of 2024, which was dismissed on merits by this Court vide order dated 18.10.2024, wherein it was held that on the basis of the alleged oral agreement the plaintiff was not entitled to any relief.

20. It was further submitted that the aforesaid order dated 18.10.2024 was assailed by the plaintiff before the Hon'ble Supreme Court by filing SLP (Diary) No. 6912 of 2025 (Irfan Qureshi v. U.P. State Industrial Development Authority), which was subsequently dismissed for non-compliance with the conditional order. It was further submitted that the plaintiff's suit was not legally maintainable, being in the nature of enforcement of an alleged oral agreement, which was impermissible in view of the bar contained under Sections 17 and 49 of the Registration Act, 1908, as applicable in the State of Uttar Pradesh, as well as Sections 38 and 41 of the Specific Relief Act. It was thus contended that the trial court has not committed any illegality in rejecting the plaint and, therefore, no interference was warranted by this Court in exercise of its appellate jurisdiction.

21. I have heard learned counsel for the parties and perused the order of the trial court and the documents submitted with the appeal.

22. The Apex Court in the case of ***Balram Singh vs Kelo Devi (2024) 12 SCC 723,*** wherin the plaintiffs sought relief of permanent injunction restraining the defendant from disturbing her possession in the suit property in Uttar Pradesh on the basis of unregistered agreement to sell, held as under:-

"6. At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent injunction only, which was claimed on the basis of the agreement to sell dated 23-3-1996. However, it is required to be noted that the agreement to sell dated 23-3-1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence.

7. ***Having been conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simpliciter for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance.***

8. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counterclaim for getting back the possession which was allowed by the learned trial court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.

9. In view of the above and for the reasons stated above, both, the learned first appellate court and the High Court have committed a grave error in passing a decree for permanent injunction in favour of the plaintiff as against the defendant and dismissing the counterclaim filed by the original defendant."

(emphasis supplied)

23. This Court in the case of ***Prem Kumar and Others vs Gurudev Singh and others 2024 SCC OnLine All 7420,*** considering whether unregistered agreement to sell could be legally enforced in a suit for specific performance, held as under:-

"Re :- First Question : - Whether a decree for specific performance based upon an unregistered for sale dated 31.05.1977 is at all sustainable'

18. In view of the questions framed by this Court, it is not necessary to comment upon requirement or no requirement of getting the AFS re-registered in the State of U.P. and whether the plaintiff was obliged or not obliged to do that, is irrelevant as the Court has to examine validity of

the decree based upon unregistered agreement, whatever might have been the reason behind its non-registration.

19. As regards requirement of registration of an AFS, it is to note that the U.P. Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act No. 57 of 1976) came into force w.e.f. 1-1-1977. This Act amended the Registration Act, 1908 as well as the Transfer of Property Act, 1882, besides several other enactments. Section 54 of the Transfer of Property Act, 1882, as applicable to the State of U.P., w.e.f. 1-1-1977, reads as under:

*'**Section 54.** 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made-** Such transfer, in the case of tangible immovable property [***], or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

Contract of Sale- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Such contract can be made only by a registered instrument.'

20. Section 3 of the Transfer of Property Act, 1882 defines-

*'**Instrument**- as a non testamentary instrument*

*'**Registered-** means registered **in any part of the territories** to which this Act extends under the law for the time being in force regulating the registration of documents.'*

21. Section 17 of the Registration Act, 1908 Act provides that certain documents are required to be compulsorily registered and, other documents are exempted from being registered. Section 17(1)(b) of the Registration Act, 1908, as applicable in the State of U.P., reads as under:

***"Section 17(1)- The following documents shall be registered-** (1) The following documents shall be registered, **if the property to which they relate is situate in a district i**n which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:'*

"""""""""..

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to in immovable property.'

22. Section 17(2)(v) of the Act of 1908 reads as under:

*"**Section 17(2)- Nothing in clauses (b) and (c) of sub-section (1) applies to-***

*(v) any documents other than documents specified in sub-section (1-A)] **[other than contract for sale]** not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest or;*

*The words **'other than contract for sale'** occurring in Section 17(2)(v) of the Registration Act have been inserted by U.P. Act No. 57 of 1976 w.e.f. 1-1-77.*

23. Section 4 of the Transfer of Property Act, 1882 reads as under:

*"4. **Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act. -** The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (IX of 1872).*

[And Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (XVI of 1908).]'

24. Thus, from a combined reading of Sections 3, 4 and 54 of the Act of 1882 and, Section 17 of the Act of 1908, as applicable to the State of U.P., as amended by U.P. Act 57 of 1976, it is clear that every contract of sale of an immovable property situated in any district of U.P. shall be made only by a registered instrument. Even though a contract for sale of immovable property does not by itself create any interest in or charge on such property and only creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest, nonetheless, the said contract for sale of an immovable property is required to be registered in the State of U.P. w.e.f. 1-1-1977.

25. The next question which arises for consideration is whether an unregistered document for sale of an immovable property, could still be enforced in a suit for specific performance. At this stage, the Court may refer to Section 49 contained in the Registration Act, 1908 alongwith U.P. Amendments made therein by U.P. Act No. 57 of 1976, w.e.f. 01.01.1977. A careful perusal of the amendments made would reflect that certain provisions relating to admissibility of an unregistered agreement in a suit for specific performance have been 'omitted' and requirement of registration has been 'inserted.' The provision reads as under:'

Central Act

'49. Effect of non-registration of documents required to be registered.- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

***unless it has been registered**:*

*[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered **may be received as evidence of a contract in a suit for specific performance** under Chapter II of the Specific Relief Act, 1877 (3 of 1877) [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]*

In Uttar Pradesh:

In Section 49,-

*(i) in the first paragraph, after the words 'or by any provision of the Transfer of Property Act, 1882', **insert** the words **'or of any other law for the time being in force';***

(ii) for clause (b), substitute the following clause, namely : -

(b) confer any power or create any right or relationship, or';

(iii) in clause (c), after the words 'such power', insert the words 'or creating such right or relationship';

*(iv) in the proviso, **omit** the words **'as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877**, or.'*

[Vide Uttar Pradesh Act 57 of 1976, sec. 34 (w.e.f. 1--1-1977).]'

26. The result of these amendments is, that, prior to 01.01.1977, an unregistered contract for sale qua immovable property situated in U.P. could be enforced in a suit for specific performance of a contract, but after the amendment in Section 49 of the Registration Act w.e.f. 01.01.1977, an unregistered agreement cannot be enforced in a suit for specific performance of a contract nor can it be read in evidence."

24. In similar facts and circumstances this Court in the case of ***Irfan Qureshi vs UP State Industrial Development Authority and Another 2024 SCC OnLine All 6776***, the parties of the instant appeal, while considering the legality of the order dismissing the plaintiff's interim injunction application, held as under:-

7. Having heard the learned counsel for the parties, I find that mandatory injunctions can be granted under Section 39 of the Specific Relief Act, 1963. The said provision finds place in

Chapter VIII and it applies when, in order to prevent breach of an obligation, it is necessary to compel performance of certain acts which the court is capable of enforcing and grant of injunction to prevent such breach is always in the discretion of the court. In the instant case, admittedly, the suit in question has not been filed claiming a decree for specific performance of an agreement, probably for the reason that there is no written agreement between the parties. Appellant's claim for relief of mandatory injunction based upon oral understanding requires to be dealt with in the light of law of the land.

8. Considering the arguments of Sri. Samir Sharma, learned Senior Counsel, in relation to Section 53-A of Transfer of Property Act, this Court thinks it appropriate to deal with the legal proposition in that regard.

9. Section 17 of Registration Act, 1908 provides for documents, registration whereof is compulsory. There is an amendment made by U.P. Act No. 57 of 1979 by inserting clause (f) in Section 17(1). The relevant provision i.e. Section 17(1), (as amended in U.P.), reads 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(XX of 1866), or the Indian Registration Act, 1871 (VII of 1871, or the Indian Registration Act, 1877(III of 1877), or this Act came or comes into force, namely:'*

.....

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property;

(c) non-testamentary instruments, which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

…….

(f) <u>any other instrument required by any law for the time being in force, to be registered.'</u>

10. There is also a corresponding amendment in sub-section (2) of Section 17, inasmuch as, Clause (v), as it stood before Central Act 48 of 2001 was substituted partially vide Section 3 of Central Act 48 of 2001, w.e.f. 24th September, 2001. Sub-section (2)(v) of Section 17 reads as under:'

'(2) <u>Nothing in clauses (b) and (c) of sub-section (1) applies to -</u>

…….

(v) any document other than contract for sale not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or'

11. An amendment was also made in Transfer of Property Act, 1882 by Section 30 of U.P. Act No. 57 of 1976, w.e.f. 1.1.1977. Section 54, as amended in U.P., reads 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 immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

***Contract of sale**.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.

Such contract can be made only by a registered instrument.'

12. Consistent with the amendments referred to above, Section 49 of Act, 1908 was also simultaneously amended by Section 34 of U.P. Act No. 57 of 1976 w.e.f. 1.1.1977 and the amended Section 49, as applicable in U.P. reads as under:

***"Section 49. Effect of non-registration of documents required to be registered.-** No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882) or of any other law for the time being in force, to be registered shall-*

(a) affect any immovable property comprised therein, or

(b) confer any power or create any right or relationship, or

(c) be received as evidence of any transaction affecting such property or conferring such power or creating such right or relationship, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of part-performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.'"

*13. T**he aforesaid provisions make it clear that an agreement to sell in respect of immovable property lying in State of U.P. required registration necessarily i.e. compulsorily.***

Section 17 of Act, 1908 read with Section 54 of Act, 1882, as applicable in U.P., makes it very clear that a contract of sale, as defined in Section 54, can be made only by a registered instrument. By omission of explanation to sub-section (2) of Section 17 of Act, 1908, the legislature has made it very clear that in State of U.P., an agreement to sell immovable property would also require compulsory registration so as to create any right, title or interest in immovable property*. This view finds support from a decision of this Court in Smt. Prabha Awasthi v. Nisha Richharia, 2012 (8) ADJ 557, wherein a Division Bench referring to Section 17 of Act, 1908, as amended in U.P. w.e.f. 1.4.1977, read with Section 49, has observed as under:*

"Section 17 of the Registration Act, 1908 has been amended in the State of U.P. vide U.P. Act No. 57 of 1976 w.e.f. 1st of April, 1977 by amending clause (b) of sub section (2) and by omitting the Explanation thereto of section 17 of the Registration Act. It follows that after the commencement of the aforesaid Amending Act, an agreement to sell in respect of immovable property lying in the State of U.P. necessarily requires registration. A document which necessarily requires registration being unregistered one cannot be read in evidence in view of section 49 of the aforesaid Act. It deals with the effect of non registered document required to be registered. Noticeably, section 49 of the Registration Act was also amended by the U.P. Act No. 57 of 1976 vide section 34 simultaneously.'

14. Though dispute before Division Bench in Prabha Awasthi (supra) related to an agreement executed in 2005 but while having a retrospect of the provisions of Act, 1908, as amended in U.P. in 1977, and the situation as had arisen, the Court has made above observations. However, since proviso to Section 49 of Act, 1908 permits an unregistered document to be received as evidence of part-performance of a contract for the purpose of Section 53-A of Act, 1882, this Court finds that permitting a document to be received in evidence for limited purpose as such would not have the effect of influencing the rights of the parties vis a vis the immovable property concerned. The general legislative policy under Section 49 of Act, 1908 is contained in three clauses i.e. (a), (b) and (c) and proviso carves out an exception in respect to clause (c) only and not (a) and (b) thereof. The inevitable conclusion qua the immovable property is that, an unregistered document shall not result in affecting the right etc. over the immovable property in any manner and also shall not confer any power to adopt it. To the extent the proviso operates, it permits that an unregistered document affecting immovable property may be given in evidence i.e. where a document remains unregistered and title does not pass, the agreement between the parties which preceded the ineffective document shall remain and may be received in evidence to look into the terms thereof. This by itself, would not confer any right since no such right has been conferred under the substantive law. Receiving in evidence does not mean conferment of substantive right. The rule of evidence cannot enlarge or alter the provisions of substantive law. It cannot confer rights, if there are none under the substantive law.

15. The Court finds that even Section 53-A would have no application in the present case. Section 53-A of Act, 1882 reads as under:

'Part performance*.- Where any person contracts to transfer for consideration any immovable 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 the contract, though required to be registered, has not been registered, or, 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.

16. In order to take shelter behind the above provision, one has to satisfy the following conditions, as are evident from bare reading of Section 53-A:

(i) The contract should have been in writing, signed by or on behalf of transferor.

(ii) The transferee should have got possession of immovable property covered by contract as a part-performance of the contract.

(iii) If the transferee is already in possession and he continues in possession in part-performance of the contract, he further should have done some act in furtherance of the contract.

(iv) The transferee has either performed his part of contract or is willing to perform his part of the contract.

(emphasis supplied)

25. The Apex Court in the case of ***Yellapu Uma Maheshwari and another vs. Buddha Jagadheeswararao and others (2015) 16 SCC 787***, while analysing Section 17 and 49 of the Registration Act,1908, has held that a document which has the effect of creating and taking away the rights in respect of an immovable property, is compulsorily registrable and if not registered, is not admissible in evidence, however, it can be relied upon for collateral purpose, subject to payment of stamp duty, penalty, proof and relevancy.

26. A Division Bench of this Court in the case of ***Vinod Kumar and others vs. Sudha Land Ventures and Homes Pvt.Ltd. 2015 SCC OnLine All 8778*** has also considered the issue whether on the basis of unregistered agreement to sell, temporary interim injunction under Order 39 Rule 1 CPC and perpetual injunction under the Specific Relief Act can be granted to the plaintiff. The relevant paragraphs of the above judgment read as under:-

14. In the case of K.B. Saha and Sons Pvt. Ltd. v. Development Consultant Ltd., [2008 (72) ALR 638 (SC).] the Hon'ble Apex Court noticed following facts as stated by Mulla in his Indian Registration Act, 7th Edition, at page 189.

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu and Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it.'"

15. The Apex Court culled out the following principles:

1. 'A document required to be registered is not admissible into evidence under section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.'

16. The word, 'collateral transaction' has been interpreted as transaction in itself not required to be effected by a registered document, i.e., a transaction creating any right, title or interest in immovable property of the value of Rs. 100/- and onwards.

17. Learned Counsel for the respondent contends that even if the two sale-deeds were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale-deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned Counsel tried to justify the impugned order.

18. This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned

or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed.

19. In our opinion, the contention that it could be used for collateral purpose for delivery of possession does not support the case of the plaintiff-respondent at all because by way of State Amendment in Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., a bar has been created w.e.f. 1.2.1977.

20. In Rule 2, in sub-rule (2), the following proviso has been added by State Amendment:

'Provided that no such injunction shall be granted'

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963.'

21. A bare perusal of Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., reveals that temporary injunction shall not be granted where no perpetual injunction could be granted in view of provisions of sections 38 and 41 of Specific Relief Act, 1963.

22. Section 38 of Specific Relief Act deals with provisions when temporary injunctions can be granted and section 41 deals with provisions when injunction can be refused.

23. Provisions of section 41 of Specific Relief Act is as under:

41. Injunction when refused.-An injunction cannot be granted'

'(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any Legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

(j) when the plaintiff has no personal interest in the matter.'

24. ***A perusal of provisions of section 41(h) of Specific Relief Act reveals that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, then there is no ground to grant injunction.***

(emphasis supplied)

27. The Apex Court in the case of ***Padhiyar Prahladji Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128***, held as under:-

18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. ***However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner.*** *In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant ' the true owner still be restrained from disturbing his/her possession and his/her possession be protected.*

(emphasis supplied)

28. The Apex Court in the case of ***Vinod Infra Developers Ltd. versus 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.

29. The Apex Court in the case of ***Keshav Sood versus 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.

30. It is well settled that at the stage of deciding an application under Order VII Rule 11 CPC, the Court is not required to consider the written statement or the documents filed by the defendant, nor is it required to examine the case of the plaintiff on merits. At this stage, the Court is only required to consider the averments made in the plaint along with the documents relied upon by the plaintiff.

31. A perusal of the plaint reveals that the plaintiff has alleged that there was an oral agreement to sell between him and the late father of defendant no.2 in respect of the disputed plot and that, in pursuance of the said agreement, he paid a sum of '29 lacs by way of three demand drafts and a further sum of '6 lacs in cash on 10.07.2008, whereafter possession of the disputed plot was allegedly handed over to him. It is apparent that there was no written agreement between the plaintiff and the father of defendant no.2, who has since died, and as such, the aforesaid assertions of the plaintiff cannot be verified.

32. It is further apparent that after the death of the father of defendant no.2 in the year 2021, he left behind his wife and two daughters as his legal heirs; however, in the present suit, the other legal heirs of the deceased have not been impleaded as parties. It is also evident that the plaintiff is seeking to enforce the alleged oral agreement by claiming the relief of mandatory injunction, seeking a direction to defendant no.2 to execute a sale deed in respect of the disputed plot in his favour. Such a relief can not be granted in the absence of any written agreement between the parties.

33. It is well settled that an agreement relating to immovable property, where the consideration was agreed to be '70 lacs, was required to be reduced into writing, duly stamped, and registered in accordance with the provisions of the Stamp Act and the Registration Act, which is admittedly not the case herein. Consequently, merely on the basis of an alleged oral agreement, no legally enforceable right accrues in favour of the plaintiff.

34. It is further evident that the relief claimed by the plaintiff is barred under Sections 38 and 41(h) of the Specific Relief Act, as an equally efficacious remedy of specific performance was otherwise available; however, in the absence of any written agreement between the parties, even such remedy could not have been enforced by the plaintiff.

35. It is further evident that the plaintiff had earlier challenged the rejection of his application for temporary injunction by filing FAFO No. 1648 of 2024 before this Court, which was dismissed vide order dated 18.10.2024. In the said order, this Court had already held that the plaintiff can not claim any right, title, or interest in the disputed property on the basis of an alleged oral agreement. The findings recorded therein operate as res-judicata in the present appeal.

36. In view of the above, it is apparent that the reliefs claimed by the plaintiff were legally unenforceable and plaintiff's suit was clearly barred by law. Even assuming that the defect relating to payment of court fees was curable, since the suit itself was barred by law, the trial court committed no error in allowing the defendants' application under Order VII Rule 11(d) CPC and rejecting the plaint at the threshold. The impugned order, therefore, does not warrant any interference by this Court in exercise of its appellate jurisdiction.

37. Accordingly, the appeal is dismissed at the admission stage under Order XLI Rule 11 CPC. Consequently, the impugned judgment and decree dated 23.07.2025 is affirmed.

(2026) 2 ILRA 1245
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 978 of 2025

Sunil Kumar Dublish ...Appellant
Versus
Ramesh Chandra Dublish & Ors. ...Respondents

Issue for Consideration

Issue pertains to whether the trial court was justified in rejecting the plaint under O. VII R. 11(d) of Code of Civil Procedure, 1908 on the ground that the suit was barred by s. 4(1) of Benami Transactions (Prohibition) Act, 1988, particularly when the plaint averments prima facie disclosed claims falling within the statutory exceptions under Section 4(3) of the Act and raised triable issues requiring adjudication on evidence.

Headnotes

Code of Civil Procedure, 1908 - O. 7 R. 11(d) - Benami Transactions (Prohibition) Act, 1988 - ss. 4(1), 4(3) - Rejection of Plaint - Triable issues involved - Benami Transaction - Determination - Question of fact - Bar of Suit - Scope and applicability - The plaintiff - appellant instituted a suit for declaration claiming exclusive ownership over the disputed residential property on the plea that it had been purchased from funds of Hindu Undivided Family and his business income, though recorded in the name of his mother, who was alleged to be merely a benamidar, and further asserted rights in ancestral agricultural property said to have devolved upon him through a prior family partition, while also disputing certain alienations made by his father and the validity of a Will executed in favour of another defendant - The defendants, in response, moved an application under O. VII R. 11 CPC contending that the suit was barred by s. 4(1) of Benami Transactions (Prohibition) Act, 1988 and also by limitation, pursuant to which the trial court rejected the plaint, leading to the instant First Appeal before the High Court.

Held: If the plaintiff succeeds in proving that his mother was not having the financial capacity to purchase the disputed land of the property, as well as, to construct a house thereon, and the funds were provided by the plaintiff from the income of his firm or were obtained by selling the immovable property of HUF, then certainly, the plaintiff's suit was not barred u/s 4(1) of Act of 1988 - The bar of s. 4(1) is only attracted where the disputed property does not fall within the exceptions enumerated in s. 4(3) of Act of 1988 - It is also well settled that whether the disputed property is Benami or not, is a disputed question of fact, which cannot be decided at the stage of considering an application under O. 7 R. 11 CPC, and the plaintiff 's suit cannot be rejected on this ground at the threshold - The trial court has committed material illegality in allowing the defendants application under O. 7 R. 11(d) of CPC - **The impugned order set aside - Accordingly, appeal has merit, thus, allowed.** [Paras 29 to 31] (E-13)

Case Law Cited

Vinod Infra Developers Ltd. v. Mahaveer Lunia and others **2025 INSC 772;** *Keshav Sood v. Kirti Pradeep Sood and others* **2023 SCC OnLine SC 2459;** *Pushpalata v. Vijay Kumar (Dead) through LR's and others*

2022 SCC OnLine SC 1152; *Marcel Martins v. M.Printer and others* **(2012)5 SCC 342;** *Shaifali Gupta v. Vidya Devi Gupta and others* **2025 SCC OnLine SC 1181;** *Pawan Kumar v. Babulal (deceased) through LR's* **(2019) 4 SCC 367 - referred to**

List of Acts

Code of Civil Procedure, 1908; Benami Transactions (Prohibition) Act, 1988

List of Keywords

First Appeal; O. VII R. 11 CPC; Rejection of plaint; s. 96 CPC; ss. 4(1) and 4(3) of Benami Transactions (Prohibition) Act, 1988; Benami transaction; Benamidar; Bar of suit; Hindu Undivided Family (HUF); Coparcener; Fiduciary capacity; Real owner; Ostensible owner; Declaration of title; Absolute ownership; Family partition; Family settlement; Joint family business; Self-acquired property; Mutation; Transfer of property; Consideration; Will; Forged and fabricated document; Legal heir; Right, title and interest; Possession; Superstructure and land beneath; Partnership firm; Maintainability of suit; Jurisdictional bar; Restoration of suit; Appeal allowed.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 978 of 2025

From the Judgment and Decree dated 30.8.2025 passed by the Court of Civil Judge (Senior Division) Meerut in O.S. No. 782 of 2006

Appearances for Parties

Advs. for the Appellant:
Durgesh Kumar Singh, Sudhir Kumar Malviya

Adv. for the Respondent:
Shiv Sagar Singh

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

1. The instant first appeal has been filed by the plaintiff under Section 96 of the CPC against the impugned judgment and decree dated 30.8.2025 passed by the court of Civil Judge(Senior Division) Meerut in O.S. No. 782 of 2006 Sunil Kumar Dublish vs. Ramesh Chand Dublish(deceased through LR) and others, whereby the defendant's application 89-C under Order 7 Rule 11 CPC has been allowed and consequently, the plaint has been rejected on the ground that the suit is barred under Section 4(1) of the Benami Transactions(Prohibition) Act, 1988, hereinafter referred to as the 'Act of 1988'.

2. Factual matrix is that the plaintiff- appellant Sunil Kumar Dublish filed O.S. No. 782 of 2006 with the averments that that the plaintiff and defendant no.1 Ramesh Chand Dublish and defendant no.2 Smt. Sarla Dublish belong to the same family, the defendant no.1 is the father of the plaintiff and defendant no.2 is the mother of the plaintiff. It was averred that the predecessors of the plaintiff and above defendants Late Shanti Saran Dublish was the owner in possession of certain agricultural property, which was described in para 3 of the plaint situated in village Mawana Kalan, Pargana Hastinapur, Tehsil Mawana, District-Meerut, the khasra number of which was changed in consolidation proceedings, which is presently recorded in the name of defendant no.1. It was further averred that Late Shanti Saran Dublish died in the year 1953, who was the grandfather of

the plaintiff, had four sons namely Ramesh Chand Dublish(defendant no.1), Suresh Chand,Naresh Chand and Umesh Chand.

3. It was further averred by the plaintiff that after the death of Shanti Saran Dublish a family partition took place on 24.2.1953 between the four sons of the deceased and the property was divided into four shares and the defendant no.1 became the owner in possession of land inherited in family partition. It was further averred by the plaintiff that he being the grandson of Shanti Saran Dublish, is the owner of half share of the above property and the remaining half share of the above property belongs to defendant no.1. It was further averred that the defendant no.1, being the father of the plaintiff, was looking after the management of the above property, as the family was Hindu Undivided Family.

4. It was further averred by the plaintiff that his father/defendant no.1 transferred a major portion of the above property to various persons on the assumption that he was the sole owner of the above property without informing and seeking any permission from the plaintiff and the amount received after transferring the property as consideration, also remained with the defendant no.1, as the family was undivided.

5. It was further averred that from the income of the partnership firm Messers Sunil Packaging Industries, in which his father was a sleeping partner, and from the cash credit Bank limit availed by him, certain immovable properties were purchased in the year 1989 and 1990, the description of which was given in the plaint, in the name of his mother, Smt. Sarla Dublish (defendant no.2), on which a house was constructed by him from the funds obtained by selling agricultural property and as such,after the death of his mother on 24.2.2015, he has become the sole owner of this property bearing no. 342/1 Harnamdass Road, Civil Lines, Meerut.

6. It was further averred that his mother, Smt. Sarla Dublish was only a Benami owner of the above property and after her death , her legal heir 2/1 Rajeev Kumar Dublish has not acquired any right, title or interest in the disputed property.

7. It was further averred that on 4.1.1972 the plaintiffs father created/manipulated a family settlement to grab his property and at that time he was studying in B.Sc. This family settlement was never acted upon as such, was not in his knowledge, which also does not bear his signature. It was averred that the plaintiff became aware of the above alleged family settlement from the proceedings of case pending in the court of SDO, Mawana, Meerut. It was further averred that his father started interference into the rights title and possession of the disputed property, which came to his share and therefore, the plaintiff had to file a suit on 5.11.2001 in the court of SDO,Mawana for the declaration of ownership of half share of the property inherited from his grandfather Shanti Saran Dublish , which came into his share in the family partition that took place between the four sons of Shanti Saran Dublish.

8. It was further averred that the plaintiff requested his father/defendant no.1 to render the accounts of the amount of consideration received from transferring the property to various persons and also to render the accounts of income received from the property managed by him for a long time, but his father denied. It was further submitted that the defendant no. 1 and 2 have also denied

the partition of the residential house to the extent of his half share in the land underneath the house. It was averred that the superstructure on the land was the exclusive property of the plaintiff whereas, the land beneath it, was the joint property of the plaintiff and defendant no.1. It was averred that the defendant no.2 has no share in the residential property no.342/1,Harnamdass Road,Civil Lines, Meerut.

9. It was further averred that his mother Smt.Sarla Dublish had no right in the disputed property as such, she could not have executed the registered Will on 15.10.2005 in favour of defendant no.3 Smt.Nupur Dublish. It was alleged that the above Will was a forged document, which was not binding upon the plaintiff. It was further averred that after the death of the plaintiffs mother, Rajeev Kumar Dublish was substituted as her legal heir,but at that time, the existence of the above Will was never disclosed to the plaintiff which itself proves that, the alleged Will was a forged and fabricated document, which confers no right on the defendant no.3, insofar as the disputed property is concerned.

10. The plaintiffs has claimed the following reliefs:-

(i) That by decree of Court, the plaintiff be declared as absolute and sole owner of house no. 342/1, Harnamdass Road, Civil Lines, Meerut.

(ii) That the cost of the suit be also awarded to the plaintiff against the defendant's.

(iii) That any other relief which the court deems fit and proper also be awarded to the plaintiff against the defendants.

11. The defendants moved an application 89-C in the trial court with the averments that after the partition, the property became the self acquired property of plaintiffs father Ramesh Chand Dublish, in terms of the provision of the UPZA & LR Act. The plaintiff has averred that his father dishonestly transferred a major portion of the property to some persons by executing sale deeds etc. without the knowledge and information of the plaintiff ,but no details of such transfer and receipt of the sale consideration have been mentioned in the plaint. It was further averred that the plaintiff alleges that the disputed property was purchased from the income of his business, which was a Benami property, as such, the suit was barred by the provisions of the Benami Transactions(Prohibition) Act,1988. It was further averred that the plaintiff was challenging the alleged family settlement dated 4.1.1972 after a period of more than 33 years, in the year 2006, as manipulated and fabricated and not binding upon him, which allegedly came into the knowledge of the plaintiff in the year 2001, but the suit was filed after the prescribed period of limitation of three years, which was grossly barred by limitation. It was further averred that the plaintiff has alleged his mother/defendant no. 2 to be the Benami owner of the disputed property, as such the suit was barred by the Act of 1988. With these averments, it was prayed that the plaint be rejected under Order 7 Rule 11(d) CPC.

12. The plaintiff- appellant opposed the above application of the defendant's on the ground that it was not legally maintainable because the defendants have already filed written statement and plaintiff has also filed his evidence and he has also been partly cross-examined, therefore, the

application could not have been moved at this stage. It was averred that the defendants want to delay the disposal of the suit on one pretext or the other. It was further averred that when Shanti Saran Dublish died, plaintiff was young/minor at that time and mere mutation of name of plaintiffs father Ramesh Chand Dublish over the inherited property has no adverse affect upon the right, title and interest of the plaintiff in the disputed property. It was further submitted that the plaintiff has claimed declaration that he is the owner of two thirds share of the land of the disputed property and the sole owner of the superstructure standing on 342/1,Harnamdass Road,Civil Lines, Meerut, on which the provisions of UPZA & LR Act are not applicable. It was further averred that plaintiff was minor and member of Hindu Undivided Family(HUF), plaintiffs father being the Karta of the HUF, who was looking after the entire affairs of the property inherited by the plaintiff from his grandfather Shanti Saran Dublish. It was further averred that the provisions of the Act of 1988 are not applicable and the family settlement dated 4.1.1972 was not the subject matter of this case, because a separate case regarding that family settlement was pending in the Additional Civil Judge(Senior Division)court no.4, Meerut in which the defendants have already stated that since the village has been notified for consolidation operation as such, the court has no jurisdiction. With these submissions it was prayed that the defendant's application be rejected.

13. The trial court by impugned order dated 30.8.2025 has concluded that since plaintiff has asserted that his mother Sarla Dublish was the benami owner of the disputed property, as such, the suit is barred by Section 4(1) of the Act of 1988. The trial court has rejected the contention of the plaintiff that the provisions of Section 4(3) of the Act of 1988, were attracted in the facts and circumstances of the case, because the disputed property was purchased from the funds of the Hindu Undivided Family (HUF). It was further concluded by the trial court that the mother does not fall within the category of coparcener in the HUF. With the above reasoning, the trial court has allowed the defendants application 89-C under Order 7 Rule 11 CPC and has consequently rejected the plaint, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 CPC.

14. Shri Durgesh Kumar Singh, learned Senior Counsel for the plaintiff-appellant submitted that at the stage of deciding Order 7 Rule 11 CPC application, only the plaint averments and the documents submitted with the plaint are to be examined, the written statement or the documents submitted by the defendants are not to be looked into, at this stage by the court. It was further submitted that the case of the plaintiff was also not required to be examined on merits and whatever the plaintiff has alleged, it is to be treated as true, for deciding the application. It was further submitted that the plaintiff has clearly alleged that there was a Hindu Undivided Family(HUF) consisting of himself and his father Ramesh Chand Dublish,who was also the Karta, who used to keep and maintain the accounts of the income of the HUF. Learned counsel submitted that the disputed property was purchased in the name of plaintiffs mother Sarla Dublish, from the funds obtained by illegally selling the immovable property of the HUF and the income of the partnership firm Messers Sunil Packaging Industries. It was further submitted that there was a fiduciary relationship between the plaintiff and his mother as such, the disputed property was purchased in the name of his mother, who was not having any independent income to purchase the disputed property and thereafter, construct house on it. It was further submitted that the disputed property fell in the exception enumerated in Section 4(3) of the Act of 1988, as such the suit was not barred by Section 4(1) of the Act of 1988. With these submissions, it was prayed that the appeal be

allowed and the original suit be restored on the file of the trial court with the direction to decide it on merits.

15. Per contra, learned counsel for the defendant- respondents Shri Shivsagar Singh submitted that the plaintiff has alleged the disputed property to be benami, in the name of his mother Sarla Dublish, hence the provisions of Section 4(1) of the Act of 1988 were attracted in the facts and circumstances of the case. It was further submitted that the trial court has not committed any error in rejecting the plaint. With these submissions it was prayed that the appeal is meritless and be dismissed at the admission stage.

I have heard the learned counsel of both the sides, perused the impugned order and the documents submitted with the appeal.

16. Appeal is admitted.

17. The Apex Court in the case of ***Vinod Infra Developers Ltd. versus Mahaveer Lunia and others 2025 INSC 772*** 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.

18. The Apex Court in the case of ***Keshav Sood versus 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.

19. 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.

20. 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 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)Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

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."

21. The Apex Court in the case of Pushpalata versus **Vijay Kumar(Dead) through LR's 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. 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.

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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. "

22. The Apex Court in the case of ***Marcel Martins versus 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. "

23. The Apex Court in the case of ***Shaifali Gupta versus 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."

24. From the above law laid down by the Apex Court in the above mentioned cases, dealing with the Benami Transactions (Prohibition) Act,1988 before its amendment in the year 2016, and after its amendment, it is apparent that where it is alleged that the suit properties are joint Hindu family property and they have been purchased either from the nucleus of the joint Hindu family property or the income derived from the joint family business and the relief claimed in the suit is purely in respect of the said property, then such suit does not stand prohibited by the Benami Act. 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.

25. 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.

26. It is also apparent that whether the matter comes 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.

27. The Apex Court in the case of ***Pawan Kumar versus Babulal (deceased) through LR's (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.

28. It is evident from the plaint averments that the disputed property belonged to plaintiffs grandfather Shanti Saran Dublish, who died in the year 1953, after which a family partition took place between the legal heirs of Shanti Saran Dublish, in which the property devolved upon the plaintiffs father Ramesh Chand Dublish, with whom the plaintiff was having a HUF. It was alleged in the plaint that the disputed property was purchased from the consideration obtained by selling the immovable property of the Hindu Undivided Family(HUF) of the plaintiff and his late father Ramesh Chand Dublish in the year 1989 and 1990, when the plaintiffs father was alive, who has died subsequently on 2.11.2006, during the pendency of the suit. It was also alleged by the plaintiff that he was also having a partnership firm with his father in the name and style of Messers Sunil Packaging Industries, in which his father was a sleeping partner, and from the income of this firm and cash credit limit obtained from a bank,house was constructed on the disputed land, which is the disputed property no.342/1,Harnamdass Road,Civil Lines, Meerut.

29. It is true that the plaintiffs mother was not a coparcener in the alleged HUF but certainly, there was a fiduciary relationship between the plaintiff and his mother Sarla Dublish, which lies within the exception enumerated in Section 4(3)(b) of the Act of 1988. The disputed property could have been purchased in the name of plaintiffs mother Sarla Dublish because she was in fiduciary capacity vis-a-vis the plaintiff, who was also the wife of plaintiffs father Ramesh Chand Dublish. Even the plaintiffs father could have purchased the property in the name of his wife. In both the above situations, the bar of Section 4(1) of the Act of 1988 is not attracted. If the plaintiff succeeds in proving that his mother was not having the financial capacity to purchase the disputed land of the property, as well as, to construct a house thereon, and the funds were provided by the plaintiff from the income of his firm or were obtained by selling the immovable property of the HUF, then certainly, the plaintiff's suit was not barred under Section 4(1) of the Act of 1988. The bar of Section 4(1) is only attracted where the disputed property does not fall within the exceptions enumerated in Section 4(3) of the Act of 1988. It is also well settled that whether the disputed property is Benami or not, is a disputed question of fact, which cannot be decided at the stage of considering an application under Order 7 Rule 11 CPC, and the plaintiff 's suit cannot be rejected on this ground at the threshold.

30. 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(d) of CPC. The impugned order is perverse and is liable to be set aside. Consequently, the appeal has merit and is liable to be allowed.

31. **Accordingly, this appeal is hereby allowed**. The impugned judgment and decree dated 30.8.2025 of the trial court in O.S. no.782 of 2006 is set aside. The defendants application 89-C under Order 7 Rule 11 CPC stands dismissed. The O.S. no. 782 of 2006 is restored to its original number.

32. 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.

33. It is further made clear that the trial court is not bound by the observations made by this Court in this order and is free to form its opinion, in accordance with law, on the basis of pleadings of the parties and evidence adduced by them during trial.

34. However in the facts and circumstances of the case, the parties shall bear their respective costs. Office is directed to prepare the decree accordingly.

(2026) 2 ILRA 1260
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.02.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

First Appeal No. 989 of 2025

Rohitash Singh **...Appellant**
Versus
Ruchi **...Respondent**

Issue for Consideration

Matter pertains to the determination of whether the rejection of a joint petition for divorce by mutual consent u/s 13-B of Hindu Marriage Act, 1955, on the ground of delay in filing the second motion beyond the stipulated period of eighteen months, is legally sustainable, particularly in light of the judicial interpretation of s. 13-B(2) as being directory in nature and the continued subsistence of mutual consent between the parties.

Headnotes

Hindu Marriage Act, 1955 - s. 13-B - Family Courts Act, 1984 - s. 19(2) - Divorce by mutual consent - Second Motion Delay - Cooling-off Period - Technical Delay - Effect - Appeal - Maintainability - The appellant -husband preferred the instant appeal assailing the judgment of Family Court whereby a joint petition for dissolution of marriage by mutual consent u/s 13-B of Hindu Marriage Act, 1955 was rejected on the ground that the second motion had not been filed within the statutory period of eighteen months from the date of presentation of the first motion - It was contended before the High Court that despite such delay, the mutual agreement between the parties to dissolve the marriage continued to subsist and both parties remained ad idem in seeking separation on agreed terms - The appellant, supported by the respondent - wife, urged that the delay in filing the second motion was a mere technicality and ought not to defeat the substantive relief, particularly in view of judicial precedents holding the relevant provision to be directory in nature - The Family Court, however, having treated the delay as fatal, declined to grant the decree, thereby giving rise to the instant appeal before the High Court.

Held: It appears from impugned judgment that the first motion was duly made - The second motion was delayed but the first motion not withdrawn in the meantime - There is otherwise nothing in judgment to indicate the Family Court was not satisfied after hearing the parties and after making such inquiry as it thought fit that the marriage had been solemnized - As the Appeal Court, sitting in adjudication of continuing

cause, after being satisfied reverse impugned judgment and direct the matrimonial case be restored to its file and number, to enable the parties to file the second motion within two weeks of restoration - The Family Court will thereafter deal with the case on both the motions filed, in accordance with law - On omission to file the second motion upon notice of restoration, the case will be dismissed forthwith - Thus, Appeal as maintainable in spite of bar u/s 19(2) of Family Courts Act, 1984 because though judgment was on a petition invoking s. 13-B, it was not passed on consent and it matters little that parties supported each other in the instant appeal - **Accordingly, appeal allowed**. [Paras 10 to 12] (E-13)

Case Law Cited

Amardeep Singh v. Harveen Kaur **reported in (2017) 8 SCC 746;** *Amit Kumar v. Suman Beniwal* **reported in (2023) 17 SCC 648;** *Shilpa Sailesh v. Varun Sreenivasan* reported in **(2023) 14 SCC 231, decided on 1st May, 2023; - referred to**

List of Acts

Hindu Marriage Act, 1955; Family Courts Act, 1984

List of Keywords

First Appeal; Delay in filing of appeal; Condonation of delay; Defective appeal; Joint petition for divorce by mutual consent; Rejection of petition; Second motion not filed within stipulated period; First motion u/s 13-B; Statutory time frame; Cooling-off period; Outer limit of eighteen months; Directory not mandatory; Subsistence of agreement between parties; Dissolution of marriage; Decree of divorce; Restoration of matrimonial case; Continuation of proceedings; Withdrawal of consent; Non-withdrawal of first motion; Appellate jurisdiction; Maintainability of appeal; Bar u/s 19 of Family Courts Act; Direction to Family Court; Compliance within stipulated time; Appeal allowed.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 989 of 2025

From the Judgment and Order dated 21.04.2025 passed by the Family Court, Sambhal (Bheem Nagar) in Claim Petition / 590 / 2022

Appearances for Parties

Adv. for the Appellant:
Sandeep Kumar Srivastava

Adv. for the Respondent:
Brijesh Kumar Pandey

(Delivered by Hon'ble Arindam Sinha, J.)

1. The appeal was moved before us as defective on 12th November, 2025. The defect was delay of 161 days in presentation of it. We had condoned the delay to admit the appeal. Mr. Sandeep Kumar Srivastava, learned advocate appears on behalf of appellant-husband and Mr. Brijesh Kumar Pandey, learned advocate for respondent wife.

2. Appellant's contention is, both respondent and he are aggrieved by judgment dated 21st April, 2025 of the Family Court rejecting their joint petition for divorce by mutual consent on finding, the second motion was not made within 18 months after filing of the first motion (the joint petition).

3. The learned advocates had submitted and maintain their submission that agreement between the parties still subsists. Their clients want to go their separate ways on mutually agreed terms. This technicality of delay in making the second motion cannot be looked at as fatal to their cause. Reliance was placed on judgment of the Supreme Court in **Amardeep Singh vs. Harveen Kaur** reported in **(2017) 8 SCC 746** for declaration of law that sub section (2) in section 13-B, Hindu Marriage Act, 1955 is directory and not mandatory.

4. Section 13-B in Hindu Marriage Act is reproduced below.

"13B. Divorce by mutual consent.-*(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.*

(2) ***On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date,*** *if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."*

(emphasis supplied)

5. In **Amardeep Singh** (supra), the Supreme Court was dealing with spouses in a marriage, who wanted immediate mutual divorce without waiting for the cooling off period provided in sub-section (2) of section 13-B. Paragraph 20 from the judgment is reproduced below.

"20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

6. A later decision of the Supreme Court in **Amit Kumar vs. Suman Beniwal** reported in **(2023) 17 SCC 648** considered **Amardeep Singh (supra)**. The Bench went on to further say that factors mentioned in **Amardeep Singh** (supra) are illustrative and not exhaustive. The stated factors are those which the Court is obliged to take note of. If all the conditions mentioned in Amardeep Singh (supra) are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under section 13-B(2). Paragraph 20 from **Amit Kumar** (supra) is reproduced below.

"20. The factors mentioned in Amardeep Singh vs. Harveen Kaur, in para 19 are illustrative and not exhaustive. These are factors which the court is obliged to take note of. If all

the four conditions mentioned above are fulfilled, the court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13-B(2) of the Marriage Act."

7. Then came judgment of a stronger Bench of the Supreme Court in **Shilpa Sailesh vs. Varun Sreenivasan** reported in **[(2023) 14 SCC 231** (date of decision 1st May, 2023)]. The Bench of five learned Judges considered, inter-alia, sub-sections (1) and (2) in section 13-B. Paragraph 25 is reproduced below.

"25. Sub-section (2) to Section 13-B of the Hindu Marriage Act provides that after the first motion is passed, the couple/parties would have to move to the court with the second motion, if the petition is not withdrawn in the meanwhile, after six months and not later than eighteen months of the first motion. No action can be taken by the parties before the lapse of six months since the first motion. When the second motion is filed, the court is to make an inquiry, and on satisfaction that the averments made in the petition are true, a decree of divorce is granted. ***Clearly, the legislative intent behind incorporating Sub-section (2) to Section 13-B of the Hindu Marriage Act is that the couple/party must have time to introspect and consider the decision to separate before the second motion is moved."***

(emphasis supplied)

After considering aforesaid decision in **Amardeep Singh** (supra) the stronger Bench expressed its opinion as would appear from paragraph 33, reproduced below.

"33. ***In our opinion, Section 13-B of the Hindu Marriage Act does not impose any fetters on the powers of this Court to grant a decree of divorce by mutual consent on a joint application, when the substantive conditions of the Section are fulfilled and the Court,*** *after referring to the factors mentioned above****, is convinced and of the opinion that the decree of divorce should be granted."***

(emphasis supplied)

8. Though both in **Amardeep Singh** (supra) and in **Amit Kumar** (supra) the Supreme Court had declared the law to be that sub-section (2) in section 13-B was directory but we are to see if it can be said to appear from paragraph 33 of **Shilpa Sailesh** (supra), the stronger Bench was referring, by implication, to power of the Supreme Court under article 142 in the Constitution. Our view is, by paragraph 33 in [**Shilpa Sailesh** (supra)] it cannot be said the earlier declarations of law were diluted. This is because the stronger Bench immediately thereafter said, inter-alia, multiplicity of litigations can restrict and block solutions, as a settlement has to be holistic and comprehensive, given that the objective and purpose is to enable the parties to cohabit and live together, or if they decide to part ways to have a new beginning and settle down to live peacefully. Paragraphs 35 and 36 from **Shilpa Sailesh** (supra) are reproduced below.

"35. Therefore, in B.S. Joshi and Ors. v. State of Haryana, this Court, notwithstanding that Section 320 of the Code of Criminal Procedure does not permit compounding of an offence under Section 498-A IPC, has held that the High Court, exercising the power under Section 482

CrPC, may quash prosecutions even in non-compoundable offences when the ends of justice so require. This view has been affirmed by the three- Judge Bench in Gian Singh v. State of Punjab and reiterated by another three-Judge Bench in Jitendra Raghuvanshi v. Babita Raghuvanshi.

36. ***The reason is that the courts must not encourage matrimonial litigation, and prolongation of such litigation is detrimental to both the parties who lose their young age in chasing multiple litigations. Thus, adopting a hypertechnical view can be counter productive as pendency itself causes pain, suffering and harassment and, consequently, it is the duty of the court to ensure that matrimonial matters are amicably resolved, thereby bringing the agony, affliction, and torment to an end.*** *In this regard, the courts only have to enquire and ensure that the settlement between the parties is achieved without pressure, force, coercion, fraud, misrepresentation, or undue influence, and that the consent is indeed sought by free will and choice, and the autonomy of the parties is not compromised. The latter two decisions in Gian Singh and Jitendra Raghuvanshi observe that the inherent power on the High Court under Section 482 CrPC is wide and can be used/wielded to quash criminal proceedings to secure the ends of justice and prevent abuse of the process of the court, albeit it has to be exercised sparingly, carefully, and with caution."*

(emphasis supplied)

9. We are convinced on law declared to be that the provisions in sub-section (2) of section 13-B are directory and not mandatory. Also true is that the provisions cannot be said to be selectively directory inasmuch as, while the cooling off period can be waived, the outer limit cannot. We are of further view that outer limit of 18 months from presentation of first motion was provided in sub-section (2) of section 13-B with object of presumption that on omission to make the second motion within time there has been withdrawal of consent. The mechanism provided by the section clearly indicates that the Court must be satisfied on mutual consent of the parties, truly stated in the joint petition for dissolution of the marriage with effect from the date of decree passed. In the case before us, parties are still in agreement regarding them wanting to honorably part ways and move ahead with their lives.

10. It appears from impugned judgment that the first motion was duly made. The second motion was delayed but the first motion not withdrawn in the meantime. There is otherwise nothing in impugned judgment to indicate the Family Court was not satisfied after hearing the parties and after making such inquiry as it thought fit that the marriage had been solemnized. We as the appeal Court, sitting in adjudication of the continuing cause, being so satisfied reverse impugned judgment and direct that the matrimonial case be restored to its file and number, to enable the parties to file the second motion within two weeks of the restoration. The Family Court will thereafter deal with the case on both the motions filed, in accordance with law. It goes without saying, on omission to file the second motion upon notice of the restoration, as directed above, the case will be dismissed forthwith.

11. We add that we have entertained the appeal as maintainable in spite of the bar under sub-section (2) of section 19 of Family Courts Act, 1984 because though impugned judgment was on a

petition invoking section 13-B, it was not passed on consent and it matters little that parties supported each other before us in the appeal.

12. The appeal is allowed and disposed of. Registry to communicate the judgment to the Family Court.

(2026) 2 ILRA 1265
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

First Appeal No. 1137 of 2026

Ishita Agarwal **...Appellant**
Versus
Gopal Krishna Mittal **...Respondent**

Issue for Consideration

Issue pertains to the determination of whether an appeal u/s 19 of Family Courts Act, 1984 is maintainable against an interlocutory order passed by the Family Court u/s 26 of Hindu Marriage Act, 1955, particularly where such order merely grants interim visitation rights to a parent in respect of a minor child during the pendency of matrimonial proceedings.

Headnotes

Family Courts Act, 1984 - s. 19 - Hindu Marriage Act, 1955 - ss. 13, 26, 28(2) - Appeal - Maintainability - Interlocutory order - Custody of minor child - Scope - The appellant, being the mother of a minor child aged about five years, assailed an interim order passed by the Family Court in pending matrimonial proceedings between the parties, whereby the respondent-father was granted visitation rights to meet the child once every month on the third Saturday within the premises of the District Legal Services Authority - The said order was passed on an application moved by the respondent u/s 26 of Hindu Marriage Act, 1955 seeking access, interaction through video conferencing, and interim custody of minor - It was contended by the appellant that similar directions for virtual interaction had already been issued in proceedings under the domestic violence law, and thus the instant appeal was maintainable - However, the respondent raised a preliminary objection asserting that the impugned order was purely interlocutory in nature, having been passed during the pendency of divorce petition, and therefore not appealable u/s 19 of Family Courts Act, 1984.

Held: Impugned judgment/order is but an interim order/direction - It is not a provision made in the decree because such decree is yet to come on adjudication of the matrimonial dispute, still pending - Where the Court passes a judgment and there is a decree, for example, directing dissolution of the marriage and also providing directions for custody, a party to the proceeding can choose to appeal only against the directions for custody by virtue of s. 26 and s. 28(2) - Such appeal would be maintainable u/s 19 in Family Courts Act, 1984 - The order being interlocutory in nature, thus, appeal not maintainable - **Dismissed.** [Paras 7, 8] (E-13)

Case Law Cited

Isma Alam v. Sri Irshad Alam, **First Appeal No. 495 of 2010 judgment dated 25th January, 2011;** *Dr. Prakhar Kumar v. Dr. Aditi Dhaundiyal,* **First Appeal No. 285 of 2025, judgment dated 17th July, 2025 - referred to**

List of Acts

Family Courts Act, 1984; Hindu Marriage Act, 1955

List of Keywords

First Appeal; Interlocutory order; Maintainability of appeal: Interim order; Visitation rights; Interim custody of minor child; Pending matrimonial proceedings; Domestic Violence; Divorce proceeding; Application u/ss. 13, 26, 28(2) of Hindu Marriage Act, 1955; Appeal u/s 19 of Family Courts Act, 1984; Interlocutory nature of order; Appellate jurisdiction of High Court; Mediation Centre; Power of Family Court; Appeal dismissed as not maintainable.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 1137 of 2025

From the Judgment and Order dated 20.02.2025, passed by Principal Judge, Family Court, Agra in Misc. Cases / 1319 / 2024

Appearances for Parties

Advs. for the Appellant:
Rakesh Kumar Garg, Yash Garg

Adv. for the Respondent:
Jai Raj

(Delivered by Hon'ble Arindam Sinha, J.)

1. Appellant is mother of the boy, who has just completed 5 years of age. Respondent is the father, in whose favour impugned judgment/order dated 20th February, 2025 has been made by the Family Court. English translation of operative direction in impugned judgment/order is reproduced below.

"Therefore, on the above grounds, the applicant's application is accepted. The respondent is directed to ensure that the applicant meets the minor child Saaransh every month on the third Saturday in the premises of the District Legal Services Authority between 3:00 PM to 4:00 PM."

On query we have ascertained from the Bar, main divorce proceeding is still pending before the Family Court.

2. Mr. Yash Garg, learned advocate appears on behalf of appellant. Mr. Jai Raj, learned advocate appears on behalf of respondent and raises preliminary objection on maintainability of the appeal. He submits, impugned judgment/order is interim in nature. There is no right to appeal provided therefrom under section 19 in Family Courts Act, 1984. He relies on view taken by a Division Bench of this Court on **judgment dated 25th January, 2011 in First Appeal no. 495 of 2010 (Isma Alam vs. Sri Irshad Alam),** inter alia, the paragraphs reproduced below.

"Applying the principles laid down in the facts and circumstances of the present case, we find that the learned Judge had not decided the case finally between the parties as the petition filed under section 25 of the Act numbered as 50/70/2009 is still pending. He has only decided the applications filed under section 12 and 26 of the Act and had directed for granting interim custody of the minor child to the opposite party herein pending final decision on the application filed under section 25 of the Act. ***Thus, the order impugned in the present appeal is an interlocutory order and an appeal under section 19 of the Act would not lie. The submission of Sri V.M. Zaidi, learned senior counsel that by the impugned order, the learned Judge had in fact decided the entire controversy is misplaced.***

While arriving at a conclusion *as to whether the interim custody of the minor child has to be given to the opposite party herein on an application in this behalf before the learned Judge,* ***the learned learned Judge has necessarily to record a finding as to why such an order granting interim custody is required to be passed. However, the findings recorded therein is only a tentative finding and would not in any way effect the disposal of case No. 50/70/2009 which has to be decided by the learned Judge on the basis of the material and evidence on record and in accordance with law."***

(emphasis supplied)

3. Mr. Garg refers us to paragraph 9 in the affidavit supporting the stay application. The paragraph is reproduced below.

"9. ***That thereafter the opposite party/husband filed one application u/s 26 of the Act, 1955 on 31.08.2024 against the appellant in the pending proceedings u/s 13 of the Act, 1955*** *seeking a direction upon the appellant to bring their minor son at Mediation Centre of the District Court, Agra for the purpose of meeting him and also sought further direction to talk with their minor son through video call.* ***By the means of this application the opposite party also sought an interim custody of their minor son****. The copy of the application filed by the opposite party u/s 26 of the Act, 1955 on 31.08.2024 at Principal Judge Family Court, Agra is being filed herewith as Annexure no.3 to this affidavit."*

(emphasis supplied)

He submits further, contact by video conferencing has already been directed by the Family Court in the domestic violence case. His client's appeal is maintainable. He relies on sections 26 and 28(2) in Hindu Marriage Act, 1955.

4. It will be useful for us to first reproduce below sub-sections (1), (5) and (6) in section 19 of Family Courts Act, 1984, which are relevant. "19. - (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) ..... (3) ..... (4) ..... (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."

Also necessary is reproduction of sections 26 and 28 in Hindu Marriage Act, 1955.

"26. Custody of children.- In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, *consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:*

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

27. .....

28. Appeal from decrees and orders.-*(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decision of the court given in exercise of its original civil jurisdiction.*

(2) ***Orders made by the court in any proceeding under this Act, under Section 25 or Section 26 shall****, subject to the provisions of sub-section*

(3), ***be appealable if they are not interim orders*** *and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.*

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of ninety days from the date of decree or order."

(emphasis supplied)

5. We have taken note of view taken by co-ordinate Bench in **Isma Alam (supra). View was also taken on judgment dated 17th July, 2025** by another co-ordinate Bench, to which one of us (Arindam Sinha, J) was party. It was in **First Appeal no. 285 of 2025 (Dr. Prakhar Kumar vs. Dr. Aditi Dhaundiyal)**. Paragraph 10 from the view is reproduced below.

"10. Guardians and Wards Act, 1890, as aforesaid, has section 12 providing for power to make 'interlocutory order'. Then came legislation by the Act of 1984. ***Parliament in the 35th year of the Republic of India acted upon the bill bearing statement of objects and reasons saying, inter alia, the need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes. By clause 2(i) in the statement of objects and reasons it was said, the bill sought to, inter alia, provide for only one right of appeal, which shall lie to the High Court.*** *It was one of the objects of the bill, enacted by Parliament. Section 19 as amended stands in the statute by the Act of 1984. To say section 12 in the Act of 1890 cannot control section 19 in the Act of 1984 would lead to presumption that the Legislature attached different meanings for word 'interlocutory' as appearing in the Act of 1890, the Code of 1908 and the Act of 1984."*

(emphasis supplied)

6. In light of above views, we need to consider section 26 and sub-section (2) in section 28, relied upon by appellant. We do not find sub-section (2) in section 28 to be contrary to the position of law created by enactment of Family Courts Act, 1984, subsequent also to Hindu Marriage Act, 1955. We have laid emphasis on above reproduction of the provision to demonstrate that an order or direction made under section 26 can be appealable if they are not interim orders. Such is also the mandate of section 19 in Family Courts Act, 1984.

7. Section 26 in the Act of 1955 empowers the Court, while dealing with any proceeding under the Act, to from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to, inter alia, custody of children. Impugned judgment/order is but an interim order/direction. It is not a provision made in the decree because such decree is yet to come on adjudication of the matrimonial dispute, still pending. Where the Court passes a judgment and there is a decree, for example, directing dissolution of the marriage and also providing directions for custody, a party to the proceeding can choose to appeal only against the directions for custody by virtue of section 26 and section 28(2). Such appeal would be maintainable under section 19 in Family Courts Act, 1984.

8. Impugned judgment/order being interlocutory in nature, the appeal is not maintainable. It is accordingly dismissed.

(2026) 2 ILRA 1269
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 130 of 2026

The Oriental Insurance Co. Ltd. ...Appellant
Versus
Ramchandrapal Singh & Ors. ...Respondents

Issue for Consideration

(i) Whether the Insurance Company could avoid liability to indemnify compensation on the ground that the vehicle had allegedly been sold prior to the accident and there was no relationship of employer and employee between the deceased and the transferee;

(ii) Whether, on the facts of the case, the appeal disclosed any ground for interference with the award passed by the Commissioner.

Headnotes

Employees' Compensation Act, 1923 — Liability — Registered owner — Transfer of vehicle — Effect:

Held: Where the material on record, including the registration certificate, showed that the vehicle continued in the name of the original owner on the date of accident, and no documentary evidence was produced to establish transfer of ownership in favour of the alleged transferee prior to the accident, the plea of transfer was liable to be rejected. [Paras 6–8, 10]

Motor Vehicles Act, 1988 — Ownership — Registered owner — Liability towards claimants:

Held: Where the registered owner continued to be recorded as owner in the registration certificate on the date of accident, such status could not be displaced by an unproved plea of prior sale, and liability arising out of the accident could not be avoided on that basis. [Paras 4–5, 7]

Employees' Compensation Act, 1923 — Employer-employee relationship — Admission — Proof:

Held: Where the alleged transferee admitted in his written statement that the deceased was employed as driver of the vehicle and died during the course of employment, the relationship of employer and employee stands established, and such admission is sufficient to fasten liability. [Para 9]

Insurance Law — IMT-29 — Coverage of employees — Scope and effect:

Held: Coverage under IMT-29 extends to employees of the insured travelling or driving the vehicle, and where premium is charged for more than one employee, it includes the driver of the vehicle; mere non-mentioning of the driver in the policy does not absolve the insurer of liability when premium has been paid covering employees. [Paras 14–15]

Insurance — Liability — Private vehicle — Coverage of driver:

Held: Mere absence of specific mention of the driver in the insurance policy does not absolve the insurer of liability where premium has been charged covering employees of the insured. [Para 14]

Insurance — IRDAI Circular dated 18.10.2023 — Effect:

Held: The circular issued by IRDAI providing for compulsory coverage of employees under IMT-29 was taken into consideration while examining the scope of coverage under the policy. [Para 13]

Employees' Compensation Act, 1923 — Appeal — Interference — Scope:

Held: Where no other issue was pressed and the findings of the Commissioner regarding ownership, employment and insurance coverage were based on material on record, and no illegality was found in the award, the appeal was liable to be dismissed at the admission stage. [Paras 16–17]

Appeal dismissed. (E-14)

Case Law Cited

Pushpa @ Leela & others v. Shakuntala and others, **(2011) 2 SCC 240 — relied on*****; Brij Bihari Gupta v. Manmet and others,*** **2025 SCC OnLine SC 1650 — relied on*****; Naveen Kumar v. Vijay Kumar and others,*** **(2018) 3 SCC 1 — referred to*****; United India Insurance Co. Ltd. v. R. Krishnan and another,*** **CMA No. 2307 of 2018 — referred to.**

List of Acts / Statutes

Employees' Compensation Act, 1923; Motor Vehicles Act, 1988**.**

List of Keywords

Employees' compensation; Registered owner; Transfer of vehicle; Employer-employee relationship; Driver coverage; Insurance liability; Appeal**.**

Case Arising From

Judgment and award dated 03.11.2025 passed by the Employee Compensation Commissioner/Deputy Labour Commissioner, Moradabad in E.C.A. Case No.111 of 2015 (Ramchandrapal Singh and others vs. Nirdosh Kumar and others).

Appearance for Parties

For Appellant: Sri Akhilesh Sharan Srivastava
For Respondent:

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

1. The instant appeal under Section 30 of the Employee's Compensation Act, 1923 has been filed by the insurer of the offending Qualis Car No.UA-07-C-6274 against the impugned judgment and award dated 03.11.2025 passed by the Employee Compensation Commissioner/Deputy Labour Commissioner, Moradabad in E.C.A. Case No.111 of 2015 (Ramchandrapal Singh and others vs. Nirdosh Kumar and others), whereby for the untimely death of Dharamveer, who was employed as a driver on above vehicle, in a road accident that occurred on 26.02.2015, a compensation of Rs.8,26,495/- along with interest @ 12% per annum has been awarded to the claimants, which has been ordered to be indemnified by the insurer of the offending Qualis Car No.UA-07-C-6274.

2. Learned counsel for the appellant-Insurance Company submitted that the insurance policy of the above vehicle was taken by Rakesh but during the tenure of the policy the vehicle was sold to Nirdosh Kumar, which was also proved from the written statement submitted by them before the Commissioner. It was further submitted that the deceased was not an employee of Nirdosh Kumar, but was an employee of Rakesh, but since Rakesh sold the vehicle to Nirdosh Kumar prior to the accident, as such, there was no relationship of master and servant between the deceased and Nirdosh Kumar, hence, no compensation could have been awarded by the Commissioner to the claimants. It was further submitted that the insurance policy was not transferred in the name of Nirdosh Kumar, as such, the Insurance Company was not liable to pay any compensation to the claimants. It was further submitted that the Insurance Company has not taken any premium for insuring the driver of the above vehicle, which was proved from the insurance policy submitted before the Commissioner but still the Commissioner has held that the appellant was liable to indemnify the compensation payable to the claimants. With these submissions, it was prayed that the appeal involves substantial questions of law regarding the liability of the Insurance Company to

indemnify the compensation in the absence of master and servant relationship between the deceased and the appellant, as such, it be admitted for hearing.

3. I have heard learned counsel for the appellant-insurance company and perused the impugned judgment and documents submitted with the appeal.

4. The Apex Court in the case of ***Pushpa @ Leela & others Vs. Shakuntala and others (2011) 2 SCC 240***, has held that when transfer of ownership of vehicle was made prior to accident, but neither transferor nor transferee took any steps to change the name of owner in registration certificate, hence in view of the said omission transferor must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale. It was held that the transferor was liable to pay compensation.

5. The Apex Court in the case of ***Brij Bihari Gupta vs Manmet and others 2025 SCC OnLine SC 1650*** while considering the liability of registered owner and insurer in the case of transfer of ownership of offending vehicle, held as under:-

"10. There is considerable reliance placed by the insurer on the fact that the appellant had received the vehicle from the Magistrate's Court, asserting his ownership. The order directing handing over the vehicle to the appellant is produced as Annexure-R/4, in IA No. 190313/2022, where it is indicated that even at that point the registered owner's name was not changed. The registered owner was present before the Magistrate as we see from the order and while ordering handing over of the vehicle, the applicant/appellant was directed to change the ownership within 30 days. Hence obviously the balance consideration of Rs. 10,000/- had not been paid till that date. ***The transfer of the registration as per Section 50 of the Motor Vehicle Act, 1988 requires the transferee to report the fact of transfer in the prescribed form to the Registering Authority within whose jurisdiction the transfer is affected within 14 days of the transfer. There is no contention raised by the registered owner that he made such a report as required under Section 50(1)(a)(i) of the Act. Hence the ownership was with the registered owner even at the time of the accident and it is his liability to compensate the victims in the accident, which also has to be indemnified by the insurer. We also notice that in Naveen Kumar[Naveen Kumar vs. Vijay Kumar & Ors. (2018) 3 SCC 1] the definition of owner in the Act of 1988 was interpreted to facilitate fulfilment of the object of the law, which was not to burden the claimant to follow the trail of successive transfers. The liability to pay falls squarely on the registered owner, even if there has been successive transfers which has to be indemnified by the insurer."***

(emphasis supplied)

6. From the perusal of the documents submitted with the appeal, it is evident that the Car No.UA-07-C-6274 was insured with the appellant under a private car liability only policy from 05.12.2014 till 04.12.2015 whereas, the accident occurred on 26.02.2015. It is apparent that on the date of the accident, the vehicle was insured with the appellant-Insurance Company. It is also apparent that the insurance policy was obtained by Rakesh and as per RC verification report annexed with the appeal, the ownership of the vehicle got transferred to Mrs. Jaykari Devi w/o

Ganga Ram on 06.07.2016, which belies the contention of learned counsel for the appellant that the ownership of the vehicle was transferred prior to the accident, to Nirdosh Kumar.

7. From the above facts, it is proved that on the date of the accident, Rakesh was the registered owner of the above vehicle.

8. The owner of the offending vehicle Rakesh duly submitted his written statement before the Commissioner in which he averred that he had previously sold the offending car to Nirdosh Kumar, who had not got it transferred in his name. It was also averred that the car was in the possession and control of Nirdosh Kumar, which was being driven with all the valid documents. It is apparent that it was not proved by any documentary evidence on record that Nirdosh Kumar was ever the registered owner of the offending car.

9. Nirdosh Kumar was also impleaded as opposite party before the Commissioner, who has submitted his written statement in which he accepted that the deceased Dharamveer was employed as a driver on the above vehicle, who died during the course of employment on 26.02.2015 due to the injuries suffered in an accident. It was further averred that the deceased was a private driver, who possessed a valid driving license for driving the car, which was valid upto 09.02.2024. He also accepted that the registered owner of the car Rakesh Kumar, was his relative and he was only power of attorney holder of Rakesh Kumar and the vehicle was insured with the Oriental Insurance Company Limited from 05.12.2014 to 04.12.2015. He further averred that he had not transferred the vehicle in his name because Rakesh was his close relative, but the transfer was in process.

10. From the written statement submitted by Rakesh Kumar and Nirdosh Kumar, it was proved that Rakesh Kumar was the registered owner of the vehicle at the time of the accident and the ownership of vehicle was never transferred to Nirdosh Kumar but instead, on 06.07.2016 Mrs. Jaykari Devi became the registered owner of the vehicle, who was not required to be impleaded in the claim petition before the Commissioner because on the date of the accident, she was not the registered owner of the vehicle.

11. Learned counsel for the Insurance Company submitted that as per insurance policy the Insurance Company has only charged Rs.50/- premium under IMT-29 for the employees of the insured, which does not cover the paid driver of the car, as such, the Insurance Company was not liable to indemnify the compensation payable to the claimants.

12. The Division Bench of the High Court of Madras in the case of ***United India Insurance Co. Ltd. vs R. Krishnan and another CMA No. 2307 of 2018*** decided on 23.03.2020, while discussing the scope of coverage with respect to IMT-29, held as under:-

"20. Issue No.5 Whether the owner of the vehicle is liable to pay additional premium in terms of IMT-29 to cover its employees?

20.1 As far as fifth issue is concerned, now we have to decide whether the owner of the vehicle is liable to pay additional premium to cover its employees in terms of IMT-29?

To answer this issue it is relevant to extract the IMT-29 as follows:

"IMT-29 Legal Liability to Employees of the Insured other than paid driver and/or conductor and /or cleaner who may be travelling or driving in the employer?s car (Private cars only/Motorized two wheelers (not for hire or reward)

"In consideration of the payment of an additional premium @ Rs.25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured?s liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured.

Provided that in the event of an accident whilst the vehicle insured is carrying more than ... employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured.*

Subject otherwise to the terms, condition limitations and exception of this policy."

20.2 The IMT-29 is relating to the payment of additional premium to cover the liability to employees of the insured other than the paid drivers/conductors/cleaners.

20.3 The terms and conditions of Section II-Liability to third parties, as stated above, clearly excludes payment of compensation to the employees of the insured under the category of third party liability. Section II ultimately provides that third party liabilities would be covered as provided under Section 147 of the M.V. Act. Section 147 of the M.V. Act, clearly spells out that premium paid by the insured would cover only the statutory liabilities as stated thereunder, excluding the liabilities to the employees of the insured. Therefore, under Section 147 of M.V. Act, it is mandatory for the insured to enter into a private contract with the insurer by way of payment of additional premium to cover its employees.

20.4 The premium paid under basic third party liability does not cover the employees of the insured. As we stated earlier, additional premium paid under IMT-16 to cover unnamed passengers also excludes employees of the insured from any coverage. Therefore, in order to cover the employees of the insured, the insured is required to pay additional premium in terms of IMT-29.

20.5 This Court vide orders dated 05.09.2019 and 23.09.2019 directed the IRDA to answer the following queries:

" (i) Whether the Insurance Company is liable to pay compensation to the occupant in a private car without paying additional premium under IMT-29?

(ii) What is the scope of IMT-29 after the issuance of circular dated 3 December 2009, by IRDA.??

20.6 In compliance with the direction of this Court, Mr.M.B.Raghavan, learned counsel appearing for IRDA filed a memo, dated 30.01.2013 along with enclosures.

20.6.1 As far as first query is concerned, the IRDA submits that the Insurance Company will not be liable to pay compensation in an accident for the occupants in the private car, who are employees of the insured/owner travelling without obtaining coverage under IMT-29.

20.6.2 As far as second query is concerned, the IRDA answered that the circular, dated 03.12.2009 was not intended to modify the policy terms or include coverage for employee/occupant but only to deal with dispute being raised by the insurer for all occupants (other than employees/occupants) contrary to the express wording of the policy.

20.7 Thus, from the memo filed by IRDA dated 30.09.2019, it is clear that insurer will not have liability for occupants in a private car, who are employees of the insured/owner (except the paid driver) without obtaining coverage under IMT-29.

20.8 Therefore, if an employer intends to cover its employees, it is mandatory for the employer to pay additional premium in terms of IMT-29. In the event of non payment of any additional premium, in terms of IMT-29, insurance coverage will not be extended to its employees…"

13. However, upon the direction of the High Court of Madras in the case of ***United India Insurance Co. Ltd. vs Ilakkiyamathi & others CMA No. 2166 of 2019 & CMP No. 8871 of 2019*** decided on 24.02.2023, the Insurance Regulatory and Development Authority of India (IRDAI) vide Circular/Notification dated 18th October 2023 bearing Ref. No. IRDAI/NL/CIR/MOTOR/178/10/2023-24, issued the following directions:-

i) All General Insurers carrying on motor insurance business shall provide the cover to the employees travelling in employer?s vehicle ***(including paid driver, if applicable)*** *under IMT-29 of the Indian Motor Tariff, compulsorily as an inbuilt coverage while issuing private car policy for such vehicles.*

(ii) The compulsory cover of IMT-29 shall be provided as an inbuilt coverage under the Compulsory Motor Third Party Liability Section of Private Car Package/ Bundled Policies and under standalone policies insuring Compulsory Motor Third Party Liability.

(iii) No additional premium shall be charged until further directions.

14. It is true that the policy discloses that the Insurance Company has taken Rs.50/- premium under IMT-29 but it does not disclose the number of employees regarding which the premium was charged. It is further evident that since the deceased was also working as an employee, being the driver of the car at the time of the accident, as such, mere specific non-mentioning of the driver in

the insurance policy does not entitle the Insurance Company to avoid its contractual liability under the Act. It is further evident that the offending car was a private vehicle which only requires a driver to drive it. It is not a commercial vehicle or a truck in which a Conductor or Khalasi is employed, besides the driver. It is further evident that under IMT-29 only a premium of Rs.25/- per employee is charged but in the instant case, the insurance company has charged premium of two persons, which proves that the driver was also covered under the instant insurance policy, which is also corroborated from the above mentioned circular of the IRDAI.

15. The Insurance Company has examined its Investigator Firoz Khan and Pawan Saxena as DW-1 and DW-2 in order to prove that the deceased was not covered under the terms and conditions of the insurance policy but it is evident that under IMT-29, the Insurance Company took premium of two employees regarding the private car, in which only a driver is employed to drive the vehicle. It is also apparent that the car was not registered in the name of Company, so as to enable the Company to carry its employees in the car. In view of the above premium charged by the Insurance Company, which was towards two employees of the insured, which also included paid driver of the car, hence the contention of the learned counsel of the appellant, contrary to it, is liable to be rejected.

16. No other issue was pressed by the learned counsel for the appellant.

17. In view of the aforesaid facts, the instant appeal does not raise any substantial questions of law and there is no illegality in the impugned judgment and award dated 03.11.2025 passed by the Commissioner concerned, as such, this appeal has got no merit and is liable to be dismissed at the admission stage.

18. Accordingly, this appeal is dismissed at the admission stage.

19. It is apparent that the Insurance Company has deposited the amount of compensation along with interest awarded by the Commissioner amounting to Rs.17,94,718/- on 02.01.2016. The Commissioner is directed to disburse the above amount to the claimants, in accordance with the impugned judgment.

(2026) 2 ILRA 1276
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 291 of 2015

The New India Assurance Co. Ltd. ...Appellant
Versus
Smt. Savita Tiwari & Ors. ...Respondents

Issues for Consideration

(i) Whether compensation under Section 166 of the Motor Vehicles Act, 1988 could be awarded in absence of negligence of the offending driver;
(ii) Whether absence of valid fitness certificate of the offending vehicle absolves the insurer from liability under Section 149(2) of the Act;
(iii) Whether the compensation awarded by the Tribunal required enhancement.

Headnotes

Motor Vehicles Act, 1988 — Section 166 — Negligence — Proof:

Held: For awarding compensation under Section 166 of the Act, proof of rash and negligent driving is essential; where the testimony of eye-witness established that the offending vehicle was driven rashly and negligently and the accident occurred due to loss of control by the driver, the finding of negligence recorded by the Tribunal was justified. [Paras 9–12]

Motor Vehicles Act, 1988 — Accident — Res ipsa loquitur — Applicability:
Held: Where the offending vehicle overturned without involvement of any other vehicle, the principle of res ipsa loquitur applies and supports the inference of negligence on the part of the driver. [Para 12]

Motor Vehicles Act, 1988 — Section 149(2) — Defence of insurer — Scope:

Held: The defences available to the insurer are confined to those specified under Section 149(2) of the Act and cannot be enlarged by raising grounds not contemplated therein. [Paras 25–26]

Motor Vehicles Act, 1988 — Fitness certificate — Absence — Effect on liability:

Held: Mere absence of a valid fitness certificate of the offending vehicle does not constitute a defence available to the insurer under Section 149(2) of the Act, particularly where the vehicle had a valid permit and no order of cancellation of permit was shown. [Paras 24–25, 30]

Motor Vehicles Act, 1988 — Permit — Validity — Finding of Tribunal:

Held: Where the offending vehicle was proved to be having a valid permit on the date of accident, the Tribunal did not err in fastening liability upon the insurer. [Para 13]

Motor Vehicles Act, 1988 — Liability of insurer — Statutory obligation:

Held: The insurer cannot avoid its statutory liability on grounds not enumerated in Section 149(2), and breach such as absence of fitness certificate, not being a specified defence, does not absolve the insurer. [Paras 24–26]

Motor Vehicles Act, 1988 — Appeal by insurer — Dismissal:

Held: Where the finding of negligence and liability recorded by the Tribunal was based on evidence and did not suffer from perversity, no interference was warranted in appeal. [Paras 12, 31]

Motor Vehicles Act, 1988 — Compensation — Assessment — Income:

Held: Where the claimants failed to prove actual income of the deceased, compensation is to be assessed on the basis of minimum wages applicable at the relevant time. [Paras 5–6 (Cross-objection)]

Motor Vehicles Act, 1988 — Compensation — Future prospects:

Held: Where the deceased was below 40 years of age, addition towards future prospects at the rate of 50% is permissible in view of statutory rules. [Para 7 (Cross-objection)]

Motor Vehicles Act, 1988 — Compensation — Conventional heads:

Held: Compensation towards loss of consortium, loss of estate and funeral expenses is to be awarded in accordance with settled principles laid down by the Supreme Court with periodical enhancement. [Paras 8–10 (Cross-objection)]

Motor Vehicles Act, 1988 — Compensation — Multiplier — Correction:

Held: Where incorrect multiplier was applied by the Tribunal, the same is liable to be corrected in accordance with settled law. [Para 12 (Cross-objection)]

Motor Vehicles Act, 1988 — Interest — Rate:

Held: Where statutory rules prescribe a higher rate of interest, the same is to be applied and inadequate rate awarded by the Tribunal requires enhancement. [Para 14 (Cross-objection)]

Appeal dismissed; Cross-objection allowed. (E-14)

Case Law Cited

Rekha Jain and another v. National Insurance Co. Ltd., **(2013) 12 SCC 202 — relied on*****; National Insurance Co. Ltd. v. Nicolletta Rohtagi,*** **(2002) 7 SCC 456 — relied on*****; United India Insurance Co. Ltd. v. Smt. Uma Tripathi and others,*** **2019 SCC OnLine All 4416 — relied on*****; Oriental Insurance Co. Ltd. v. Roop Rani and another,*** **2019 SCC OnLine All 8154 — considered*****; National Insurance Co. Ltd. v. Pranay Sethi and others,*** **(2017) 16 SCC 680 — relied on*****; Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others,*** **(2018) 18 SCC 130 — relied on*****; Gurpreet Kaur and others v. United India Insurance Co. Ltd. and others,*** **2022 SCC OnLine SC 1778 — relied on*****; Jitendra v. Sadiya and others,*** **2025 SCC OnLine SC 261 — relied on*****; Rahul Ganpatrao Sable v. Laxman Maruti Jadhav (Dead) through LRs and others,*** **(2023) 13 SCC 334 — relied on.**

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicle Rules, 1998.

List of Keywords

Motor accident; Negligence; Res ipsa loquitur; Fitness certificate; Permit; Insurer's liability; Statutory defence; Compensation; Future prospects; Multiplier; Minimum wages**.**

Case Arising From

Judgment and award dated 29.11.2014 passed by Motor Accidents Claims Tribunal/Additional District Judge, Court No.4, Kanpur Nagar in Motor Accident Claim Petition No. 159 of 2013 (Smt. Savita Tiwari and others vs. Susheel Kumar Pandey and another).

Appearance for Parties

For the Appellants: Sri Aditya Singh Parihar
For the Respondents: Sri Anil Kumar Mehrotra, Sri Mohd. Naushad Siddiqui, Sri Vidya Kant Shukla

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

Order on Appeal:-

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the insurer of the offending Xylo car No.UP-35-H-0005 against the impugned judgment and award dated 29.11.2014 passed by the Motor Accidents Claims Tribunal/Additional District Judge, court no.4, Kanpur Nagar, in Motor Accident Claim Petition No. 159 of 2013 (Smt. Savita Tiwari and others vs. Susheel Kumar Pandey and another), whereby, for the untimely death of Manoj Kumar Tiwari @ Gandhi in an accident that took place on 05.12.2012, the Tribunal has awarded compensation of Rs.4,44,000/- along with interest at the rate of 6% per annum to the claimants(wife, son and mother), which has been ordered to be indemnified by the insurer of the offending Xylo car No.UP-35-H-0005.

2. Shri Aditya Singh Parihar, learned counsel for the appellant-insurance company submitted that the deceased was alleged to be travelling on the date of the accident i.e. 05.12.2012 in the offending Xylo car No.UP-35-H-0005 when the accident occurred in which besides the deceased, three other persons namely Amit Dubey, Pankaj Shukla and Gaurav Mishra also died. He further submitted that from the G.D. entry No.31 dated 05.12.2012 recorded in Police Station Pilua District Etah, it was proved that in the accident there was no negligence of the offending driver. Learned counsel for the appellant further submitted that even the tribunal did not frame any issue regarding the negligence of the offending driver and also did not conclude that there was any such negligence on the part of the offending driver, as such, without the finding of negligence, compensation under Section 166 of the Motor Vehicles Act,1988 has been awarded to the claimants, which is illegal. It was further submitted that the offending vehicle was a commercial vehicle and for plying it, a valid certificate of fitness was mandatory but the offending vehicle was not having a valid fitness on the date of the accident, as such, the insurance company was not liable to indemnify the compensation payable to the claimants, but this fact was also not considered by the tribunal. It was further submitted that for awarding compensation under Section 166 of the Act, a finding of negligence is sine qua non, but this finding was not recorded by the tribunal, as such, no compensation under Section 166 of the Act could have been awarded to the claimants. It was further submitted that even the eye witness of the alleged accident admits that there was no negligence of the offending driver, as such, the tribunal could not have decided the claim petition under Section 166 of the Act. With these submissions, it was prayed that the appeal preferred by the appellant-insurance company be allowed and the cross objection of the claimants-respondent be dismissed.

3. Per contra, learned counsel for the claimants-respondents submitted that on the date of the accident, the deceased Manoj Kumar Tiwari was travelling in the offending car alongwith Pankaj Shukla, Gaurav Mishra and Amit Dubey, the vehicle was being driven in a rash and negligent manner, which was proved from the testimony of eye witness Vishnu Tiwari PW-2. He further submitted that due to the rash and negligent driving of the offending driver, the vehicle overturned and it was res ipsa loquitur proved that there was negligence on the part of the offending driver. It was further submitted that the tribunal has also recorded that there was negligence of the offending driver in the accident, as such, it has rightly allowed the claim petition under Section 166 of the Act. It was further submitted that the offending vehicle was having a valid fitness certificate on the date of the accident and even if it is presumed that the fitness was not valid, even then, it is not the defence available to the insurance company to evade its statutory liability under Section 149(2) of the Act. In support of its contention, learned counsel for the claimants-respondent has relied upon the judgment of this Court in ***United India Insurance Co. Ltd. Vs. Smt. Uma Tripathi & others***

2019 SCC OnLine All 4416. He further submitted that the deceased was working as a Supervisor in construction company and was getting a salary of Rs.16,600/- per month which was also proved by PW-3 Brijesh, but still the tribunal has assessed the compensation on the notional income of the deceased by presuming that he was only earning Rs.3,000/- per month, which is grossly inadequate. It was further submitted that the tribunal has not awarded any compensation towards the future prospects of the deceased, awarded inadequate amount of compensation under non-pecuniary heads and has also awarded less interest on compensation and for enhancing it, the claimants have filed the cross objection before this Court. It was submitted that the appeal preferred by the insurance company be dismissed and the cross objection filed by the claimants-respondent be allowed.

4. I have heard learned counsel for the parties and perused the impugned judgment and the documents submitted with the appeal.

5. GD No. 31, recorded at 18:45 hours on 05.12.2012 at Police Station Pilua, District Etah, discloses that on the information provided by Devendra Tiwari, on 05.12.2012 the informant, along with Gajendra Tiwari, Krishna Kumar, Vishnu Kumar, Amit Dubey, Pankaj Shukla, Manoj Tiwari, Gopalji and Gaurav Mishra, were travelling from Patel Nagar, Kanpur to Harduaganj, Aligarh to attend the engagement ceremony of his niece, Shweta Tiwari, in a Xylo car bearing registration No. UP-35-H-0005, which was being driven by Gaurav Mishra. At about 5:30 p.m., while attempting to save a bicycle rider, the driver lost control of the vehicle and it suddenly overturned, as a result of which the passengers travelling in the car sustained grievous injuries. The injured persons were sent by the police for treatment to the District Hospital, Etah, where Manoj Kumar Tiwari and Pankaj Shukla were declared dead, while Amit Dubey and Gaurav Mishra were referred to Kanpur for better treatment. The treatment of Gajendra Tiwari, Krishna Kumar and Gopalji continued at the District Hospital, Etah. The said GD entry further records that there was no negligence on the part of the driver of the offending vehicle.

6. It is further evident that the FIR relating to the accident was registered on 08.01.2013 at 15:34 hours as Case Crime No. 2 of 2013 at Police Station Pilua, District Etah, under Sections 279,338,337,304A IPC, on the basis of the report lodged by Satish Chandra Dwivedi. The FIR discloses that on 05.12.2012, the first informant, Amit Dubey, along with other relatives, were travelling in vehicle No. UP-35-H-0005 to attend the engagement ceremony of Km. Shweta Tiwari, at Harduaganj, Aligarh . It is alleged that the driver of the said vehicle was driving rashly and negligently and, despite being cautioned several times to drive carefully, he continued to drive at a high speed. At about 5:30 p.m., while attempting to save a bicycle rider, the driver lost control of the vehicle due to its high speed, as a result of which the vehicle overturned. In the said accident, Manoj Kumar Tiwari and Pankaj Shukla died on the spot, whereas Amit Dubey and Gaurav Mishra were taken in grievous condition to Agra for treatment; however, Amit Dubey succumbed to his injuries on 05.12.2012 while being taken for treatment, and Gaurav Mishra died during treatment after about two hours. It is further disclosed that the initial information furnished by Devendra Tiwari, which was recorded in GD No. 31, indicated that the accident occurred coincidentally which was not correct. The subsequent FIR alleges that the accident was caused due to rash and negligent driving on the part of the driver of the vehicle.

7. Before the tribunal the claimants examined the wife of the deceased Smt. Savita Tiwari as PW-1, Vishnu Tiwari as PW-2 and Brijesh as PW-3. Whereas, the Insurance Company examined its investigator Kailash Upadhyay as DW-1 and owner of vehicle Sushil Kumar Pandey, as DW-2.

8. Smt. Savita Tiwari PW-1 very fairly accepted that she was not an eye witness of the accident. PW-3 Brijesh is also not an eye witness, who has proved the salary of the deceased.

9. PW-2 Vishnu Tiwari deposed that the accident occurred on 05.12.2012 when he was going to the engagement ceremony of Km. Shweta Tiwari at Harduaganj, Aligarh alongwith his relatives in vehicle No. UP-35-H-0005, then within the jurisdiction of police station Pilua, District Etah, the Xylo Car No. UP-35-H-0005 overturned because it was being driven rashly and negligently by its driver, due to which Amit Dubey, Pankaj Shukla, Gaurav Mishra and Manoj Kumar Tiwari @ Gandhi died. He further deposed that the GD entry regarding the accident was made at police station Pilua on 05.12.2012 on the basis of information provided by Devendra Tiwari and subsequently, an FIR was registered by Satish Chandra Dwivedi. He specifically deposed that the accident occurred due to rash and negligent driving of the Xylo car driver.

10. In his cross-examination, PW-2 deposed that at the time of the accident he was travelling in the offending vehicle and had also sustained injuries in the said accident. He further deposed that prior to the accident, the driver had been cautioned to drive the vehicle in a controlled manner, but the driver remained unrelenting. He also deposed that the car was being driven by Gaurav Mishra.

11. The insurance company has examined Kailash Upadhyay as DW-1 and owner of vehicle, Sushil Kumar Pandey as DW-2, in order to prove that the offending Xylo car was being driven in violation of the terms and conditions of the policy, in the absence of valid fitness certificate on the date of the accident. It is undisputed that both the above witness are not the eye-witness of the accident, as such, on the basis of their evidence, the negligence of the offending driver and the factum of the accident cannot be determined.

12. From the evidence of eye-witness PW-2 it was proved that he was travelling in the offending car at the time of the accident, which was driven in rash and negligent manner, by its driver and even prior to accident, the driver was cautioned to drive the vehicle slowly, according to rules and regulations of the traffic, but the driver remained unrelenting and he continued to drive the vehicle rashly and negligently and when a bicycle rider suddenly appeared on the road, due to the high speed of the vehicle, the driver in order to save the bicycle rider, lost control and the car overturned causing grievous injuries to the passengers travelling in the offending vehicle. It is further apparent that the tribunal has considered the testimony of the eye witness PW-2 and has recorded that accident occurred due to rash and negligent driving of the offending driver, and even from the facts and circumstance of the accident, it was res ipsa loquitur proved that the accident was caused due to rash and negligent driving of the Xylo car driver because no other vehicle was involved in the accident. It is further apparent that the owner of the offending vehicle has not led any evidence to prove that there was no rashness and negligence of the offending driver in the accident. It is also evident that the offending driver Gaurav Mishra has also died in the accident. In view of the above evidence on record, there is no perversity in the conclusion of the tribunal that

the accident occurred due to the rash and negligent driving of the driver of the Xylo car, warranting any interference by this court in exercise of its appellate jurisdiction.

13. It is further apparent that the owner DW-2 claimed that the offending vehicle was being driven with all the valid document on the date of the accident but the fitness certificate of the offending vehicle was not produced before the Tribunal. Learned counsel of the insurance company has also submitted that the offending vehicle was not having a valid permit on the date of the accident but this fact is not corroborated by the evidence on record. It is apparent that the vehicle was having a valid UP permit on the date of the accident which was valid from 20.09.2010 to 19.09.2015, whereas the accident occurred on 05.12.2012 as such, the tribunal has not erred in concluding that the permit of the offending vehicle was valid on the date of the accident.

14. Section 149 of the Motor Vehicles Act,1988, which was in force at the relevant time, while specifying the limited grounds of defence available to an insurer, on which it can avoid its statutory liability to indemnify the insured, reads as under:-

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1)*

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

*(3)******

*(4)******

*(5)******

*(6)******

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

15. The Division Bench of the Apex Court in the case of ***Rekha Jain and another vs National Insurance Co. Ltd.(2013) 12 SCC 202 while interpreting S149(2)*** of the Motor Vehicles Act,1988, held as under:-

"17. This principle has been laid down by a three-Judge Bench decision of this Court in National Insurance Co. Ltd. v. Nicolletta Rohtagi [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788] . The relevant paragraphs of the judgment read as under: (SCC p. 468, paras 15-16)

"15. It is relevant to note that Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."

Precedents of this Court

16. This Court in the case of ***Smt. Uma Tripathi*** (supra) where the offending truck was possessing a valid permit, but lacked fitness certificate, which expired a week before the date of the accident, held as under:-

"20. Before coming to the contention of learned counsel for the insurance company with respect to the fitness certificate, it is worth noticing the few relevant sections namely, 56(1), 66(1), and 84(a) of the Act, 1988 touching the aspect of the fitness certificate, which are extracted herein below:-

56. Certificate of fitness of transport vehicles.--

(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the -authorized testing station- refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

66. Necessity for permits.--

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage : Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

84. General conditions attaching to all permits.--The following shall be conditions of every permit--

(a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder;

21. According to Section 56(1) of the Act, 1988, for registration of transport vehicles under Section 39, a valid fitness certificate is required and in absence of such fitness certificate, transport vehicle shall not be deemed to have valid registration.

22. Section 66(1) provides necessity for permit for the use of a vehicle as a transport vehicle in a public place. According to Section 66(1), a transport vehicle shall be used or permitted to be used by owner of vehicle in any public place in accordance with the condition of permit.

23. Section 84(a) provides the general condition which are attached to all the permits. One of the condition as contemplated under Section 84(a) of the Act, 1988 is that vehicle to which the permit relates carries valid certificate of fitness issued under Section 56 and is at all times so maintained as to comply with the requirements of the Act, 1988 and the rules made thereunder.

24. From the aforesaid provisions, it can be safely culled out that for the purposes of registration of transport vehicle, a fitness certificate as contemplated under Section 56 of the Act, 1988 is mandatory and plying of a transport vehicle without a valid fitness certificate amounts to violation of condition of permit.

25. At this juncture, it is useful to notice Section 86(1)(a) which provides that the transport authority which has granted permit may cancel the permit or suspend it for the period as it thinks fit on the breach of any condition specified in Section 84 or of any condition contained in the permit. The proviso to Section 86 (1) of the Act, 1988 provides that no permit shall be suspended or cancelled unless an opportunity of hearing has been given to the holder of permit to furnish his explanation. Section 86(1) of the Act, 1988 is reproduced herein below:-

"86. Cancellation and suspension of permits.- (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit-

(a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.-

26. The proviso to Section 86 (1) clearly contemplates an opportunity of hearing to the holder of permit before cancellation or suspension of the permit on the ground specified in Section 86(1)(a) to (f). Thus, it is evident that the Act does not contemplate that if there is violation of any condition of the permit, the permit shall automatically be deemed to have been cancelled. In fact competent authority has to pass an order before cancelling or suspending the permit after affording opportunity of hearing to the holder of permit.

27. In the instant case, it is not in dispute that fitness certificate of the truck was valid upto 16.07.2010. The fitness certificate expired about a week before the date of accident i.e. 24.07.2010. It is also not disputed by the insurance company that the truck was having a valid permit on the date of accident. There is no order passed by the competent authority on record cancelling the permit of the truck after given an opportunity of hearing to the owner of the truck on the ground that condition of permit has been violated by the owner as the truck was plied without valid fitness certificate. Thus, in such situation, it cannot be said that the truck was not having a valid permit. It is further useful to notice that Section 149(2)(a)(i)(c) talks about the breach of condition of policy where vehicle is used for the purpose not allowed by the permit.

28. In the case in hand, it is not the case of the insurance company that there was no permit of the truck or truck was being used for the purpose not allowed by the permit, therefore, the contention of learned counsel for the insurance company that since fitness certificate has expired on 16.07.2010 before the date of accident, therefore, insurance company is not liable to pay compensation is devoid of merit and is rejected."

(emphasis supplied)

17. A Coordinate Bench of this Court in the case of ***Oriental Insurance Co. Ltd. vs Roop Rani and another 2019 SCC OnLine All 8154,*** while dealing with the issue where the owner was not possessing a valid fitness certificate on the date of the accident and after appreciating the relevant provisions of the Motor Vehicles Act, held as under:-

"12. As per Section 39 of the Act a motor vehicle as defined under section 2(28) of the Act has to be compulsorily registered in accordance with the provisions of the Act before it is plied in a public place. Section 39 of the Act reads as under:

Section 39. Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

13. ***Section 56 of the Act lays down that without a valid fitness certificate, a transport vehicle shall be deemed to be without registration.***

Relevant portion of section 56 reads as under:

Section 56. Certificate of fitness of transport vehicles. -

(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorised testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

14. ***In Narinder Singh v New India Assurance Co. Ltd., (2014) 9 SCC 324 the Apex Court has held that the use of a motor vehicle in a public place without any registration is a fundamental breach of the terms and conditions of a policy contract****. Paragraph 12 of the said report is extracted below:*

"12. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11-1-2006 and the alleged accident took place on 2-2-2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11-1-2006, when the period of temporary registration expired, the appellant, owner of the vehicle, either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract.-

15. As per section 66 of the Act a vehicle defined under Section 2(28) of the Act can only be used as a -transport vehicle- as defined under Section 2(47) of the Act, only if it has a -permit- as defined under Section 2(31) of the Act. Sub-section (3) of Section 66 of the Act carves out certain exceptions to sub-section (1). Relevant portion of Section 66 of the Act reads as under:

66. Necessity for permits.-(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

16. ***Section 84 of the Act lays down the general conditions attaching to all permits. As per Sub-section (a) of Section 84 of the Act every vehicle having a permit should have a valid certificate of fitness at all times.*** *Relevant portion of section 84 reads as under:*

Section 84. General conditions attaching to all permits. - The following shall be conditions of every permit--

(a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder,

17. In National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517, the Apex Court observed as under:

"12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.-

18. In Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., (2018) 7 SCC 558 the Apex Court following Challa Upendra Rao (supra) has held that plying of a transport vehicle in a public place without a permit is a fundamental breach. Paragraph 12 of the said report being relevant is extracted below:

"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh and Lakhmi Chand in that regard would not be applicable to the case at hand. ***That apart, the insurer had taken the plea that the vehicle in question had no permit.*** *It does not require the wisdom of the -Tripitaka-, that the existence of a permit of any nature is a matter of documentary evidence.* ***Nothing has been brought on record by the insured to prove that he had a permit of the vehicle****. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh and other cases pertaining to pay and recover principle."*

19. *In Ramankutty and another v. Pareed Pillai and another, 2018 SCC Online Ker 3542, a 5 Judge Bench of the Kerala High Court* ***considered the question as to whether the absence of 'Permit' or 'Fitness Certificate' relating to a transport vehicle is only a 'technical breach' or a***

'fundamental breach' The Bench relying upon the dictum of the Apex Court in the case of Challa Upendra Rao held it to be a 'fundamental breach'. *Paragraphs 16, 17 and 18 of the said report is extracted below:*

"16. As mentioned above, fitness of a vehicle, to be used as a transport vehicle, is of paramount importance. The necessity to have -Fitness Certificate- is prescribed under Section 56 of the Act. Sub-section (1) of Section 56 clearly stipulates that, a transport vehicle [subject to the provisions of Section 59 (power to fix the age limit of motor vehicle) and Section 60 (registration of the vehicles belonging to the Central Government)] shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a -Certificate of Fitness- as prescribed. By virtue of Section 84(a), as mentioned already, it is a mandatory requirement of every Permit, that the vehicle to which the Permit relates, shall carry valid Certificate of Fitness- issued under Section 56 at all time, absence of which will automatically lead to a situation that the vehicle will not be deemed as having a Permit [if it is not having a Fitness Certificate- on a given date]. Using a motor vehicle in an unsafe condition in any public place itself is an offence under Section 190 of the Act. Separate penalty is prescribed under Section 192 for driving or using the motor vehicle in contravention of Section 39 of the Act [i.e. without registration]; which at the first instance by fine upto Rs. 5000/- [not less than Rs. 2000/-] and for the second or subsequent offences, it may be with imprisonment, which may extend to one year or fine upto Rs. 10,000/- [not less than Rs. 5000/-] or with both; of course, conferring power upon the Court to impose a lesser punishment, for reasons to be recorded. Similarly, separate punishment is provided for using vehicles without -Permit- as provided under Section 192A [first offence with fine upto Rs. 5000/- which shall not be less than Rs. 2000/- and for any subsequent offence with imprisonment upto one year [which shall not be less than 3 months or with fine upto Rs. 10,000/- which shall not be less than Rs. 5000/-] or with both; here again conferring power on the Court to impose lesser punishment, for reasons to be recorded. Reference is made to the above provisions only to illustrate the utmost requirement to have a valid -Registration, Permit and Fitness Certificate".

17. Importance of the fitness/road worthiness of a vehicle, right from the time of registration of the vehicle, is further discernible from Rule 47 of the Central Motor Vehicles Rules 1989 [referred to as Central Rules]. The said Rule deals with application for registration of motor vehicles, which, among other things, stipulates that it shall be accompanied by various documents. Under sub-rule (1)(g), it is mandatory to produce road worthiness certificate in Form 22 from the manufacturers [Form 22A from the body builders]. On completing the formalities/procedures, -Certificate of Registration- is to be issued in terms of Rule 48 of the Central Rules in Form 23/23A, as the case may be. The said Rule contains a proviso, insisting that, when Certificate of Registration pertains to a transport vehicle, it shall be handed over to the registered owner only after recording the Certificate of Fitness in Form 38. Validity of the Certificate of Fitness is only to the extent as envisaged under Rule 62 of the Central Rules, which mandates, as per the proviso, that the renewal of a Fitness Certificate shall be made only after the Inspecting Officer or authorised Testing Station as referred to in sub Section 1 of Section 56 of the Act has carried out the test specified in the table given therein.

18. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above

prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely Interlinked. In the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to property. Only If the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued In terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite -fundamental- in nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather be branded as -technical violations-. In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers.

20. The facts of the present case have to be examined in the light of the above-settled proposition of law. The conclusion recorded by the Tribunal clearly shows that the accident occurred on 8.3.2011 and the respondent no. 2 failed to establish that on the date of accident the offending vehicle had a valid fitness certificate. It is not the case of the insured that the offending vehicle was covered by any of the exceptions mentioned in sub-section (3) of Section 66 of the Act. In the circumstances, ***in view of the settled legal position that absence of a fitness certificate amounts to the absence of a valid permit, the offending vehicle, in the present case, would be deemed to be without registration and without a valid permit, and as such, the liability cannot be imposed upon the insurer.*** *The impugned award directing the appellant to pay the compensation is set aside."*

(emphasis supplied)

Precedents of other High Courts

18. The High Court of Madhya Pradesh in the case of ***United India Insurance Co. Ltd. vs Vinod and others 2019 SCC OnLine MP 6107,*** where the owner of the offending vehicle lacked valid and effective fitness certificate on the date of the accident, held as under:-

"10***. Thus, it is clear that for use of a vehicle, Insurance Policy is required under section 147 of Motor Vehicles Act, 1988, and for use of a vehicle, its registration is compulsory and for registration, the fitness certificate of the transport vehicle is necessary under section 56 of Motor Vehicles Act. Use of vehicle without registration is also punishable under section 192 of Motor Vehicles Act. Thus, in the considered opinion of this Court, the requirement of fitness certificate for the liability of the Insurance Company is not dependent upon the terms and conditions of the Insurance Policy, but it is the requirement of law for using the vehicle in accordance with law and none of the term or condition of the Insurance Policy allows the owner of the vehicle to ply the vehicle in contravention of any provision of law. Thus, this Court is of the considered opinion that due to non-availability of the fitness certificate, it can be safely said that the vehicle was being used contrary to the provisions of law, and since, the insurance policy is required under section 147 of the Motor Vehicles Act, therefore, it cannot be said that Insurance Policy is a private contract of insurance between the driver and the Insurance Company, but in fact it is the statutory requirement.***

11. Further, for holding a valid permit, the fitness certificate is must. Section 84(a) of Motor Vehicles Act, 1988 reads as under:

84. General conditions attaching to all permits.- The following shall be conditions of every permit-

(a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder;

12. The Supreme Court in the case of National Insurance Company Limited v. Challa Upendra Rao, reported in (2004) 8 SCC 517 has held as under:

12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.

13. The Supreme Court in the case of Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., reported in 2019 (2) M.P.L.J. (S.C.) 8 : (2018) 7 SCC 558 has held that in case, if the transport vehicle was being plied without permit, then the Insurance Company would not be liable.

14. Section 146 of Motor Vehicles Act, 1988 provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. ***Thus, for use of a***

vehicle, an insurance policy is necessary and for use of a transport vehicle, not only it is required to be registered, but it should have fitness certificate apart from permit. Thus, fitness certificate cannot be read in isolation from other provisions of Motor Vehicles Act, 1988.

15. ***Thus, in absence of fitness certificate, the Insurance Company would not be liable to indemnify the insured."***

(emphasis supplied)

19. Again, the High Court of Madhya Pradesh in the case of ***Ramdeen and another vs Vikas and another Misc. Appeal No. 4336 of 2018 decided on 24.02.202***5, wherein the owner of the offending vehicle lacked fitness certificate on the date of accident and there was no condition prescribed in the insurance policy which mandated obtaining a fitness certificate, held as under:-

"9. ***The conjoint reading of Sections 39 & 56 of the Motor Vehicles Act makes it clear that a vehicle without fitness certificate would be treated to be a vehicle without valid registration.***

10. This Court in the case of Smt. Kvita Balethiya and others Vs. Santosh Kumar and another passed in MA No.691/2016 on 26.06.2019 has considered the interpretation of various provisions of Motor Vehicles Act including provisions of Sections 39 & 56 Motor Vehicles Act and in para-18 as held as under;

18. Thus, it is clear that for use of a vehicle, Insurance Policy is required under Section 147 of Motor Vehicles Act, 1988, and for use of a vehicle, its registration is compulsory and for registration, the fitness certificate of the transport vehicle is necessary under Section 56 of Motor Vehicles Act. Use of vehicle without registration is also punishable under Section 192 of Motor Vehicles Act. Thus, in the considered opinion of this Court, the requirement of fitness certificate for the liability of the Insurance Company is not dependent upon the terms and conditions of the Insurance Policy, but it is the requirement of law for using the vehicle in accordance with law and none of the term or condition of the Insurance Policy allows the owner of the vehicle to ply the vehicle in contravention of any provision of law. Thus, this Court is of the considered opinion that due to non-availability of the fitness certificate, it can be safely said that the vehicle was being used contrary to the provisions of law, and since, the insurance policy is required under Section 147 of the Motor Vehicles Act, therefore, it cannot be said that Insurance Policy is a private contract of insurance between the driver and the Insurance Company, but in fact it is the statutory requirement.

11. Thus, as per the law laid down by this Court in the case of ***Smt. Kvita Balethiya (supra), the requirement of having fitness certificate is the requirement of law for using the vehicle in accordance with the provisions of Motor Vehicles Act and merely because the policy of insurance does not specifically provides for having the fitness certificate would be inconsequential. In other words, the absence of specific condition for possessing fitness certificate in the Insurance Policy would not allow the owner of the vehicle to ply the vehicle in***

contravention of the provisions of the Act. Thus, plying the vehicle without fitness certificate amounts to violation of provisions of law."

(emphasis supplied)

20. A Division Bench of the High Court of Madras in the case of ***The Commissioner, Tiruppur Municipality, Tirupur vs K. Marayammal and others in CMA No.781 of 2024 and CMP No.7285 of 2024 decided on 27.03.2024,*** where the offending vehicle did not had a fitness certificate on the date of the accident, held as under:-

"16. On the second point regarding liability of the Insurance Company, we find that the fact that the vehicle did not have a fitness certificate on the date of the accident is admitted. If we are to look at the consequence of the absence of the fitness certificate, Section 56 provides the consequence and it reads as follows:-

56. Certificate of fitness of transport vehicles.- (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in subsection (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the authorized testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.[Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.]

(2) The -authorised testing station-; referred to in subsection (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.

(3)Subject to the provisions of subsection (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4)The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:[Provided that no such cancellation shall be made by the prescribed authority unless,

(a)such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b)the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.]

(5)A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7)Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.

17. Section 39 of the Motor Vehicles Act, which provides for registration of the motor vehicles reads as follows:-

39. Necessity for registration.-No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

18. ***Section 56 provides that a transport vehicle shall not be deemed to be validly registered for the purpose of Section 39 unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed Authority, or by an authorized testing station. The consequence of absence of fitness certificate is very serious, which goes to the extent of nullifying the registration of the vehicle, since the vehicle without fitness certificate is deemed to have been not registered at all.***

19. ***If we are to look at Section 39 which speaks about the necessity of registration, we find that there is a clear bar on persons using vehicles without registration on public roads. Therefore, as pointed out by the Hon-ble Supreme Court in Amrit Paul Singh and othes Vs. Tata***

AIG General Insurance Co. Ltd. And others referred to supra, violation is a fundamental statutory refraction.

20. The Hon-ble Supreme Court after referring to the provisions of Section 66 which deal with the permit which after referring to the judgment in National Insurance Co. Ltd., Vs. Swaran Singh and others reported in (2004) 3 SCC 297, concluded that if it is a fundamental statutory infraction then the Insurance Company is absolved of its liability and therefore there cannot be even a direction to the Insurance Company to pay the compensation with liberty to recover it. After discussing other judgments on the issue the Hon-ble Supreme Court observed as follows:-

24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the -Tripitaka-, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle."

(emphasis supplied)

Conclusion of this Court

21. It is apparent that the judgment of this Court in ***Roop Rani*** (supra), which runs contrary to the earlier judgment of this Court in ***Smt. Uma Tripathi*** (supra), was delivered without making any reference to the binding precedent in ***Smt. Uma Tripathi*** (supra). If the Court was doubting the correctness of the view taken by this Court in ***Smt. Uma Tripath***i (supra) then the matter ought to have been referred to a larger Bench for reconsideration, but this course was not adopted. In view of this, the judgment rendered in ***Roop Rani*** (supra) is per incuriam, which is confined to the peculiar facts of that case.

22. It is further apparent that the above contrary or divergent views expressed by other High Courts cannot be relied upon since this Court is bound by the law laid down by this Court in the case of ***Smt. Uma Tripathi*** (supra). Further, this Court is in agreement with the view taken in ***Smt. Uma Tripathi*** (supra).

23. It is pertinent to mention here that no binding precedents of the Apex Court is available on the controversy involved in this case.The Apex Court in the case of ***Challa Upendra Rao*** (supra) and ***Amrit Paul Singh*** (supra) was only considering the situation where the offending vehicle was not having a valid permit on the date of accident, which is entirely different to the controversy at hand, which only relates to lack of valid fitness certificate on the date of accident as such, the ratio of that cases has got no applicability on the facts of this case.

24. From the above analysis, it is evident that even if, it is presumed that the offending vehicle was not having a valid fitness certificate, even then, it does not entitle the insurance company to avoid its statutory liability under Section 149(2) of the Act as held by the Coordinate Bench of this Court in the case of ***Smt. Uma Tripathi*** (supra), wherein this Court was specifically dealing with this issue whether, in the absence of a valid fitness certificate, the insurer of the offending vehicle could avoid its statutory liability. This court after examining the relevant provisions came to the conclusion that since the offending vehicle was having a valid permit which was not cancelled for the lapse of fitness, as such, it cannot be held that the offending vehicle was being plied in contravention of the terms and conditions of the policy.

25. It is further apparent from the judgment of the Apex Court in ***Rekha Jain*** (supra) that the insurer cannot enlarge his defence by taking additional grounds than those specified in Section 149(2) of the Act, insofar as the breach of the conditions of the policy are concerned. It is for this very reason, breaches such as overloading of vehicle with respect to the goods/passengers carried, deviation of route, driving of vehicle in violation of traffic rules and regulations, are not a ground on which the insurer can avoid its statutory liability. Further, the legislature was fully conscious that fitness certificate is required for plying the vehicle in a public place but still, it is not a ground of defence available to insurer under Section 149(2) of the Act. The legislature purposely restricted the ground of defence to breach of the conditions of permit and lack of effective driving license. The legislature even specified what would amount to breach of the conditions of permit.

26. It is not a case of the insurance company that the offending vehicle was not having a permit to carry passengers for hire or reward. It is also not the case of insurance company that the offending vehicle was a private vehicle, which was carrying passengers for hire or reward. It is proved from record that the vehicle was insured as a commercial passenger carrying vehicle, under a package policy from 18.06.2012 to 17.06.2013, whereas, the accident occurred on 05.12.2012.

27. Further, the insurance policy discloses that requirement of permit was mandatory, but it nowhere mentions that fitness certificate is also mandatory, for plying the vehicle. It is also not a case where the offending vehicle was very old. In this case, the vehicle was only about two years old, having manufactured and registered in the year 2010, whose initial fitness was valid for two years, from the date of registration.

28. Judicial notice can be taken of cases where even after having a valid fitness certificate, the accident occurs because of mechanical failure of the offending vehicle such as failure of brakes, steering, bursting of tyres, failure of propulsion system, loss of engine power while driving uphill, etc.

29. Now the question arises if the fitness certificate was valid, then why there was mechanical failure in the vehicle- It shows that grant of fitness certificate is a mere formality, which can never guarantee that mechanical failure will not occur. The legislature was conscious of all these situations, hence, lack of valid fitness certificate was not a ground, which permitted the insurer to avoid its statutory liability under Section 149(2) of the Act.

30. In view of the above legal position even if the offending vehicle was not having a valid fitness certificate even then, the insurance company cannot avoid its statutory liability under Section 149(2) of the Act.

31. In view of the above analysis, the appeal preferred by the insurance company is liable to be dismissed.

32. **According, the appeal preferred by the appellant-insurance company is dismissed.**

33. Office is directed to remit back the statutory deposit made by the insurance company at the time of filing of the appeal, to the concerned tribunal, forthwith.

34. Interim order, if any, stands vacated.

Order on Cross Objection No.156 of 2022

1. As per the office report, there is a delay of 2625 days in filing the instant cross-objection; however, since the cross-appeal filed by the Insurance Company is being disposed of, the delay in filing the cross-objection is condoned.

2. The claimants claimed that the deceased was working as a supervisor in Ashish Contract Pvt. Ltd., Sonipat, Haryana and was getting a salary of Rs.16,600/- per month, which was proved by Brijesh PW-3, but still the Tribunal has disbelieved the evidence of PW-3 on the ground that he was not the employer of the deceased and was only working with him. The Tribunal has assessed the compensation by taking the notional income of the deceased at the rate of Rs.3,000/- per month, which is grossly inadequate.

3. The Apex Court in the case of ***Gurpreet Kaur and Others vs. United India Insurance Company Ltd. and Others 2022 SCC OnLine SC 1778***, held as under:-

"8. Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the testimony of P.W.4 - Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased - Pyara Singh was regularly making the payment of Rs. 11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire

loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs. 50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of monthly instalment of Rs. 11,550/- towards loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs. 25,000/- per month.

*9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs. 25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. T**he Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased.** Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court. "*

(emphasis supplied)

4. The Apex Court in the case of ***Jitendra vs. Sadiya & Others 2025 SCC OnLine SC 261,*** held as under:-

"10. We have heard the learned counsel for the Appellant. We are unable to agree with the view taken by the Tribunal and High Court on the income of the Appellant and the functional disability suffered by him. At the outset, we must refer to the exposition of this Court in Gurpreet Kaur v. United India Insurance Company Ltd. 2022 SCC OnLine SC 1778., wherein it was stated the notifications under the Minimum Wages Act can be a guiding factor in cases where there is no evidence available to evaluate monthly income."

5. It is evident that since the employer of the deceased or his representative were not examined by the claimants in order to prove the salary of the deceased before the Tribunal, as such, the Tribunal has rightly disbelieved the evidence of PW-3 insofar as the quantum of salary of the deceased was concerned, but still the Tribunal was supposed to assess the compensation on the basis of minimum wages paid to an unskilled labour at the time of the accident in the State of Haryana, which was higher than that prevailing in the State of Uttar Pradesh. In the State of Uttar Pradesh, it was Rs.4,677/-per month.

6. In view of the above, the claimants are entitled to receive compensation on the basis that the deceased was an unskilled labourer having a monthly income of Rs.5,000/-.

7. ***Rule 220-A of the UP Motor Vehicle Rules,1998*** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income.

8. The Constitution Bench of the Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.(2017) 16 SCC 680*** has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

9. The Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others, (2018) 18 SCC 130***, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

10. Further, the Apex Court in the case of ***Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others (2023) 13 SCC 334***, held as under:-

"32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. ***In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium."***

(emphasis supplied)

11. As per ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998***, the claimants are entitled to get compensation on the future prospects of the deceased at the rate of 50% of his income, since the deceased was aged about 40 years at the time of the accident.

12. Further, a multiplier of 15 was to be applied for assessing compensation in this case, but the Tribunal has applied a multiplier of 16, which requires reduction, keeping in view the judgment of the Apex Court in the case of ***Pranay Sethi*** (supra).

13. It is further apparent that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires substantial enhancement, keeping in view, the judgment of the Apex Court in the case of ***Pranay Sethi*** (supra), ***Magma General Insurance Company Ltd.*** (supra) and ***Rahul Ganpatrao Sable*** (supra).

14. Further, as per ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998***, the claimants were entitled to get interest at the rate of 7% per annum on the compensation awarded; however, the Tribunal has awarded it at the rate of 6% per annum, which requires enhancement.

15. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded (in Rs.)	In Accordance with.

1.	Monthly income of deceased as per minimum wages of unskilled workman	5,000/-	***Gurpreet Kaur*** *(supra)* & ***Jitendr****a (supra)*
2.	Annual Income of deceased	5,000X12=60,000/-	***Gurpreet Kaur*** *(supra)* & ***Jitendra*** *(supra)*
3.	Less 1/3rd deduction towards self expenses of the deceased (3 dependents)	20,000/-	***Pranay Sethi****(supra)*
4.	Net annual income on which claimants were dependent	40,000/-	***Pranay Sethi****(supra)*
5.	Add future prospects @50% since deceased was aged about 40 years	20,000/-	***Rule 220-A of UP Motor Vehicle Rules,1998***
6.	Total annual dependency of claimants on deceased	60,000/-	***Rule 220-A of UP Motor Vehicle Rules,1998***
7.	Multiplier applied since age of deceased was about 40 years at the time of the accident		***Pranay Sethi****(supra)*
8.	Total loss of dependency to the claimants	60,000X15=9,00,000/-	***Pranay Sethi****(supra)*
9.	Loss of consortium @Rs.40,000/-each, increased by 10% after every 3 years (3 claimants)	48,400X3=1,45,200/-	***Pranay Sethi(****supra)* *and* ***Magma General Insurance Co. Ltd.*** *(supra)*
10.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	***Pranay Sethi****(supra)*
11.	Funeral Expenses@ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	***Pranay Sethi****(supra)*
12.	Total compensation	10,81,500/-	

16. In this way, the claimants are entitled to total compensation of Rs.10,81,500/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending Xylo car No.UP-35-H-0005.

17. **Accordingly, the cross-objection preferred by the claimants for enhancement of compensation is allowed. The impugned judgment and award of the tribunal dated 29.11.2014 is modified to the above extent.**

18. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants, keeping in view their age and dependency.

(2026) 2 ILRA 1301
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 1370 of 2024

Subhaschandra Gupta ...Appellant
Versus
Ajay Kumar Sharma & Ors. ...Respondents

Issues for Consideration

(i) Whether the first appellate court was justified in permitting substituted service under Order V Rule 20 CPC without sufficient material showing that the defendants were avoiding service;
(ii) Whether the ex-parte judgment passed in the appeal without proper service of summons and without affording an opportunity of hearing was sustainable;
(iii) Whether the rejection of the application under Order 41 Rule 21 CPC for recalling the ex parte judgment was legally justified.

Headnotes

Civil Procedure Code, 1908 — Order V Rule 20 — Substituted service — Preconditions:

Held: Substituted service under Order V Rule 20 CPC is an exception to the normal mode of service and can be resorted to only when the Court, on the basis of material on record, records satisfaction that the defendant is keeping out of the way for the purpose of avoiding service or that summons cannot be served in the ordinary manner; such satisfaction must be based on earlier attempts made for service and cannot be presumed in absence of material. [Paras 26–27]

Civil Procedure Code, 1908 — Order V Rules 17, 20, 21 — Service of summons — Mandatory compliance:

Held: Before resorting to substituted service, the Court must ensure compliance of mandatory provisions relating to service, including attempts through registered post acknowledgment due, service through process server and, where the defendant resides outside jurisdiction, service through the competent Court under Order V Rule 21 CPC; absence of any documentary evidence regarding such attempts vitiates the order permitting substituted service. [Paras 28–32, 35–36]

Civil Procedure Code, 1908 — Substituted service — Absence of material — Illegality:

Held: Where no documentary evidence was available on record regarding issuance, service or refusal of registered notices or summons, no report of process server existed and no compliance of Order V Rule 17 CPC was shown, the appellate court could not have permitted substituted service through publication in newspaper. [Paras 31, 35–36]

Civil Procedure Code, 1908 — Ex-parte proceedings — Opportunity of hearing — Validity:

Held: Where substituted service was not validly effected and there was no proof of service of notice either on the defendant or on his counsel, proceeding to hear the appeal ex-parte without affording opportunity of hearing was unsustainable. [Paras 37–39]

Civil Procedure Code, 1908 — Order 41 Rule 21 — Recall of ex-parte decree — Sufficient cause:

Held: Where service of summons was not duly effected and the defendant had no knowledge of the proceedings, there existed sufficient cause for non-appearance, and the application for recall of ex-parte judgment ought to have been allowed. [Para 41]

Civil Procedure Code, 1908 — Findings — Presumption without evidence — Validity:

Held: Findings of the appellate court presuming service of summons and knowledge of proceedings on the basis of conduct of the defendant, without any supporting documentary evidence, are perverse and legally unsustainable. [Paras 40–41]

Civil Procedure Code, 1908 — Appeal — Interference — Setting aside ex-parte decree:

Held: Where substituted service was illegally permitted, mandatory provisions of service were not complied with and the defendant was denied opportunity of hearing, the impugned order rejecting recall application and the ex-parte judgment and decree were liable to be set aside and the appeal restored for decision on merits. [Paras 41–42]

Appeal allowed. (E-14)

Case Law Cited

Om Prakash v. Prakash Chand and others, **Neutral Citation 2004 AHC 106 (DB) — relied on; *Teharoon Chand v. Surajmull Nagarmull*, AIR 1984 Cal 82 (DB) — relied on; *K. Raja v. V. Prabhakar*, Neutral Citation 2024 KHC 49086 — relied on; *Virendra Kumar Sondhi v. Sudesh Kumar Suri and others*, 2022 SCC OnLine MP 1304 — referred to; *Mrs. Payal Ashok Kumar Jindal v. Capt. Ashok Kumar Jindal*, (1992) 3 SCC 116 — relied on; *Smt. Yallawwa v. Smt. Shantavva*, (1997) 11 SCC 159 — relied on; *Smruti Pahariya v. Sanjay Pahariya*, (2009) 13 SCC 338 — relied on; *M/s Neerja Realtors Private Limited v. Janglu (Dead) through LRs*, (2018) 2 SCC 649 — relied on.**

List of Acts / Statutes

Code of Civil Procedure, 1908.

List of Keywords

Substituted service; Service of summons; Process server; Registered post; Ex-parte decree; Recall of decree; Opportunity of hearing; Perverse finding**.**

Case Arising From

Order dated 23.05.2024 passed by Additional District Judge, Court No. 6, Ghaziabad in Miscellaneous Case No. 71 of 2019 (Subash Chand Gupta vs. Ajay Kumar Sharma and others), rejecting application under Order 41 Rule 21 CPC for recalling ex-parte judgment dated 17.07.2019 passed in Civil Appeal No. 146 of 2011.

Appearance for Parties
For the Appellants: Sri Pramod Kumar Jain, Senior Advocate, Syed Fahim Ahmed
For the Respondents: Sri Devid Kumar Singh, Sri Prateek Rai

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

1. The instant appeal under Order 43 Rule 1(t) read with Section 104 CPC has been preferred by the defendant against the impugned order dated 23.5.2024 passed by Indu Dwivedi, Additional District Judge, Court No.6, Ghaziabad in Miscellaneous Case No. 71 of 2019 Subash Chand Gupta vs. Ajay Kumar Sharma and others whereby, the defendants application no.4-C under Order 41 Rule 21 CPC for recalling the ex-parte judgment in Civil Appeal no.146 of 2011, and to rehear the appeal on merits, has been rejected.

2. Appeal is admitted.

3. Factual matrix is that the plaintiff -respondents no. 1 to 3 filed O.S. no. 544 of 1997 against the defendant-appellant and co-defendant /respondent Phool Singh(died during pendency of suit) for the relief of permanent injunction and possession, which was dismissed on merits by Additional Civil Judge (Senior Division) Court No.2 Ghaziabad on 18.8.2011, which was challenged by the plaintiffs by filing Civil Appeal no. 146 of 2011 Ajay Kumar Sharma and others vs. Gangaram and others in the Court of District Judge, Ghaziabad, which was subsequently after admission, transferred to the Additional District Judge, Court no.6, Ghaziabad.

Relevant chronology of C.A. no.146 of 2011

4. Civil Appeal no.146 of 2011 was admitted for hearing on 16.9.2011 and thereafter, notices were issued on the respondents fixing 15.11.2011 for disposal of stay application and the appellants were directed to take steps within 7 days. On 28.11.2011 the appellants moved an application 17-C2 for effecting service of summons through registered post, alongwith application 19-C2 for effecting service through publication in newspaper, and the court fixed 30.11.2011 for disposal of the above applications. On 30.11.2011, the plaintiff-appellants submitted before the court that during the pendency of the suit the disputed property has been sold to the defendant-respondent no.4 Subash Chand Gupta, as such none is taking interest on behalf of respondents no.1 to 3 and respondent no. 4 was deliberately not appearing before the court whereas, he was aware of the appeal. It was further submitted that the respondent was in a hurry to sell the disputed property, because no injunction has been granted. On this ground, it was prayed by the appellants that they be permitted to effect service on respondents through publication, which was supported by an affidavit of appellant Ajay Kumar Sharma(paper no. 20-C).

5. The appellate court recorded a finding that previously also notices were sent on the respondents but service could not be effected on them, hence, in the interest of justice, the court on 30.11.2011 permitted the appellants to effect service through publication on their expenses, and to

take steps within 4 days. The appellants application 19-C2 was accordingly disposed and the appellate court fixed 21.12.2011 for hearing.

6. The appellate court on 16.2.2012 recorded that the service on respondents was sufficient by publication in newspaper 21-C2, but none of them was present as such, the court proceeded ex-parte against the defendant/respondents and fixed 29.2.2012 for hearing ex-parte arguments of the plaintiff-appellants.

7. The appellate court on 19.4.2012 recorded that the acknowledgement due(AD) of the registered notices, which were sent to the respondents was not available on the record. Besides that, there was no proof that notice was sufficient on the learned counsel of the respondents,who was appearing in the lower court. The court also noted that the plaintiff 's suit was dismissed on merits, which has been challenged in the appeal. In view of the above facts, the court concluded that it was expedient that notices of hearing of appeal be sent to the learned counsel of the defendant/ respondents appearing in the trial court, in order to hear the appeal on merits and for this, the appellants were directed to take steps within a week.

8. The appellate Court on 23.7.2012 recorded that notices have been again sent to the respondents, but they are not present. The court fixed 13.8.2012 for ex-parte hearing of the appeal. Ultimately,the appellate court heard the arguments of the appellants on 6.7.2019 and fixed 17.7.2019 for pronouncement of judgment. On 17.7.2019, the Civil Appeal was allowed ex-parte and consequently, the decree passed in O.S. no. 544 of 1997 was set aside and the plaintiff 's suit was decreed. The defendant/respondents were directed to handover the possession of the disputed property within 3 months to the appellants, failing which, the appellants were held entitled to get it in accordance with law, through court.

Proceedings of Miscellaneous Case no. 71 of 2019

9. This case was instituted by the defendant-appellant Subash Chand Gupta under Order 41 Rule 21 read with Section 151 CPC for recalling ex-parte judgment dated 17.7.2019 in C.A. 146 of 2011 on 14.8.2019, with the averments that on 2.8.2019 he received an envelope at his residence, but at that time, he was in Dehradun for some necessary work, as such, he was not able to see the envelope but after returning on 8.8.2019, when he opened the envelope, then he came to know that the plaintiff/ appellants had filed a caveat under Section 148-A CPC in the High Court, Allahabad. It was further averred that by going through the contents of the envelope he became aware that in C.A. 146 of 2011 some order has been passed regarding which, the plaintiff has filed a caveat in the High Court. It was further submitted that on 9.8.2019 he contacted his Advocate Braham Prakash Nirbhya and showed him the envelope, then his Advocate inspected the record of the appeal on 13.8.2019 and then he became aware that the above appeal has been ex-parte decided. He further averred that from the inspection of the above file, he became aware that no registered notices or summons were ever served on him and service was deemed sufficient on him through publication in a newspaper, which was not read by him, as such, he never became aware about the appeal. It was further submitted that there was also no notice of the appeal on the learned counsel, who was appearing for him in the trial court. It was further submitted that due to the ex-parte hearing of the appeal, he has suffered severe loss and as such, the order dated 17.7.2019 passed in the appeal be

recalled and the appeal be heard and decided on merits, after hearing him. An affidavit of defendant Subash Chand Gupta, was submitted with the above application.

10. The above application of the appellant was opposed by the plaintiffs, on the ground that even in the O.S. 544 of 1997 after filing his written statement, the defendant/ appellant Subash Chand Gupta remained absent in order to delay the disposal of the suit, which was also mentioned in the judgment of the trial court. It was submitted by the plaintiffs, that the defendant/appellant deliberately failed to appear in the appeal whereas, he was fully aware of the appeal. It was admitted that service was effected on the defendant's through publication in the local newspaper, which was paper no. 21-C on the record of the appeal. It was further submitted that since the defendant was fully aware about the appeal as such, the application was not legally maintainable, which was liable to be dismissed. An affidavit of plaintiff Ajay Kumar Sharma was filed in support of the objection.

11. The appellate court by impugned order dated 23.5.2024 has rejected the defendant/appellants application no.4-C under Order 41 Rule 21 CPC on the ground that it is not the case of the defendant that summons and notices were sent on his wrong address because the address mentioned by the defendant in his application was the same, as was mentioned in the plaint and memo of the appeal. It was further concluded by the court that it can be presumed that notices and summons sent to the defendant were duly served on him. Besides that, publication in the newspaper was also effected. The court was of the opinion that since the defendant has not filed the copy of the caveat,his assertion of knowledge through caveat was not reliable. Ultimately, the court on the basis of conduct of the defendant presumed, that he was having notice of the appeal through summon and publication, but he deliberately failed to appear before the appellate court, but immediately after the passing of the ex-parte decree, has appeared before the court within a month, which shows that he was having full knowledge of the appeal, but he deliberately failed to appear. Aggrieved against the rejection of the above application, the defendant has filed this instant appeal under Order 43 Rule 1(t) CPC.

Submissions of learned counsel of the parties

12. Shri Pramod Jain learned senior counsel for the defendant/appellant submitted that there is no documentary proof on record to presume that registered notices were ever sent to the defendant/ appellant ,which were refused to be accepted by him;that summons sent through process server were ever refused to be accepted by the appellant; the appellant was avoiding service of summon sent through process server or registered post, as such, without the above evidence, the appellate court could not have ordered the service to be effected on the appellant through publication in local newspaper. Learned counsel submitted that substituted service through publication in a newspaper can only be effected if, the court is of the opinion that the defendant is deliberately avoiding service through normal mode. Learned counsel further submitted that ordinarily at least twice or thrice registered notices or summons through process server are sent on the defendant/respondent, and when it becomes evident that the defendant was trying to avoid the service,only then, it is ordered that the substituted service be effected through publication in the local newspaper.

13. Learned counsel further submitted that in this case the defendant/appellant was resident of Delhi, but the newspaper in which summons were published, was having no circulation in Delhi, which was not read by the appellant, as such, even after publication, the appellant remained unaware about the appeal and hence, could not appear before the court. Learned counsel submitted that the appellate court even tried to effect service on the counsel of the appellant, who appeared in the trial court, but there is no evidence that notice was duly served on the counsel. Learned counsel submitted that since there was no service of notice or summon on either the appellant or his counsel in the trial court, as such, no one could appear before the appellate court during the hearing of the appeal, but still, the appellate court has presumed from the conduct of the appellant that he was fully aware of the proceedings of the appeal and he deliberately did not appear before the appellate court, which is a perverse finding. It was further submitted that without following the mandatory provisions of Order V CPC, service has been presumed sufficient on the defendant's, which is illegal. Learned counsel in support of his contention has relied upon the case law of :-

(1)Om Prakash vs. Prakash Chand and ors. Neutral Citation 2004 AHC 106(DB).

(2)K. Raja vs.V.Prabhakar, Neutral Citation 2024 KHC 49086 (Karnataka).

(3)Teharoon Chand vs. Surajmull Nagarmull AIR 1984 Cal 82(DB).

(4)Mrs.Payal Ashok Kumar Jindal vs. Capt. Ashok Kumar Jindal (1992)3 SCC 116.

(5)Smt.Yallawwa vs.Smt.Shantavva (1997)11 SCC 159.

14. Per contra, learned counsel for the plaintiff-respondents submitted that the defendant/appellant was well aware of the proceedings of the appeal, who deliberately did not appear before the appellate court in order to delay the disposal of the appeal, as such, the appellate court has rightly rejected his recall application. Learned counsel further submitted that notices and summons were duly sent to the appellant, and substituted service was also effected on him through publication in local newspaper, which was in accordance with the relevant provisions of Order V CPC, as such, no illegality was committed by the appellate court in hearing and deciding the appeal ex-parte. It was further submitted that the appellate court has rightly noted the conduct of the appellant, who deliberately avoided appearing before the appellate court during the pendency of the appeal. It was further submitted that notice was also served on the learned counsel of the defendant, who was appearing in the original suit before the trial court, but even the counsel deliberately failed to appear before the appellate court.With these submissions, it was prayed that the appeal is meritless and it be dismissed.

15. I have heard the learned counsel of both the sides and perused the impugned order, as well as, the record of the lower court.

16. On the basis of the submissions of the learned counsel of the parties and the perusal of the record, the following questions arise for determination in this appeal:-

(i) Whether the first appellate court was justified in allowing the plaintiff-appellants application for effecting substituted service on the defendant-respondents?

(ii) Whether there was sufficient material on record to arrive at a conclusion that the defendants-respondents were avoiding service and they were deliberately not appearing in the appeal?

(iii) Whether the first appellate court was justified in hearing the appeal ex-parte without affording the defendants-respondents due opportunity of hearing?

Relevant Statutory Provisions

17. For appreciating the controversy in issue, it will be appropriate that the relevant provisions of Order V CPC are considered. The relevant provisions as mentioned in Order V Rule 9,12,15,17,19,20,21 CPC read as under:-

9. Delivery of summons by Court."*(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.*

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an

endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for
the purposes of sub-rule (1).

12. ***Service to be on defendant in person when practicable, or on his agent.*** *-Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.*

15. **Where service may be on an adult member of defendant's family.-** *Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.*

Explanation. "A servant is not a member of the family within the meaning of this rule.

17. ***Procedure when defendant refuses to accept service, or cannot be found.-****Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.*

19. Examination of serving officer*.-Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the*

matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. Substituted service.-*(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.*

(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service.-Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed.-Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may

require.

21. Service of summons where defendant resides within jurisdiction of another Court.- *A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers [or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.*

Case law referred and considered

18. A Division Bench of this Court in ***Om Prakash*** (supra) after considering Order V Rule 20 CPC held as under:-

" that substituted service is permissible, provided the courts record the reasons after being fully satisfied that the service cannot be effected in an ordinary manner and it cannot be taken as a matter of right. Party cannot ask the court that it wants to serve the defendant/respondent by substituted service. The courts have deprecated the practice of filing such an application and categorically held that substituted service is not permissible unless the court records the reasons reaching the conclusion that it is not possible to serve the defendant/respondent in an ordinary manner."

19. A Division Bench of the Calcutta High Court in ***Teharoonchand*** (supra), while considering service of summons under Order V Rule 20 CPC held as under:-

"Before issuing summons under Order V, Rule 20 of the Code, the court is to be satisfied that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason summons cannot be served in the ordinary way. Before such satisfaction, the court has to consider the case carefully having regard to the nature of the earlier attempts made for the service of summons. Mere assertion of the plaintiff in this respect to attract the provisions of Order V, Rule 20 of the Code will not be enough. Only when the court is satisfied from the materials on record that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason summons cannot be served in the ordinary way, the court will be entitled to order service of summons under Order V, Rule 20 of the Code."

20. A Single Judge Bench of the High Court of Karnataka in the case of **K. Raja** (supra) has held that the provisions of Order V Rule 17 and Order V Rule 20 of the Code, are to be read conjointly. It was held that without following the mandatory procedure prescribed in Order V Rule 17, provisions of Order V Rule 20 of the Code cannot be invoked.

21. Similarly, a Single Judge Bench of the High Court of Madhya Pradesh in the case of ***Virendra Kumar Sondhi vs Sudesh Kumar Suri and others 2022 SCC OnLine MP 1304***, held as under:-

"14. However, the substituted service cannot be ordered in a routine manner. Before resorting to the provision of Order 5 Rule 20 of C.P.C., it is obligatory for the Court to record its satisfaction that the defendant was keeping out of the way for the purpose of avoiding service and the summons could not be served in ordinary manner."

22. The Apex Court in the case of ***Mrs.Payal Ashok Kumar Jindal*** (supra), where in the matrimonial petition filed by the respondent husband for divorce, registered notices sent to the appellant were returned with the postal endorsement that she could not be found on the given addresses, has held that :-

".....there is no material on the record to reach a conclusion that the appellant refused to receive the notices. After the notices sent by registered post were received back, the Family Court did not make any attempt to serve the appellant through the process of the Court. Under the circumstances, resort to the substitute service by way of publication in the newspaper was not justified. We are, therefore, of the view that there was sufficient cause for the non-appearance of the appellant in the matrimonial petition before the Family Court."

23. The Apex Court in the case of ***Smt.Yallaww***a (supra), while upholding the order of the High Court setting aside the ex-parte decree of divorce passed against the respondent wife, was considering whether in the matrimonial proceeding, service was sufficient on the wife, held as under:-

"The learned counsel for the respondent was also justified in submitting that the trial court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order V Rules 12,15 and 17 CPC. It must be kept in view that substituted service has to be resorted as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. In the present case, it appears that almost automatically the procedure of substituted service was resorted to."

24. The Apex Court in the case of ***Smruti Pahariya vs.Sanjay Pahariya (2009)13 SCC 338(by 3 Judges),*** while upholding the judgment of the High Court setting aside the ex-parte divorce decree granted to the appellant wife, held as under:-

"12..... Looking at the service return, the Court found that service was not a proper one and the Court was also not satisfied with the endorsement of the courier. Under such circumstances, the Courts direction on the prayer of the appellant-wife, for substituted service under Order 5 Rule 20 of the CPC is not a proper one. Direction for substituted service under Order 5 Rule 20 can be passed only when Court is satisfied "that there is reason to believe that the defendant is keeping out of the way for the purpose of evading service, or that for any other reason the summons cannot be served in the ordinary way."

13.In the facts of this case, the Court did not, and rather could not, have any such satisfaction as the Court found that the service was not proper. If the service is not proper, the Court should have directed another service in the normal manner and should not have accepted the plea of the appellant-wife for effecting substituted service. From wife's affidavit asking for substituted service, it is clear that the servant of the respondent-husband intimated her advocate's clerk that respondent-husband was out of Bombay and will be away for about two weeks. However, the appellant- wife asserted that the respondent-husband was in town and was evading. But the Court on seeing the service return did not come to the conclusion that the husband was evading service. Therefore, the Court cannot, in absence of its own satisfaction that the husband is evading service, direct substituted service under Order 5 Rule 20 of the Code."

25. The Apex Court in the case of ***Messers Neerja Realtors Private Limited vs.Janglu (Dead) through LR's (2018) 2 SCC 64***9 (by 3 Judges), while upholding the judgment of the High Court setting aside the ex-parte decree of specific performance granted in favour of the appellant, held as under:-

"16.Evidently as the report of the bailiff indicates, he was unable to find the defendant at the address which was mentioned in the summons. The report of the bailiff does not indicate that the summons were affixed on a conspicuous part of the house, at the address mentioned in the summons. There was a breach of the provisions of Order V Rule 17. When the application for substituted service was filed before the Trial Court under Order V Rule 20, a cryptic order was passed on 2 September 2011. Order V Rule 20 requires the Court to be satisfied either that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason, the summons cannot be served in the ordinary way. Substituted service is

an exception to the normal mode of service. The Court must apply its mind to the requirements of Order V Rule 20 and its order must indicate due consideration of the provisions contained in it. Evidently the Trial Court failed to apply its mind to the requirements of Order V Rule 20 and passed a mechanical order. Besides this, as observed by the learned Single Judge of the High Court, the Trial Judge ignored the provisions contained in Chapter III of the Civil Manual issued by the High Court on its appellate site for the guidance of civil courts and officers subordinate to it.....

17.The submission that under Order V Rule 20, it was not necessary to affix a copy of the summons at the court house and at the house where the defendant is known to have last resided, once the Court had directed service by publication in the newspaper really begs the question. There was a clear breach of the procedure prescribed in Order V Rule 17 even antecedent thereto. Besides, the order of the Court does not indicate due application of mind to the requirement of the satisfaction prescribed in the provision. The High Court was, in these circumstances, justified in coming to the conclusion that the ex-parte judgment and order in the suit for specific performance was liable to be set aside."

Conclusion by this Court

26. From the above law laid down by the Apex Court and High Courts, it is evident that substituted service under Order V Rule 20 of the Code, is an exception to the normal mode of service and it can only be ordered by the Court if, it is of the belief, on the basis of material on record, that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason, the summons cannot be served in the ordinary manner. It is further evident that the Court has to apply its mind to the facts and circumstances of the case and then it has to record its satisfaction that service on the defendant is not possible by normal mode and only then, the plaintiff/appellant can be permitted to effect substituted service by publication in local newspaper.

27. It is further evident that the Court has also to consider having regard to the nature of the earlier attempts made for the service of summons and only when the Court is satisfied from the material on record, that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason, summons cannot be served in the ordinary way, the Court will be entitled to order service of summons under Order V Rule 20 of the Code.

28. It is further evident that from the evidence on record it is to be considered by the Court how many times registered post acknowledgement due (AD) notices were sent on the defendant /respondent; what was the postal endorsement made on those undelivered notices; whether acknowledgement due (AD) was received or not; whether process server went at the residence /establishment of the defendant / respondent to serve the summon; how many times the process server went to the residence /establishment of the defendant/respondent; who was present at the residence/establishment of the defendant/respondent; whether the defendant/respondent was personally present who refused to receive the summons or whether his/her family members/servants/employees were present, who in his/her absence refused to receive the summons; whether 2 witnesses of such refusal were noted and their signed statement was duly recorded by the

process server in his report to substantiate his version that he went to the residence/establishment of the defendant/respondent but he/she was not present or he/she was present but he/she deliberately failed to receive the summon.

29. It is further evident that when the defendant/respondent resides outside the local jurisdiction of the Court then, service can also be effected on him, through the Court, in whose jurisdiction he /she resides/carries on business, in accordance with Order V Rule 21 CPC.

30. It is further evident that as per Order V Rule 17 CPC, if the defendant/respondent is not found at his residence/establishment or refuses to accept the summons, the process server shall affix the copy of the summons on the outer door or some other conspicuous part of the house in which he/she ordinarily resides or carries on business or personally works for gain, and shall then return the original summon to the issuing Court, with his report that he has so affixed the copy and the circumstances under which he did so, and the name and address of the persons (if any) by whom the house was identified and in whose presence the copy was affixed.

31. From the perusal of the record of the Appellate Court it is evident that there is no documentary evidence on record as to how many times and when registered notices with AD or summons through process server were sent to the defendant/ appellant Subash Chand Gupta; what was their fate; whether they were delivered or not; whether they were refused to be accepted; there is no report of the process server that he went to the residence of the appellant who was not found present or he refused to accept the summons; there is no evidence on record to prove that registered AD notices sent to him were returned undelivered; there is no postal AD available on record; no postal registration receipt is available on record to prove that registered notices were ever sent to the defendant/appellant. There is no documentary evidence to prove that the process server went to the house of the appellant and since summons were not served or refused, he affixed the copy of the summon on the outer door or conspicuous part of his house, along with the name and address of witnesses, who identified his house and in whose presence, the copy of summon was affixed. It is apparent that, in fact, there is no compliance of the mandatory provisions of Order V Rule 17 CPC.

32. It is further apparent that the defendant/appellant Subash Chand Gupta resides in Shahdara, Delhi, which is outside the local jurisdiction of the Ghaziabad Court , where the Appellate Court was situated, as such, the Ghaziabad Court could have sent the summons to the competent Delhi Court, for effecting service through Court in accordance with Order V Rule 21 CPC but this procedure was not adopted by the Appellate Court, which is very surprising.

33. From the perusal of the record, it is evident that C.A. no.146 of 2011 was admitted for hearing on 16.9.2011 by the District Judge Ghaziabad, and the appellants were directed to take steps within 7 days and the next date fixed was 15.11.2011. On 15.11.2011, the appeal was transferred to the ADJ Court No. 13, Ghaziabad for hearing and the next date fixed was 28.11.2011. On 28.11.2011, the appellants moved an application 17-C2 for effecting service through registered post AD along with application 19-C2 for effecting service through publication. It is apparent that both the applications were moved simultaneously by the appellants.

34. The record discloses that on 30.11.2011, the appellate court after hearing the learned counsel for the plaintiff-appellants and considering the submission that during the pendency of the suit the disputed property has been sold by the respondents no.1-3 to respondent no.4, hence the respondents no.1 " 3 have lost interest, the respondent no.4 was deliberately not appearing in the appeal whereas, it was asserted, that he was having knowledge of the appeal,who was in a hurry to sell the disputed property, the appellate court believing the affidavit(paper no.20-C) of appellant Ajay Kumar Sharma, allowed application 19-C2 and permitted substituted service on all the respondents, through publication in local newspaper. The appellate court also concluded that previously notices were sent to the respondents, which remained unserved,hence, permitted the appellants to effect substituted service. It is evident that the appellate court did not pass any order on plaintiff-appellants application 17-C2 for permission to effect service through registered post AD.

35. It is apparent from the record that prior to 30.11.2011 and even subsequent thereto, during the pendency of the Civil Appeal, notices through registered post AD was never sent to the respondents, what to say about their service and refusal. Even during the pendency of the appeal, no summons through process server were ever sent to the respondents to effect service on them. No report of process server is available on the record. No undelivered registered letter or registered postal receipt is available on the record. The appellants moved application 17-C2 before the appellate court seeking permission to effect service on the respondents through registered post AD, which was never disposed by the appellate court, itself proves that, this mode was never adopted by the appellants for effecting service on the respondents. There was no documentary evidence on record to prove that registered notices sent to the respondents were returned undelivered ,which were deliberately not received by them, or the summons sent through process server were deliberately not received by them, but still, the appellate court concluded in order dated 30.11.2011, that notices sent earlier to the respondents remained unserved, whereas, there was no documentary evidence on record to arrive at that conclusion.

36. It is apparent that the appellate court before allowing substituted service under Order V Rule 20 CPC, has failed to consider that no registered notice or summon through process server, was ever sent to the respondents in the appeal as such, in the first place,substituted service on respondents should never have been permitted. There was no material on record to prove that the respondents were avoiding service or service cannot be effected through normal mode and they were aware of the pendency of the appeal. The mandatory provisions of Order V Rule 17 CPC have not been complied with by the appellants. In these circumstances, the appellate court certainly could not have permitted the plaintiff-appellants to effect substituted service on the defendant - respondents in the Civil Appeal.

37. The appellate court in the above circumstances concluded that service by publication on the respondents was sufficient, who were not present, hence proceeded to hear the Civil Appeal ex-parte on 16.2.2012 and consequently, the record of O.S. No. 544 of 1997 was summoned from the record room.

38. It is evident from the record that the appellate court on 19.4.2012 noted with concern, that service on respondents was deemed sufficient by publication but on the record, no

acknowledgement due(AD) was available. It was further noted that there was also no proof that a notice has been served on the learned counsel, who was representing the defendant/respondents in the trial court. In these circumstances, the appellate Court was of the opinion that for hearing the appeal on merits, it was necessary that notices be issued to the learned counsel of the defendant/respondents and for this, 7 days time was afforded to the appellants to take steps and the office was directed to issue process. On 23.7.2012, the appellate court notes that notices have already been sent on the respondents, but, the record does not disclose that any notice was served on the learned counsel of the defendant/respondents, who was appearing for them before the trial court.

39. It is apparent that the appellate court has failed to record its satisfaction, that service was sufficient on the learned counsel of the defendant/respondents, who was earlier representing them in the proceedings of the original suit before the trial court. In the absence of any documentary proof, it cannot be presumed that the learned counsel of the defendant/respondents was aware of the appellate proceedings, who deliberately failed to appear before the appellate court.

40. The appellate court while dismissing the defendant/appellants application 4-C under Order 41 Rule 21 CPC by impugned order, has concluded that notices and summons were sent several times on the defendant, since the address was not wrong, it was presumed that they were duly served on the defendant. It was also presumed that the copy of the newspaper in which substituted service was effected on the defendant, would also have been received by the defendant. The appellate court further concluded that from the conduct of the defendant it was apparent that, no sooner the appellate court passed ex-parte decree than he appeared within 30 days of the decree, which proved that the defendant/appellant always remained aware of the proceedings of the appellate court but he deliberately did not appear before it.

41. The above reasoning of the appellate court is not supported by any documentary evidence on record, which is a figment of imagination, which is legally unsustainable. It is apparent that the above finding is perverse, which requires to be set aside by this Court in exercise of its appellate jurisdiction. It is proved that there was no basis for the appellate court to permit substituted service on the respondents and to hear the appeal ex-parte. There was sufficient cause for the defendant/appellant for not appearing before the appellate court since service of summons was not sufficient on him. It is pertinent to mention here that the original suit of the plaintiffs was dismissed on merits, which has been illegally allowed ex-parte by the appellate court, without affording an opportunity to the defendants to contest the appeal on merits.

42. **For the aforesaid reasons, the instant appeal is allowed.** The impugned order dated 23.5.2024 passed in Miscellaneous Case no. 71 of 2019 is set aside. The defendant/ appellants application 4-C and Miscellaneous Case No. 71 of 2019, stands allowed. Consequently, the ex-parte judgment and decree dated 17.7.2019 passed in Civil Appeal no. 146 of 2011 is set-aside and the Civil Appeal is restored to its original number.

43. The first appellate court is directed to rehear and decide the Civil Appeal no. 146 of 2011 afresh on merits, after hearing both the parties, in accordance with law, within a period of four months, from the date a certified copy of this order is produced before it, without affording any

unnecessary adjournment to either of the parties. afresh on merits, after hearing both the parties, in accordance with law, within a period of f**our months**, from the date a certified copy of this order is produced before it, without affording any unnecessary adjournment to either of the parties.

44. The parties are directed to maintain status quo regarding the disputed property till the disposal of the appeal on merits.

(2026) 2 ILRA 1316
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 2756 of 2025

Radhey Lal Gupta ...Appellant

Versus

Shyam Sunder Gupta @ Ganesh Prasad Gupta & Ors. ...Respondents

Issues for Consideration

(i) Whether the trial court was justified in rejecting the plaintiff's applications for interim injunction and for restraining construction on the disputed property;
(ii) Whether the plaintiff had established a prima facie case, balance of convenience and irreparable injury;
(iii) Whether any ground existed for interference by the appellate court with the discretionary order of the trial court.

Headnotes

Civil Procedure Code, 1908 — Interim injunction — Prima facie case — HUF property — Burden of proof:

Held: Where the plaintiff alleged that the disputed property was purchased from the funds of a HUF but failed to produce any documentary evidence to establish the existence of the HUF at the time of purchase or its continued existence, and failed to prove existence of any joint family nucleus from which the property could have been acquired, no prima facie case was made out. [Paras 27–28, 34, 41]

Hindu Law — Joint family property — Proof — Nucleus:

Held: The burden lies upon the person asserting that the property is joint family property to establish existence of sufficient joint family nucleus from which the property could have been acquired; in absence of such evidence and where the very existence of the HUF at the relevant time is not proved, the claim of joint family property cannot be accepted. [Paras 33–34]

Evidence — Admission — Effect on title:

Held: Mere admission in estate duty proceedings by a third person or in assessment proceedings does not conclusively establish title in respect of property, and title cannot be presumed on the basis of such admission alone. [Paras 28, 42]

Civil Procedure Code, 1908 — Interim injunction — Balance of convenience — Subsequent events:

Held: Where the disputed property had already been sold during pendency of the suit and the purchasers were in possession and had raised construction, the balance of convenience was not in favour of the plaintiff. [Paras 18, 45]

Civil Procedure Code, 1908 — Interim injunction — Absence of declaration — Effect:

Held: Where the plaintiff had not sought declaration of title or partition and failed to establish prima facie right, relief of injunction could not be granted. [Para 46]

Civil Procedure Code, 1908 — Interim injunction — Concealment of material facts:

Held: Where earlier suits involving the same property and similar reliefs between substantially the same parties were pending and the plaintiff had not disclosed such fact, the plaintiff was not entitled to discretionary relief of injunction. [Paras 17, 44]

Civil Procedure Code, 1908 — Appellate jurisdiction — Interference with discretionary order:

Held: The appellate court cannot interfere with an order granting or refusing interim injunction unless the order is shown to be arbitrary, capricious, perverse or contrary to settled principles; where the view taken by the trial court is a possible view based on material on record, no interference is warranted. [Paras 38, 40, 47]

Civil Procedure Code, 1908 — Interim injunction — Findings of trial court — Validity:

Held: Where the trial court, on consideration of material on record, concluded that the plaintiff failed to establish prima facie case and balance of convenience, and such view was a possible and reasonable view, the order rejecting interim injunction did not suffer from perversity. [Paras 41, 45, 47]

Appeal dismissed. (E-14)

Case Law Cited

Adiveppa and others v. Bhimappa and another, **(2017) 9 SCC 586 — considered;** ***Mudigowda Gowdappa Sankh and others v. Ramchandra Revgowda Sankh*****, (1969) 1 SCC 386 — considered;**
Ambika Prasad Thakur v. Ram Ekbal Rai**, AIR 1966 SC 605 — referred to;**
Avtar Singh v. Gurdial Singh**, (2006) 12 SCC 552 — referred to;**
Ramchandra Sakharam Mahajan v. Damodar Trimbak**, AIR 2007 SC 2577 — referred to;** ***Union of India v. Ibrahim Uddin*****, (2012) 8 SCC 148 — referred to;** ***Wander Ltd. v. Antox India Pvt. Ltd.*****, 1990 Supp SCC 727 — relied on;** ***Ramakant Ambalal Choksi v. Harish Ambalal Choksi and others*****, 2024 SCC OnLine SC 3538 — relied on;** ***Dalpat Kumar v. Prahlad Singh*****, (1992) 1 SCC 719 — referred to.**

List of Acts / Statutes

Code of Civil Procedure, 1908.

Interim injunction; Prima facie case; HUF property; Joint family nucleus; Admission; Balance of convenience; Discretionary relief; Appellate interference; Perverse finding**.**

Case Arising From

Order dated 29.08.2025 passed by Additional District Judge (FTC), Mahoba in O.S. No. 3 of 2025 (Radhey Lal Gupta vs. Shyam Sunder Gupta alias Ganesh Prasad Gupta and others), rejecting application no. 6-C2 for interim injunction and application no. 31-C2 for restraining construction.

Appearance for Parties

For the Appellants: Sri Ankur Sharma, Smt. Nidhi Agarwal
For the Respondents: Sri Devansh Misra, Sri Chandra Prakash Kushwaha, Sri Dileep Kumar Singh

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

1. The instant appeal has been filed by the plaintiff under Order 43 Rule 1(r) read with Section 104 CPC against the impugned order dated 29.8.2025 passed by the court of Additional District Judge(FTC), Mahoba, in O.S. no. 3 of 2025 Radhey Lal Gupta vs. Shyam Sunder Gupta alias Ganesh Prasad Gupta and others, whereby plaintiffs interim injunction application no.6-C2 as well as, application no. 31-C2 for stopping construction on the disputed property, have been rejected.

Plaint case

2. The factual matrix is that the plaintiff filed O.S.no.157 of 2024, which was renumbered as 3 of 2025, with the averments that the disputed property is known as 'Shanker Godam', which is situated in Mohalla Chajmanpura, Mahoba, which was purchased from the income of the HUF of "Kashi Prasad Gaya Prasad", hereinafter referred to as the 'firm', in the name of its partner Seth Gaya Prasad, through registered sale deed executed on 31.8.1943. It was further averred that at that time, the partners of the above firm were Deokinandan,Gaya Prasad, Ram Nath, Ramcharan and Bhavanideen. It was further averred that whatever property was purchased, it was from the income of the above firm. It was further averred that at that time the disputed property was lying in ruins, in Mohalla Kanoongoyan ,which is now known as Mohalla Chajmanpura. It was further averred that currently the disputed property is in the form of a ground in which an old temple of Lord Shanker, and a well is constructed.

3. It was further averred that since the sale deed of the disputed property was in the name of the father of defendant no.1, as such the defendant no.1 intends to sell the disputed property by misleading persons, whereas, the disputed property is the property of the above HUF. It was further averred that all the partners of the above firm have died and now their legal heirs are joint owners of the property, who intend to sell the property as per their individual wish.

4. It was further averred that the disputed property belongs to the above HUF, in which the plaintiff and defendants have got share, as such, it cannot be sold by a sole person. It was further averred that during the pendency of the suit the disputed property "Shanker Godam"has been sold by defendant no.1 in an illegal manner to defendant No. 7 Mohammed Imtiyaz and defendant No. 8 Chetrapal Singh Yadav through separate sale deeds registered on 30.1.2025, on the basis of which no right title and interest is vested in the above purchasers.

5. It was further averred that the income tax assessment dated 26.7.1978 of the above firm filed by defendant no.1,discloses that the disputed property is of above HUF, and it also discloses the share of defendant no.1 in the property of the HUF as 20%,but still the defendant no.1 intends to sell the disputed property solely and usurp the consideration.

6. The plaintiff has claimed the following reliefs:-

(i)By decree of permanent injunction, the defendant no.1 be restrained from selling the disputed property known as Shanker Godam.

(ii)The registered sale deeds dated 30.1.2025 executed by defendant no.1 in favour of defendant no. 7 and 8 be cancelled and its information be sent to the concerned sub-registrar.

(iii)By decree of permanent injunction granted in favour of the plaintiff against the pendentelite purchasers defendant No. 7 and 8 , they be restrained from making any demolition, construction in the disputed property and also selling it.

Defendant's case

7. The defendant no.1 Shyam Sunder Gupta alias Ganesh Prasad Gupta submitted his written statement in which he admitted that on the basis of sale deed, his father Gaya Prasad was the owner of the disputed property. It was averred that the disputed property was purchased by his father late Gaya Prasad through registered sale deed dated 2.9.1943 from his self earned income, and thereafter, his father became the sole owner in possession of the disputed property. It was averred that subsequently a registered Will was executed by his father, in his favour, and after the death of his father, he is the sole owner in possession of the disputed property, and in exercise of his right as owner, on 30.1.2025 executed sale deeds of the disputed property in favour of defendant no. 7 and 8 and also handed its possession to them.

8. The defendant has denied that the disputed property belongs to the HUF "Kashi Prasad Gaya Prasad". It was averred that the above firm was constituted on 01.11.1951, whereas the disputed property was purchased on 2.9.1943 from the self earned income of his late father through registered sale deed, which proves that the disputed property was neither the property of HUF nor any plaintiffs right title and interest is vested in it, hence, the plaintiff 's suit was not maintainable and was liable to be dismissed.

9. It was further averred that in the instant suit the member of HUF Jainarain Gupta alias Hindi Bhaiya has been impleaded as defendant no. 2, who has previously filed O.S.no.156 of 2024 in the Court of Civil Judge (Senior Division), Mohaba titled Jainarain Gupta vs. Shyam Sunder Gupta and others and O.S. no. 259 of 1991 in the Court of Civil Judge (Junior Division), Mohaba titled Jainarain Gupta vs. Shyam Sunder Gupta and others, which are pending. It was further averred that in the above mentioned suits, and the instant suit ,the cause of action and the relief claimed is the same as such, the defendant no. 2 should have been impleaded as a co-plaintiff in the instant suit. This shows the collusion between the plaintiff and defendant no. 2. It was further averred that in O.S. No. 259 of 1991, the last Karta of the HUF late Ramcharan Gupta in his affidavit accepted that defendant no.1 was the sole owner of the disputed property, which proves that the disputed property is the self earned property of defendant no.1, in which the plaintiff has got no right title and interest.

10. It was further averred that the plaintiff has filed the photocopy of the estate duty assessment order, which was inadmissible in evidence, in the proceedings of which defendant no.1 was not present, but his cousin Ramswaroop was present, as such any admission made by

Ramswaroop was not binding on defendant no.1. It was further averred that since the disputed property during the pendency of the suit has been sold, the plaintiff 's suit has become infructuous. It was further averred that the plaintiff has not filed any documentary evidence such as balance-sheet of the firm, profit and loss account of the firm,etc. to prove that the disputed property belongs to HUF, which prima facie proves that plaintiff has got no right title and interest in the disputed property and the balance of convenience is also not in his favour.

11. The defendant No. 7 and 8 in their written statement have accepted that the disputed property has been purchased by them through registered sale deed dated 30.1.2025, which is in their possession. It was further averred that the old construction on the disputed property has been demolished and in its place three storeyed building has been constructed, hence the plaintiffs suit for the relief of permanent injunction has become infructuous. It was further averred that father of defendant no.1 was the sole owner of the disputed property, who executed a registered Will dated 01.2.1972 regarding his entire movable and immovable property, which became effective after his death, and on the basis of this Will, defendant no.1 has executed the sale deed of the disputed property in their favour. In view of this, the plaintiff has got no right to obtain the relief of cancellation of the above sale deeds.

12. During the pendency of the suit the plaintiff moved an interim injunction application no.6-C2 on the grounds mentioned in the plaint, which are not being repeated for the sake of brevity. The plaintiff also moved an application 31-C2 for restraining the defendant nos. 1,7 and 8 from demolishing the constructions standing on the disputed property and also stopping the construction work, on the disputed property.

13. The defendants objected to the plaintiffs above applications on the same grounds that were mentioned by them in their written statement, as such, they are not being repeated for the sake of brevity.

Findings of the trial court

14. The trial court by impugned order dated 29.8.2025 concluded that the plaintiff has not produced any evidence regarding when the firm "Kashi Prasad Gaya Prasad" came into existence and duration of its existence, was also not proved. It was also concluded that from the perusal of the true copy of the sale deed dated 31.8.1943 it was not proved that the property was purchased from the income of the firm. It only discloses that the purchaser of the property was Gaya Prasad. It was further concluded that the assessment order of estate duty dated 14.5.1974/20.5.1974 discloses that the return regarding the property of deceased Gaya Prasad was filed by defendant no.1 Shyam Sunder Gupta and the necessary information was provided by cousin of the deceased Ramswaroop. The trial court concluded that the above document discloses that in the disputed property the share of the deceased Gaya Prasad was only 20%. The trial court further concluded that the above order discloses that Gaya Prasad was the coparcener of a HUF Deokinandan Gaya Prasad , which was in existence till assessment year 1952 - 53. On 30.10.1951 there was a partial partition of the above HUF and thereafter, partnership firm came into existence on 01.11.1951, in which there were 5 coparceners. It was further concluded that the above document was a photocopy, which was inadmissible in evidence, and further, in the above proceeding the information was supplied by the

cousin of the deceased Gaya Prasad, namely Ramswaroop but when the firm "Kashi Prasad Gaya Prasad" came into existence, was not disclosed. The trial court further concluded that the estate duty assessment order was not a conclusive evidence insofar as the ownership of the disputed property was concerned as such, on the basis of this document, plaintiff cannot be presumed to be having any right title and interest in the disputed property.

15. The trial court further concluded that the plaintiff has filed photocopy of the partnership deed dated 21.8.1972, which discloses that it was executed between Ramnath Gupta son of Kashi Prasad, Babulal Gupta and Ramswaroop Gupta sons of Deokinandan, Radhey Lal Gupta son of Bhawani Deen and Shyam Sunder Gupta son of Gaya Prasad. This deed also discloses that there was previous partnership deed of firm "Kashi Prasad Gaya Prasad" dated February 1967, but the trial court concluded that even on this basis, it was not established that on 31.8.1943 the firm "Kashi Prasad Gaya Prasad" was in existence.

16. The trial court also perused the order dated 09.12.2024 passed by the High Court in Writ B No. 6108 of 2024 and concluded that the dispute related to plot no. 1866, which was purchased through sale deed in the year 1956, which was deemed to be the property of the HUF, against which SLP was pending in the Apex Court.

17. The trial court also concluded that in O.S. No. 259 of 1991 and 156 of 2024, the relief of permanent injunction has been claimed regarding the disputed property 'Shanker Godam', which is similar to the relief claimed in the instant suit, and majority of parties are same in the suits. The trial court concluded that the plaintiff has filed the suit by concealing the above fact.

18. In view of the above facts, the trial court concluded that the plaintiff has failed to make out a prima facie case in his favour. It was also concluded that there was also no balance of convenience in plaintiff's favour and since the disputed property has already been sold by defendant no.1 in favour of defendant no. 7 and 8 on 30.1.2025, and constructions have already been raised on the disputed land,as such, it was concluded that the plaintiff was not entitled to the relief of interim injunction, as well as, for the relief of stopping the construction work on the disputed property. Accordingly, both the applications 6-C2 and 31- C2 were rejected, aggrieved against which, the plaintiff has filed the instant appeal.

Submissions of the learned counsel

19. Learned counsel for the plaintiff-appellant submitted that the plaintiff and the defendant's no.1 to 6 are the legal heir's of the members of the HUF "Kashi Prasad Gaya Prasad" and the disputed property "Shanker Godam" was purchased from the income of the above HUF in the name of its partner, the father of defendant no.1 Gaya Prasad, which was also proved from the documentary evidence submitted by the plaintiff before the trial court, but the trial court has held otherwise. It was further submitted that there was presumption that since Gaya Prasad was the partner of above HUF, as such, the property purchased in his name through sale deed dated 31.8.1943, was purchased from the income of the above HUF, which has not been rebutted by the defendants, as such, the trial court has erred in concluding otherwise. It was further submitted that in the estate duty assessment order regarding the property of the deceased Gaya Prasad submitted

on 26.7.1978 by his son defendant no.1, there was an explicit admission that the disputed property was the property of the above HUF in which the share of Gaya Prasad was only 20%, but still the trial court has overlooked the above documentary evidence. It was further submitted that since there was admission on the part of defendant no.1, it was binding on him, and in view of that admission, the defendant no.1 cannot claim himself to be the absolute owner of the disputed property.

20. It was further submitted that in Writ 'B' No. 6108 of 2014, which was decided by this Court by order dated 09.12.2024, it was conclusively held that the disputed property was property of HUF, which has not been rebutted by the petitioner Shyam Sunder Gupta, who is the defendant no.1 in the instant suit, as such, even on the basis of above finding recorded by this Court, it was proved that the disputed property was the property of HUF. Learned counsel submitted that in view of the above evidence on record, the trial court has erred in rejecting the plaintiffs interim injunction application 6-C2 and application 31-C2 for restraining the defendants from raising construction on the disputed property. With these submissions, it was prayed that the appeal be admitted for hearing and allowed on merits.

21. Learned counsel in support of his submission has relied upon the following case law:-

(i)Adiveppa and others vs.Bhimappa and another (2017) 9 SCC 586.

(ii)Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others 2024 SCC OnLine SC 3538.

(iii)Dalpat Kumar vs. Prahlad Singh (1992) 1 SCC 719.

(iv)Mudigowda Gowdappa Sankh and others vs. Ramchandra Revgowda Sankh by his LR's & others (1969)1 SCC 386.

22. Per contra, learned counsel for the defendant-respondents submitted that the trial court has considered the entire evidence of the plaintiff and has passed a reasoned order, in which there is no perversity, arbitrariness and capriciousness. It was further submitted that the view taken by the trial court is possible, on the basis of evidence on record, as such, even if the appellate court is of the view that, on the basis of evidence another view is possible, even then, the appellate court cannot interfere in the conclusion reached by the trial court. Learned counsel submitted that the parameters of interference by the appellate court in the discretionary order of interim injunction passed by the trial court are well settled, and keeping in view the above parameters, this case is not a fit case, warranting interference by this Court in exercise of its appellate jurisdiction.

23. It was further submitted that the initial burden lied upon the plaintiff to prove that the disputed property was the property of HUF, which was never discharged by the plaintiff, in accordance with law. Learned counsel submitted that on the basis of mere admission, no right title and interest in the property can be created. It was further submitted that on the basis of registered Will of Gaya Prasad dated 01.2.1972, after the death of Gaya Prasad, the disputed property was

bequeathed to his son, defendant no.1, and subsequently, his name has also been mutated in the property records but no action has been taken by the plaintiff to challenge that mutation. Learned counsel submitted that the registered sale deed was of 31.8.1943, and nothing prevented the plaintiff from challenging the above sale deed till the filing of the suit in the year 2024, which itself proves that the plaintiff always accepted that the disputed property was the self earned property of late Gaya Prasad. It was further submitted that no declaration of ownership has been claimed regarding the disputed property by the plaintiff as such, the relief of permanent injunction cannot be granted to the plaintiff. It was further submitted that the plaintiff 's suit was barred by limitation and during the pendency of the suit, the disputed property has been sold to defendant no. 7 and 8 and its possession has also been handed to them, who have also raised constructions on it, as such, the plaintiff 's suit for the relief of permanent injunction has become infructuous. It was further submitted that the plaintiff failed to prove that the HUF was in existence at the time of purchasing the disputed property on 31.8.1943.

24. It was further submitted that in the Writ proceeding, the dispute related to plot no.1866, which was purchased through sale deed in the year 1956, which was not at all related to the sale deed of the year 1943, which is the case in the instant suit. Learned counsel submitted that the plaintiff was supposed to prove when the HUF came into existence and the duration of its existence, since after the year 1974, no documentary evidence regarding the existence/continuation of alleged HUF has been submitted by the plaintiff. It was further submitted that in the plaint, it has not been disclosed, the area of the disputed property,plot/khasra number of the disputed property, whereas the judgment of the High Court in the Writ deals specifically with a particular plot number 1866. It was submitted that the judgment of the High Court in the above-mentioned Writ, does not conclude that the disputed property purchased through sale deed dated 31.8.1943, was the property of HUF.

25. It was further submitted that O.S. no. 259 of 1991 and 156 of 2024 are also pending for disposal between the parties,in which the disputed property and the relief claimed is also same, but the plaintiff has concealed the factum of pendency of above suits, and on this ground alone, the plaintiff was not entitled to the discretionary relief of injunction. It was further submitted that since the plaintiff failed to prove that the disputed property was the property of HUF,as such, no relief could have been granted to him by the trial court, which has not committed any illegality in dismissing the plaintiffs interim injunction application 6-C2 and application 31-C2, for restraining the defendants from raising construction on the disputed property. With these submissions, it was prayed that the appeal is meritless and be dismissed at the admission stage.

26. I have heard Shri Ankur Sharma learned counsel for the appellant, Shri Sanjeev Singh learned Senior Counsel assisted by Shri Dileep Kumar Singh for the respondents no. 7 and 8, Shri Devansh Mishra alongwith Shri Chandra Prakash Kushwaha for the respondent no.1, perused the impugned order and the documents submitted with the appeal.

Conclusion of this Court

27. The plaintiff alleges that there was a HUF "Kashi Prasad Gaya Prasad" and the disputed property "Shanker Godam", which was purchased through sale deed dated 31.8.1943 by late Gaya

Prasad, was purchased from the funds of the above HUF, but except the estate duty assessment order of the year 1974, there is no other documentary evidence to prove the existence of the above HUF. If the above alleged HUF is still in existence at the time of filing of the instant suit in the year 2024, then the plaintiff could have filed its income tax returns, partnership deed ,statement of profit and loss account, balance-sheet, statement of assets held by it,etc. to prove its existence, but no such evidence is available on record.

28. The estate duty assessment order relied upon by the plaintiff discloses that Gaya Prasad died intestate on 4.4.1972 and after his death, estate duty return was filed by his legal heirs, regarding the property held by him. In the assessment proceedings, the nephew of the deceased, Ramswaroop appeared and provided the necessary information to the assessment officer. The assessment order notes that Gaya Prasad was having share in HUF M/S Kashi Prasad Gaya Prasad and M/S Kashi Prasad Deokinandan. It also discloses that previously there was a bigger HUF M/S Deokinandan Gaya Prasad till the assessment year 1952-53, however, on 30.10.1951 there was a partial partition of the said HUF, in which the total capital was divided between 5 brothers and the new partnership firm came into existence on 01.11.1951. The order notes that as per the Wealth tax return filed for assessment year 1971 " 72, the capital invested by the deceased with Messers Kashi Prasad Gaya Prasad was Rs.42,468/-. The order also notes that at the time of his death, Gaya Prasad was having 20% share in M/S Kashi Prasad Gaya Prasad. The question that arises is whether the alleged HUF of "Kashi Prasad Gaya Prasad" is still in existence after the death of Gaya Prasad in the year 1972, because no documentary evidence whatsoever has been produced by the plaintiff to prove its continued existence at the time of filing of the suit in the year 2024.

29. It is further surprising that if the disputed property was of HUF then why the plaintiff remained silent for so many years. It is apparent that after the death of Gaya Prasad in the year 1972, on the basis of his registered Will, the name of his son/defendant no.1 was mutated in the property records, and subsequently on 30.1.2025, he has executed 2 sale deeds of the disputed property in favour of defendant no. 7 and 8 and its possession has also been handed to them, who have raised construction on it.

30. The Apex Court in the case of ***Adiveppa*** (supra) was dealing with a situation where the plaintiff had sought declaration that the suit property described in Schedule 'B' and 'C' was self acquired, property of Schedule 'D' was ancestral, in which the plaintiff had 4/9 th share as members of the family, regarding which no partition had taken place among the family members and as such, the plaintiff also sought partition. The defendants denied the plaintiffs claim and averred that the entire suit properties comprising in Schedule 'B,C and D' were ancestral properties, in which an oral partition had taken place amongst the family members during the lifetime of Hanamappa on 28.10.1993, pursuant to which, all family members were placed in possession of their respective shares. In such circumstances, it was concluded by the Apex Court that-

"22.It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family.The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self acquired property.

23.In our considered opinion, the legal presumption of the suit properties comprising in Schedule B and C to be also the part and parcel of the ancestral one(Scheduled D) could easily be drawn for want of any evidence of such properties being self acquired property of the plaintiffs. It was also for the reason that the plaintiffs themselves had based their case by admitting the existence of joint family nucleus in respect of Schedule D properties and had sought partition by demanding 4/9 th share.

24.In our considered opinion, it was, therefore, obligatory upon the plaintiffs to have proved that despite existence of jointness in the family, properties described in Schedule B and C was not part of ancestral properties but were their self acquired properties. As held above, the plaintiffs failed to prove this material fact for want of any evidence."

31. It is evident that in the case of **Adiveppa** (supra) there was an admission on the part of the plaintiff that property of Schedule D was ancestral and property of Schedule B and C was self acquired, which was denied by the defendants who averred that all the property of Schedule B,C and D was joint, regarding which an oral partition has already taken place, and the family members are in possession of their respective share. In this backdrop, it was concluded by the Apex Court that since there was an admission on the part of the plaintiff that Schedule D property was joint, as such, the other property of Schedule B and C ,which was claimed by the plaintiff as self earned, due to lack of evidence on the part of plaintiff, would also be treated as joint property.

32. It is evident that the fact situation in the instant case is entirely different from **Adiveppa** (supra) because the plaintiff has alleged that the disputed property was purchased from the funds of HUF "Kashi Prasad Gaya Prasad", which has been denied by the defendants on the ground that the sale deed dated 31.8.1943 of the disputed property, was in the name of Gaya Prasad, which has been subsequently bequeathed to defendant no.1 in the year 1972. It is the case of the defendants that the disputed property was purchased from the self income of Gaya Prasad. In view of the above facts, no reliance can be placed on the case law of Adiveppa (supra).

33. The Apex Court in the case of ***Mudigowda Gowdappa Sankh*** (supra), while considering whether there is presumption that a Hindu family merely because it is joint, possesses any joint property, held as under:-

"6.... The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenery property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate....."

34. It is apparent that in the instant case the burden is upon the plaintiff to prove that there was adequate income/nucleus of the HUF "Kashi Prasad Gaya Prasad" in the year 1943, through which Gaya Prasad could have purchased the disputed property, but this burden has not been prima facie

discharged by the plaintiff. There is no admission on the part of the defendants that the disputed property was purchased from the income of the above HUF "Kashi Prasad Gaya Prasad", in fact, the very existence of HUF in the year 1943 has been denied by the defendants.

35. The plaintiff has also relied upon the decision of this Court dated 09.12.2024 in Writ- B no. 6108 of 2014 Shyam Sunder Gupta vs. Board of Revenue and others, in which the matter related to rights conferred by registered sale deed that 3.9.1956 executed in favour of the petitioner's father Gaya Prasad, regarding plots no. 1709 and 1866. The order mentions that petitioner averred that after the death of his father in the year 1972, the HUF came to an end, all properties were divided between 5 family members and the new proprietary ship firm was constituted in the year 1972, which the petitioner failed to prove. This Court concluded that the disputed plot number 1866 was the property of HUF of "Kashi Prasad Gaya Prasad" and has accordingly, dismissed the writ petition. Learned counsel of the parties admit that the above order of the High Court has been challenged by filing SLP before the Apex Court, which is pending for disposal.

36. It is apparent that in the above Writ petition the dispute was regarding plot number 1866 only. In the instant case, the plaintiff has not mentioned the plot/khasra number of the disputed property, it's area, as such, the above decision of this Court in the above Writ petition, has got no relevancy to the facts of this case. On the basis of the above decision in the Writ, it cannot be concluded that the disputed property which was purchased through sale deed dated 31.8.1943 is the property of HUF "Kashi Prasad Gaya Prasad".

37. The Apex Court in the case of the Ambika Prasad Thakur vs. Ram Ekbal Rai AIR 1966 SC 605, Avtar Singh vs. Gurdial Singh (2006)12 SCC 552, Ramchandra Sakharam Mahajan vs. Damodar Trimbak AIR 2007 SC 2577 and Union of India vs. Ibramuddin (2012) 8 SCC 148, has considered inter alia the effect of admission by a party in respect of title. It was held that title cannot pass by a mere admission.

When the Appellate Court can interfere in these matters

38. The Apex Court in the case of ***Wander Ltd. and another vs. Antox India Pvt. Ltd. 1990 Supp SCC 727,*** while discussing the scope of interference by the appellate courts while hearing appeals against injunction orders passed by the trial court, held as under :-

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary

conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] "...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case"."

39. The Apex Court in the case o***f Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others 2024 SCC OnLine SC 3538***, has analysed the principles regarding grant of injunction and interference by the appellate court in the discretion exercised by the trial court. The relevant paragraphs read as under:-

"26. The principles of law explained by this Court in Wander [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

27. In Neon Laboratories Ltd. v. Medical Technologies Ltd. [Neon Laboratories Ltd. v. Medical Technologies Ltd., (2016) 2 SCC 672 : (2016) 2 SCC (Civ) 190] , this Court held that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

28. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan [Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan, (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285] , this Court emphasised on the principles laid down in Wander and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39CPC. The basis for substituting the view of the trial court should be mala fides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below: (SCC p. 230, para 20)

"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge,

as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd. "

29. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. [Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd., (2023) 1 SCC 634 : (2023) 1 SCC (Civ) 301] observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial Judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

30. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. [Monsanto Technology LLC v. Nuziveedu Seeds Ltd., (2019) 3 SCC 381 : (2019) 2 SCC (Civ) 158] , observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case .

32. In Anand Prasad Agarwalla v. Tarkeshwar Prasad [Anand Prasad Agarwalla v. Tarkeshwar Prasad, (2001) 5 SCC 568] , it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

33. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant

injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See Dalpat Kumar v. Prahlad Singh [Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719] .)

34. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [Moffett v. Gough, (1878) 1 LR Ir 331] , the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [Godfrey v. Godfrey, 106 NW 814 : 127 Wis 47 (1906)] , the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

35. The expression "perverse" has been defined by various dictionaries in the following manner:

(a) Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

Perverse " Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

(b) Longman Dictionary of Contemporary English " International Edn.

Perverse " Deliberately departing from what is normal and reasonable.

(c) The New Oxford Dictionary of English " 1998 Edn.

Perverse " Law (of a verdict) against the weight of evidence or the direction of the Judge on a point of law.

(d) New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse " Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

(e) Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

Perverse " A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

36. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See Damodar Lal v. Sohan Devi [Damodar Lal v. Sohan Devi, (2016) 3 SCC 78 : (2016) 2 SCC (Civ) 36] .)

37. Seen in light of the aforesaid settled position of law, we are of the clear view that in the facts of the present case, the High Court overstepped its appellate jurisdiction under Order 43CPC and substituted its own view for the one taken by the trial court without giving any categorical finding as to why the order of the trial court could be said to suffer from any perversity, capriciousness, arbitrariness, mala fides or having been passed in ignorance of the settled principles governing the grant of injunction under Order 39CPC."

40. It is apparent from the above law laid down by the Apex Court in **Wander Ltd** (supra) and **Ramakant Ambalal Choksi** (supra) that the Appellate Court while hearing appeals against the order of the trial court granting or refusing injunction can only interfere where the impugned order is malafide, capricious, arbitrary or perverse. If the view taken by the trial court was a possible view, the Appellate Court was not supposed to substitute its view. It is further apparent that if as per the reasonable man, the conclusion reached by the trial court on facts was possible, there is no perversity. If not, the finding is perverse. It was further held by the Apex Court that inadequacy of evidence or a different reading of evidence is not perversity.

41. From the analysis made hereinbefore, it is apparent that, the trial court has not erred in concluding that there was neither any prima facie evidence to prove the existence of HUF "Kashi Prasad Gaya Prasad" in the year 1943 nor the disputed property was purchased from the funds/income/nucleus of the HUF.

42. It is further apparent that the trial court has not erred in concluding that merely on the basis of admission by Ramswaroop in proceedings before the estate duty assessment officer, it cannot be presumed that the disputed property was of HUF "Kashi Prasad Gaya Prasad". The trial court has further not erred in concluding that merely on the basis of the above assessment order, the ownership of disputed property cannot be decided. It is also apparent that merely on the basis of admission, the title of disputed property cannot be presumed in favour of the plaintiff.

43. It is further apparent that the trial court has rightly concluded that the matter in the Writ before the High Court related to plot number 1866, which was purchased through sale deed in the year 1956, which is not relevant in the instant suit.

44. It is further apparent that the trial court has rightly concluded that previously O.S. no. 259 of 1991 and 156 of 2024 have also been filed by defendant No.2(of the instant suit) against defendant no.1(of the instant suit) and other's, in which the disputed property is the same and the relief claimed was also the same and the main parties were also same, but this fact was not disclosed by the plaintiff.

45. It is further apparent that the trial court has correctly concluded that since the disputed property has been sold to the defendant no.7 and 8, who are in its possession and who have raised construction on it, as such, neither the plaintiff has proved his prima facie case nor the balance of convenience lies in his favour.

46. It is also apparent that the plaintiff has neither claimed declaration of his rights nor partition of his alleged share in the disputed property, but has simply claimed the relief of permanent injunction and cancellation of registered sale deeds dated 30.1.2025 executed during the pendency of the suit by defendant no.1 in favour of defendant no.7 and 8. It is apparent that the plaintiff has failed to prove that prima facie he is having any right title and interest in the disputed property, as such the trial court has not committed any illegality in rejecting the plaintiffs interim injunction application 6-C2 and application 31-C2 for restraining the defendants from raising any construction on the disputed property.

47. For the aforesaid reasons, this Court is of the opinion that there is no perversity in the impugned order of the trial court. The view taken by the trial court is a possible view, which is in accordance with the evidence on record and prevailing law, which cannot in any manner whatsoever be termed capricious, arbitrary or malafide, as such, keeping in view the parameters of interference laid down by the Apex Court in ***Wander Ltd*** (supra) and ***Ramakant Ambalal Choksi*** (supra), this Court while exercising its appellate jurisdiction cannot interfere in the impugned order and substitute its own view. The trial court has rightly concluded that the plaintiff has failed to prove his prima-facie case and the balance of convenience is also not in his favour.

48. ***Accordingly, the instant appeal has got no merit, and is hereby dismissed at the admission stage.*** Consequently, the impugned order dated 29.8.2025 of the trial court in O.S.no.3 of 2025 stands affirmed.

49. The trial court is directed to decide the instant suit preferably within a period of six months from the date a certified copy of this order is produced before it, without affording unnecessary adjournment to either of the party, on merits, in accordance with law.

50. The observations made by this Court in the instant order are only for the purpose of deciding this appeal and the trial court will not be influenced and bound by it, and is at liberty to form its own opinion, on the basis of pleadings and evidence adduced by the parties during trial, in accordance with law.

(2026) 2 ILRA 1331
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE MRS. BABITA RANI, J.

Habeas Corpus Writ Petition No. 307 of 2025

Sunil Kumar Gupta @ Sunil Chain ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Issue for Consideration

A. Whether the detention order has been wrongly passed by terming the 'law and order' situation as public order situation

B. Whether there was an inordinate and unexplained delay in deciding the representation of the detenue by the appropriate government.

C. Whether the detention order was passed despite the petitioner being already in custody and on grounds of likelihood of bail which itself vitiates the detention order

D. Whether Detenue's/petitioner's criminal history was used as the basis of the illegal detention order.

Head Notes

The Constitution of India, 1950-Article 21, 22(1) & 226; The National Security Act, 1980-Section 3, 8, 9, 10, 11 & 12- The power of preventive detention under the Act, 1980 can only be exercised where a person acts in a manner prejudicial to public order or security of the State or in a manner prejudicial to the maintenance of supplies and services essential to the community.

Breach of law in all cases does not lead to public disorder and that the contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. From the incident which has occurred on 15.06.2025 it clearly emerges that it is the public at large which has been affected.

No hard and fast rule exists for determining the timeline within which the representation is supposed to be determined by the concerned authority and it has to be decided on the basis of the facts of each individual case. The affidavits filed by the respondent authorities demonstrate their conduct in dealing with the representation of the detenue petitioner and it cannot be said that they acted with indifference. The petitioner was also provided an opportunity to present his case before the Advisory Board which he duly exercised. Thus, the argument pertaining to the delay in deciding the representation is rejected.

Where the detaining authority is of the opinion that the circumstances of a particular case necessitate the passing of a detention order despite the presence of the accused in jail, then in such a scenario, the detaining authority, while recording its reasons and satisfaction for such compelling circumstances, may pass the detention order.

While passing an order of detention under the Act, 1980, the detaining authority has to record its satisfaction to the effect that the detention of the detenue is necessary in order to prevent him from acting in any manner prejudicial to the public order or any of the other grounds specified in Section 3. The previous conduct or criminal antecedents of the detenue can be considered in arriving at such subjective satisfaction.

Held- Petitioner was provided a detailed description of the grounds considered by the authority while passing the detention order dated 02.07.2025. He was also informed about his right to prefer a representation before the concerned authorities and the right to appear before the Advisory Board-No infirmity in the detention order dated 02.07.2025- **Petition dismissed**. (E-15)

(Para 27, 54, 58, 63 & 66)

Case Law Cited

Additional Secretary to the Government of India Vs. Alka Subhas Gadia, reported in (1992) Supp (1) SCC 496; Ram Bali Rajbhar vs. State of W.B. (1975) 4 SCC 47; Ameena Begum Vs. State of Telengana and Ors., reported in (2023) 9 SCC 58; Lalit Gupta and Ors Vs. Union of India, reported in MANU/UP/1067/2021; Ashok Kumar Vs. Delhi Administration, reported in MANU/SC/0052/1982; Mohd. Faiyyaz Mansuri Vs. Union of India, reported in 2021 (6) ALJ 247; Sarabjeet Singh Mokha v. District Magistrate, Jabalpur, (2021) 20 SCC 98; Abdulla Kunni & Another v. Union of India (1991) 1 SCC 476; L.M.S. Ummu Saleema vs B.B. Gujaral & Anr (1981) 3 SCC 317; Aslam Ahmed Zahire Ahmed Shaik v. Union of India and Others, 1989) 3 SCC 277;

Kamarunnissa Etc. vs Union Of India And Ors, 1991 (1) SCC 128; Union of India v. Yumnam Anand (2007) 10 SCC 190; Union of India v. Laishram Lincola (2008) 5 SCC 490

List of Acts

The Constitution of India, 1950; The National Security Act, 1980

List of Keywords

Habeas corpus; Detention; Public order Vs Law and Order; No fixed timeline for deciding representation; Detaining authority to record its satisfaction; Section 3; National Security Act

Case Arising From

Habeas Corpus Writ Petition has been filed praying for a direction to the respondents to release the petitioner from the illegal detention under the National Security Act, 1980 (in short "Act, 1980"). Further prayer is for quashing the detention order dated 02.07.2024 passed under the Act, 1980 by the District Magistrate, Mathura and all consequential proceedings emanating therefrom as well as for a direction to pay appropriate compensation for the illegal detention

Appearances for Parties

Counsel for Petitioner(s) : Avinash Singh Vishen, Digvijay Singh, Nadeem Murtaza, Nikhil Mishra, Sudhanshu S. Tripathi
Counsel for Respondent(s) : A.S.G.I., Dr. Pooja Singh, G.A.

(Delivered by Hon'ble Mrs. Babita Rani, J.)

1. Heard Sri Nadeem Murtaza, Advocate assisted by Sri Sudhanshu Tripathi, Advocate & Sri Raghav Bansal, learned counsel for the petitioner, Dr. Pooja Singh, learned counsel for the respondent no. 1 and Sri S.N.Tilahari, learned AGA appearing on behalf of the respondents no. 2 to 4.

2. The Apex Court, vide order dated 18.12.2025, passed in **Special Leave to Appeal (Crl) No. 20664 of 2025 Inre; Sunil Kumar Gupta Vs. Union of India and Ors** has requested the High Court to decide the issue of maintainability of Habeas Corpus Writ Petition within a period of four weeks from the date of receipt of a certified copy of the order which order has been received on 03.01.2026.

3. Considering the aforesaid, the matter has been heard at length.

4. Instant Habeas Corpus Writ Petition has been filed praying for a direction to the respondents to release the petitioner from the illegal detention under the National Security Act, 1980 (in short "Act, 1980"). Further prayer is for quashing the detention order dated 02.07.2024 passed under the Act, 1980 by the District Magistrate, Mathura and all consequential proceedings emanating therefrom as well as for a direction to pay appropriate compensation for the illegal detention.

5. Learned counsel for the petitioner states that on account of typographical error in the prayer clause, the date has been indicated as 02.07.2024 rather the same should be read as 02.07.2025 as the detention order is of 02.07.2025.

6. The aforesaid statement of learned counsel for the petitioner is recorded.

7. Learned counsel for the petitioner had been required to indicate as to how the petition in the nature of Habeas Corpus would lie against the detention order passed under the Act, 1980.

8. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of **Additional Secretary to the Government of India Vs. Alka Subhas Gadia**, reported in **(1992) Supp (1) SCC 496** wherein the Apex Court has categorically held that it is always open for the detenue or anyone on his behalf to challenge the detention order by way of Habeas Corpus petition on any of the grounds available to him.

9. Dr. Pooja Singh, learned counsel for the respondent no. 1 and Sri S.N.Tilahari, learned AGA appearing on behalf of the respondents no. 2 to 4 do not dispute the aforesaid proposition of law as laid down by the Apex Court.

10. Accordingly, keeping in view the aforesaid, we find that the petition in the nature of Habeas Corpus raising a challenge to the detention order passed under the Act, 1980 is maintainable. We hold accordingly.

11. Broadly, the detention order has been challenged by the petitioner/detenue on the following grounds:

i) The detention order has been wrongly passed by terming the 'law and order' situation as public order situation.

ii) There was an inordinate and unexplained delay in deciding the representation of the detenue by the appropriate government.

iii) The detention order was passed despite the petitioner being already in custody and on grounds of likelihood of bail which itself vitiates the detention order.

iv) Detenue's/petitioner's criminal history was used as the basis of the illegal detention order.

12. Before proceedings further and examining the legality and validity of the detention order, it is important to refer to the relevant provisions of the Act. The petitioner in the instant case has been detained under Section 3 of the Act, 1980, which deals with the power and procedure of detention under the Act. Section 8 of the Act, 1980 confers the right on the detenue to be informed of the grounds of detention as soon as may be and to be afforded the earliest opportunity of making a representation against the detention order to the appropriate government. Sections 9 to 12 deal with the Advisory Board and Section 13 provides that the maximum period of detention under the Act, 1980 shall not exceed a period of 12 months from the date of detention. Section 14 states that the power of revocation of detention lies with the State as well as Central Government.

13. For the sake of convenience, the relevant provision of the Act, 1980 are reproduced herewith:

*"**3. Power to make orders detaining certain persons**.-(1) The Central Government or the State Government may,-*

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.-For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a

bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "twenty days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

…….

8. ***Grounds of order of detention to be disclosed to persons affected by the order.-****(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.*

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.-(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. ***Reference to Advisory Boards.-****Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section.*

*11. **Procedure of Advisory Boards.**-(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.*

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

*12. **Action upon the report of the Advisory Board.-**(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.*

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

14. It goes without saying that detention casts a restriction on the liberty of an individual and thus, this power has to be exercised sparingly. There can be no second opinion to the fact that the liberty guaranteed under Article 21 of the Constitution is one of the most sacred and cherished fundamental rights. Thus, the power of preventive detention must be exercised with a degree of circumspection.

15. The power of preventive detention under the Act, 1980 can only be exercised where a person acts in a manner prejudicial to public order or security of the State or in a manner prejudicial to the maintenance of supplies and services essential to the community.

16. In **Ram Bali Rajbhar vs. State of W.B. (1975) 4 SCC 47,** the Hon'ble Supreme Court has held as under,

"13. .... On a habeas corpus petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a satisfaction on every question of fact. Courts have, no doubt, to zealously guard

the personal liberty of the citizen and to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining authorities and the Advisory Board. But, this does not mean that they have to or can rightly and properly assume either the duties cast upon the detaining authorities and Advisory Boards by the law of preventive detention or function as courts of appeal on questions of fact. The law of preventive detention, whether we like it or not, is authorised by our Constitution presumably because it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the bases of an established order may outweigh the claims of personal liberty."

17. While the scheme of preventive detention has been recognized in the Constitution, it cannot be lost sight of that the Constitution also mandates several safeguards against the arbitrary exercise of this extraordinary power. Provisions have been made for the constitution of Advisory Boards which consist of eminent persons who are qualified to be judges of High Courts and the right to prefer a representation against the detention has also conferred upon the detenue.

18. After going through the objectives of the Act, we now proceed to analyze the arguments presented by the petitioners in light of the provisions mentioned above.

'Public Order' and 'Law and Order'

19. The learned counsel for the petitioner states that the grounds for detention, as communicated to the petitioner, indicate about disturbance of public order which has also been made a ground for invocation of the detention order apart from other grounds.

20. In this regard, learned counsel for the petitioner has taken us through the grounds for detention dated 02.07.2025 which indicate that an incident had taken place on 15.06.2025 per which the petitioner along with others had been carrying out digging and construction work at a particular spot despite objections by other residents which resulted in five houses collapsing and about half dozen houses having developed cracks. On account of collapse of the houses, three persons died including children and various persons were injured. On account of the said incident, the shopkeepers shut down their shops and jammed the road which resulted in PAC, Fire Brigade, NDRF, SDRF and senior police officials reaching on the spot and a Case Crime No. 248 of 2025 under Section 105 of Bhartiya Nyay Sanhita, 2023 was registered. Again on 16.06.2025, the residents of locality shut their shops and establishment claiming award of adequate compensation for the deceased and for the collapsed houses. It emerged that there was no permission granted towards the digging. It further emerged that despite repeated protests by the residents, the petitioner and his acquaintance had carried the construction and digging work which on account of the collapsing of the houses and death of various persons had caused fear in the society. The place of incident is situated adjacent to Shree Krishna Janam Bhoomi & Dwarkadees temple where thousands of persons visit everyday and on account of the said incident of collapsing of houses, there is large scale fear amongst the general public and on account of persons having protested for the purpose of compensation towards the collapse of houses and death, huge jam had occurred in the locality and the entire public order had been disturbed.

21. Argument of the learned counsel for the petitioner, while placing reliance on the judgment of the Apex Court in the case of **Ameena Begum Vs. State of Telengana and Ors., reported in (2023) 9 SCC 587** is that the Apex Court has categorically held that there is a difference between the "Public Order" & "Law & Order" and that the incident which has been invoked against the petitioner while passing the detention order can atmost fall within the ambit of being an incident relating to "Law & Order" and not "public order" and thus, the respondents have wrongly passed the detention order on the basis of the act of the petitioner allegedly resulting in public disturbance of public order and on the said ground itself, the detention order merits to be set aside.

22. On the other hand, Sri S.N.Tilahari, learned AGA has placed reliance on the Division Bench judgment of this Court in the case of **Lalit Gupta and Ors Vs. Union of India, reported in MANU/UP/1067/2021** to argue that the distinction between the two concepts of "Public Order" & "Law & Order" has been lucidly explained by the Division Bench of this Court after placing reliance on the judgment of the Apex Court in the case of **Ashok Kumar Vs. Delhi Administration**, reported in **MANU/SC/0052/1982** and has thus argued that the act of the petitioner which has resulted in passing of the impugned order of detention is in fact an act of disturbance of public order and consequently, the detention order has correctly been passed.

23. Further, placing reliance on the Division Bench judgment of this Court in the case of **Mohd. Faiyyaz Mansuri Vs. Union of India, reported in 2021 (6) ALJ 247**, argument of Sri Tilahari is that it is the subjective satisfaction of the competent authority to pass an order of detention and thus the Court may not substitute its own satisfaction for that of the authority concerned and decide whether the satisfaction of the authority invoking the detention order was reasonable or proper.

24. From a perusal of the grounds of detention accompanying the detention order it emerges that the competent authority has invoked the detention order on the basis of an incident of houses having collapsed on 15.06.2025 which has resulted in the death of three persons, various houses having developed cracks and residents having resorted to demonstration and protest against the said incident and also demanding compensation for the collapsed houses and death of certain persons. Adjacent to the place of incident, two temples namely Shree Krishna Janam Bhoomi & Dwarkadees temple are situated where thousands of persons visit everyday and on account of the said incident and the road being jammed and demonstration by the residents, there is fear in the society which has resulted in disturbance in the public order.

25. The Apex Court in the case of **Ameena Begum** (supra) has held has under:-

"36. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order".

37. We may refer to the decision of the Constitution Bench of this Court in ***Ram Manohar Lohia v. State of Bihar [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709]*** *, where the difference between "law and order" and "public order" was*

lucidly expressed by Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words :

"54. ... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. ?

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

(emphasis supplied)

38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67], is this :

"3. - Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?"

26. Per contra, the Division Bench judgment of this Court in the case of **Lalit Gupta (supra)**, after considering the judgment of the Apex Court in the case of **Ashok Kumar (supra)**, has held as under:-

"(15) The distinction between the two concepts of "public order" and "law and order" has been lucidly explained by the Apex Court in Ashok Kumar Vs. Delhi Administration : AIR 1982 SC 1143, wherein the Apex Court has observed that the true distinction between the areas of "public order" and "law and order", being fine and sometimes overlapping, does not lie in the nature or quality of the act but in the degree and extent of its reach upon society. The Apex Court has further observed that the act by itself is not determinant of its own gravity. ***It is the potentiality of the act to disturb the even tempo of the life of the community which makes it "prejudicial to the maintenance of public order". If the contravention in its effect is confined only to a few***

individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of "law and order" only. It is the length, magnitude and intensity of the terror wave unleashed by a particular act or violence creating disorder that distinguishes it as an act affecting "public order" from that concerning "law and order"*. On the facts of that case the Apex Court held that whenever there is an armed hold up by gangsters in a residential area of the city and persons are deprived of their belongings at the point of knife or revolver they become victims of organised crime and such acts when enumerated in the grounds of detention, clearly show that the activities of a detenue cover a wide field falling within the ambit of the concept of "public order".*

(16) The Apex Court, to the aforesaid effect, has made observations in Victoria Fernandes Vs. Lalmal Sawma : AIR 1992 SC 687, wherein, relying on its earlier decisions, including Ashok Kumar Vs. Delhi Administration (supra), it was reiterated that while the expression "law and order" is wider in scope, in as much as contravention of law always affects order, "public order" has a narrower ambit and public order would be affected by only such contravention which affects the community and public at large.

(17) The distinction between violation of 'law and order' and an act that would constitute disturbing the maintenance of 'public order' had also fallen for consideration of the Apex Court in State of U.P. & Anr. Vs. Sanjay Pratap Gupta @ Pappu and others : 2004 (8) SCC 591, wherein the Apex Court, after an extensive survey of authority on the issue brought out the distinction in fine detail, which reads as under :-

"12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". (See Kuso Sah v. State of Bihar 1974 1 SCC 185, Harpreet Kaur v. State of Maharashtra 1992 2 SCC 177, T.K Gopal Alias Gopi v. State Of Karnataka 2000 6 SCC 168 and State of Maharashtra v. Mohd. Yakub 1980 2 SC 1158).

14. The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. ***What has***

to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact."

(18) The issue has also been dealt with in the case of Sant Singh vs. District Magistrate, Varanasi : 2000 Cri LJ 2230, wherein in paragraph 7 of the report, while dealing with the point, the Apex Court has held as under :-

"7. The two connotations 'law and order' and 'public 'order' are not the words of magic but of reality which embrace within its ambit different situations, motives and impact of the particular criminal acts. As a matter of fact, in a long series of cases, these two expressions have come to be interpreted by the apex Court. It is not necessary to refer all those cases all over again in every decision for one simple reason that they have been quoted and discussed in earlier decision of this Court dated 14-10-1999 in Habeas Corpus Writ Petition No. 33888 of 1999- Udaiveer Singh v. State of U.P. and the decision dated 1-12-1999 in Habeas Corpus Writ Petition No. 38159 of 1999 Rajiv Vashistha v. State of U.P. (Reported in 1999 All Cri R 2777). The gamut of all the above decisions in short is that the true distinction between the areas of 'public order' and 'law and order' lies not in nature and quality of the act, but in the degree and extent of its reach upon society. Sometimes the distinction between the two concepts of law and order' and 'public order' is so fine that it overlaps. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore, touch the problem of 'law and order', while in another it might affect 'public order'. The act by itself, therefore, is not determination of its own gravity. ***It is the potentiality of the act to disturb the even tempo of the community which makes it prejudicial to the maintenance of 'public order".***

(19) The scope of expression "acting in any manner prejudicial to the maintenance of public order" as appearing in Sub-Section 2 of Section 3 of the Act, 1980 also came up for consideration of the Apex Court in Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, (1995) 3 SCC 237; Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat, (1999) 5 SCC 613 and Hasan Khan Ibne Haider Khan Vs. R.H. Mendonca, (2000) 3 SCC 511. The Apex Court held that the fallout, the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with the person concerned or to prevent his subversive activities affecting the community at large or a large section of the society. ***It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activities amounts only to a breach of "law and order" or it amounts to a breach of "public order"****. In Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat (supra), the Apex Court has held that the activities involving extortion, giving threat to public and assaulting businessmen near their place of work were sufficient to affect the even tempo of life of the society and in turn amounting to the disturbance of the "public order" and not mere disturbance of "law and order".*

(20) While dealing with the question as to whether one solitary instance can be the basis of an order of detention, the Apex Court in Smt. Bimla Rani Vs. Union of India : 1989 (26) ACC 589 SC, observed that ***the question is whether the incident had prejudicially affected the 'public order'. In other words, whether it affected the even tempo of the life of the community. In Alijan***

Mian v. District Magistrate Dhanbad, 1983 (3) SCR 930 AIR 1983 SC 1130 it was held that even one incident may be sufficient to satisfy the detaining authority in this regard, depending upon the nature of the incident. *Similar view has been expressed in the host of other decisions. The question was answered more appropriately and with all clarity in the case of Attorney General of India v. Amratlal Prajivandas : AIR 1994 SC 2179, wherein the Apex Court ruled that it is beyond dispute that the order of detention can be passed on the basis of a single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Thus, the argument of learned counsel for the petitioners that since it is solitary incident of the petitioners, he deserves sympathy, is rejected. Now the law, as it stands, is that even one solitary incident may give rise to the disturbance of 'public order'. It is not the multiplicity but the fall out of various criminal acts. Though there is consistency in the various decisions of the apex Court about the interpretation of the expressions of 'law and order' and 'public order' undue insistence on the case law is not going to pay any dividend as each case revolves round its own peculiar facts and has to be viewed in the light of the various attending factors. It is difficult to find a case on all fours with the case in hand."*

(emphasis by the Court)

27. From a perusal of the aforesaid judgments it clearly emerge that although breach of law in all cases does not lead to public disorder and that the contravention of law always affects order but before it can be said to affect public order, **it must affect the community or the public at large.** From the incident which has occurred on 15.06.2025 it clearly emerges that it is the public at large which has been affected.

28. Perusal of the Division Bench judgment of this Court in the case of **Lalit Gupta (supra)** also indicates that where potentiality of the act is to disturb the even tempo of the life of the community, it would be "prejudicial to the maintenance of public order" and that public order would be affected by only such contravention which affects the community or the public at large.

29. Clearly, the ground of detention indicate that the action of the petitioner on the fateful date i.e 15.06.2025 has resulted in disturbance of the public order, even tempo of the life of the community and has affected the community and public at large. Even otherwise, the Division Bench of this Court in the case of **Mohd. Faiyyaz Mansuri** (supra) has held that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper or whether in the circumstances of the matter, the person concerned should have been detained or not.

30. For the sake of convenience, the relevant observations of the Division Bench of this Court in the case of **Mohd. Faiyyaz Munsuri** (supra) are reproduced below:-

"(25) To sum up, a law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention, and leaves the matter to subjective

satisfaction of the Executive. The reason for this view is that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects that the law of preventive detention seeks to prescribe. Preventive detention is, thus, based on suspicion or anticipation and not on proof. The responsibility for security of State, or maintenance of public order, or essential services and supplies, rests on the Executive and it must, therefore, have necessary powers to order preventive detention. Having said that, subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. A Court is not a proper forum to scrutinize the merits of administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. It is often said and held that the Courts do not even go into the question whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the Courts and that is not the object of law of preventive detention. This matter lies within the competence of Advisory Board. While saying so, this Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.

(26) It is apt to mention here that our Constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. However, it should be kept in mind by one and all that the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedom and personal liberty is designed to grow and flourish. The larger interests of our multi-religious nation as a whole and the cause of preserving and securing to every person the guaranteed freedom peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardize the rightful freedoms of the rest of the society. Main object of Preventive Detention is the security of a State, maintenance of public order and of supplies and services essential to the community demand, effective safeguards in the larger interest of sustenance of peaceful democratic way of life.

31. Considering the aforesaid, the said ground is found to be misconceived and rejected.

Regarding the alleged delay in deciding the representation

32. Another contention which is pressed into service by the Learned counsel for the petitioner is that there was an inordinate delay in deciding his representation by the concerned authorities, namely the District Magistrate, Mathura, State Government and the Central Government. The learned counsel for the petitioner has vehemently submitted that a detenue has a right to have his representation determined by all the three authorities in a timely manner, whereas the authorities took unexplained 24 days to process his application, thereby violating his right to liberty. Per contra, the learned counsels for the respondents contended that there was no delay caused in deciding the representation of the petitioner and the entire procedure was carried out promptly and in the minimum time frame as provided under the Act, 1980.

33. The respondents have further contended that the Act nowhere stipulates any time frame for deciding the representation and does not require the state authorities to explain day-to-day delay. However, the respondent authorities have decided the representation of the petitioner with utmost urgency at every step.

34. The right to prefer representation against the order of detention stems from Article 22(5) of the Constitution itself which states that a person being detained has to be afforded the earliest opportunity to make representation against such detention. This right is a valuable constitutional right, violation of which would certainly render a detention illegal. Further, Section 8 of the Act, 1980 reaffirms the right of the detenue to be afforded the 'earliest' opportunity of making a representation against the detention order.

35. So far as the contention of the respondents that since no definite time frame has been fixed by the Act, 1980 for deciding the representation of the detenue and thus, the Courts cannot call upon the state to explain the delay is concerned, we do not agree with such a view. It has been settled through several pronouncements that the power of detention is to be sparingly exercised as it partakes the nature of an unusual restriction on the liberty of an individual. The right to make representation is a safeguard against the arbitrary exercise of this power and thus, it is the duty of the courts to ensure that such a right is provided to a detenue in a real and effective manner, which also includes the right to have the representation decided within a reasonable time frame.

36. In **Sarabjeet Singh Mokha v. District Magistrate, Jabalpur, (2021) 20 SCC 98,** the Hon'ble Supreme Court, while emphasizing on the importance of expeditious consideration of the representation of the detenue by the concerned Government, made the following observations:

"47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. ***As we have noted earlier, the communication of the grounds of detention to the detenu "as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy.*** *The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government to not deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution."*

(Emphasis added by Court)

37. In **Abdulla Kunni & Another v. Union of India (1991) 1 SCC 476**, the Hon'ble Supreme Court made the following observations regarding the rights of a detenue as emanating from Article 22(5) of the Constitution of India:

"7. The detenu has two rights under clause (5) of Article 22 of the constitution: (i) to be informed, as soon as may be, of the grounds on which the order of detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (ii) to be afforded the earliest opportunity of making a representation against the order of detention."

38. We are also conscious of the fact that no strict formula can be applied to determine whether delay has occurred in deciding the representation or not. This has to be determined in view of the facts of each case and the delay, if any, has to be tested on the anvil of reasonableness. The statute may or may not prescribe any fixed time period for deciding the representation. However, since the power of detention is of a hard and exceptional nature, it is expected that the authorities will act in an expeditious manner and any delay would be accompanied by a reasonable explanation.

39. In **L.M.S. Ummu Saleema vs B.B. Gujaral & Anr (1981) 3 SCC 317**, the Hon'ble Supreme Court made the following observations regarding the principle of explaining day to day delay in deciding the representation of a detenue:

"7. Another submission of the learned counsel was that there was considerable delay in the disposal of the representation by the detaining authority and this was sufficient to vitiate the detention. The learned counsel submitted that the detaining authority was under an obligation to adequately explain each day's delay and our attention was invited to the decisions in Pritam Nath Hoon v. Union of India & Others and in Shanker Raju Shetty v. Union of India. ***We do not doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed by one of us in Francis Coralie Mullin v. W.C. Khambra. "The time imperative can never be absolute or obsessive". The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae****. Considered in that light, can it be said that there was an unreasonable delay in the present case? The representation was despatched on 5.2.1981 and was received in the office of the detaining authority on 13.2.1981. Apparently it was in postal transit from 5th to 13th. It was put up before the detaining authority on 19.2.1981 and disposed of that very day. From the records produced before us we notice that the detaining authority, Shri B.B. Gujral, was not available from 13th to 16th as he had gone abroad. He returned on 16th and considered the matter on 19th. The learned counsel for the detenu urged that the absence of the detaining authority from India cannot be allowed to violate the fundamental right of the detenu to have his representation considered with the utmost expedition. We agree that in such cases appropriate arrangements must be made for considering the detenu's representation. Apparently, it was not thought necessary in the present case as Shri Gujral was returning on 16th, that is, within a few days. After the 16th the delay, was for a period of three days only. It can hardly*

be described as delay though one wishes there was no room even for that little complaint. We are of the view that there has not been any unaccountable or unreasonable delay in the disposal of the representation by the detaining authority."

(Emphasis added by Court)

40. In **Aslam Ahmed Zahire Ahmed Shaik v. Union of India and Others, (1989) 3 SCC 277**, the Hon'ble Apex Court made the following observations,

"5. This Court in Sk. Abdul Karim and Others v. State of West Bengal, [1969] 1 SCC 433 held: (SCC p. 439, para 8)

"The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality."

6. This view was reiterated in Rashid SK. v. State of West Bengal, [(1973) 3 SCC 476 : 1973 SCC (Cri) 376] while dealing with the constitutional requirement of expeditious consideration of the petitioner's representation by the Government as spelt out from Article 22(5) of the Constitution observing thus: (SCC p. 478, para 4)

"The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty- the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion."

7. ***It is neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases within which period the representation of detenu has to be disposed of with reasonable expedition but it must necessarily depend on the facts and circumstances of each case.*** *The expression 'reasonable expedition' is explained in Sabir Ahmed v. Union of India, [(1980) 3 SCC 295: 1980 SCC (Cri) 675] as follows:*

"What is 'reasonable expedition' is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But is certainly does not cover the delay due to negligence, callous inaction avoidable red-tapism and unduly protracted procrastination."

8. See also Vijay Kumar v. State of J&K [(1982) 2 SCC 43 : 1982 SCC (Cri) 348] and Raisuddin v. State of U.P. [(1983) 4 SCC 537 : 1984 SCC (Cri) 16] .

9. ***Thus when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that***

obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution."

(Emphasis added by Court)

41. In the instant case, admittedly the petitioner was detained on 02.07.2025. From a perusal of the pleadings on record, it emerges that the detention order, along with other connected documents, were forwarded by the District Magistrate, Mathura to the State Government on the same day, i.e., on 02.07.2025 and which were received by the State Government on 03.07.2025. Thereafter, the State Government approved the same on 11.07.2025 and the decision was communicated to the petitioner on 12.07.2025. Further, a copy of the detention order, grounds of detention and other related documents had also been forwarded to the Central Government within the statutory time period.

42. As per the mandate of Section 3(4) of the Act, the detention order cannot remain in force unless the same is approved by the concerned State Government within a period of 12 days from the date of passing of the detention order. Section 3(5) states that once the detention order is approved by the State Government, the same has to be reported to the Central Government within 7 days along with the grounds of detention. The detention order dated 02.07.2025 was approved by the State Government on 12.07.2025 and same was also forwarded to the Central Government. Thus, the mandate of Section 3(4) and 3(5) stood complied in the present case.

43. The representation against the detention was submitted by the petitioner on 07.07.2025 to jail authorities, Mathura. The Superintendent, District Jail forwarded the representation to the DM Mathura on the same day. Thereafter, the representation was rejected by the District Magistrate on 11.07.2025 and the decision was communicated to the detenue petitioner on the same day. The District Magistrate had forwarded the representation, along with his comments to the State and Central Government.

44. The representation dated 07.07.2025 was received by the concerned section of the State Government on 14.07.2025 along with the letter and comments of the District Magistrate dated 11.07.2025. The copy of the representation was sent to both the Central Government and Advisory Board on 15.07.2025. Thereafter, the representation was examined by the Under Secretary, Home Department, Uttar Pradesh on 16.07.2025 and on the same day the representation was also considered by the Joint Secretary and subsequently Special Secretary, Home Department, Uttar Pradesh. Subsequently, on 17.07.2025 the representation was examined by the Secretary, Home Department, Uttar Pradesh and on 18.07.2025, the representation was examined by the Principal Secretary, Home Department, Uttar Pradesh. 19.07.2020 and 20.07.2020 were holidays and thereafter, the representation was sent to the higher authorities who, after considering all the relevant documents, approved the detention order on 23.07.2025. On the same day, decision of the State Government was communicated to the petitioners. Thus, a total of 16 days were taken by the

State Government in deciding the representation of the petitioners, on which the petitioner also has no dispute.

45. On the part of the Central Government, the representation dated 07.07.2025, along with the para-wise comments of the detaining authority dated 11.07.2025, were received by the concerned Ministry of the Central Government on 14.07.2025 and reached the concerned Section of the Ministry on 15.07.2025. Thereafter, the Central Government waited for the copy of the report of the State Government, which was received on 22.07.2025 after the State Government had considered and approved the detention. The Central Government wanted to peruse the comments of the State Government before deciding the representation and the State Government communicated its own satisfaction after considering the material available on record. The learned counsel also produced certain email communications dated 18.07.2025 and 22.07.2025 to establish that the Central Government was acting with diligence and had requested the State Government for the record of the case.

46. Thereafter, the representation dated 07.07.2025 as well as the report sent by the State Government containing the grounds of detention, comments and related documents, were examined at the section level on 23.07.2025 and forwarded to the Under Secretary on 24.07.2025. On the same day, the Under Secretary forwarded the same to the Deputy Secretary, along with her comments. Thereafter, the same was forwarded to Joint Secretary on 25.07.2025 and to the Union Home Secretary on 26.07.2025. Since 27.07.2025 was Sunday, the same was considered and rejected by the Union Home Secretary on 28.07.2025 and sent back to the Joint Secretary. The file reached the concerned section on 30.07.2025 and was communicated to the detenue petitioner on 30.07.2025. Therefore, a total of 23 days were taken in transmitting the representation, deliberating, deciding and communicating the decision.

47. Thus, within a span of 23 days, all three authorities, whom the petitioner has claimed are bound by a duty to expeditiously decide the representation of the detenue, had decided the representation of the petitioner. The respondents have contended that the representation was decided by the concerned authorities within the shortest possible time. However, we deem it appropriate to mention that it is not merely the duration or number of days which have to be looked upon, rather a holistic view has to be taken to determine if there was any indifference, slackness or callous attitude on the part of the authority concerned. Further, delay in itself is not fatal and it is only where the delay is unexplained or depicts a callous and indifferent approach on the part of the authorities that can an adverse view be taken.

48. From a perusal of the above, nothing is on record to demonstrate deliberate or fatal delay on the part of either the State Government or the Central Government.

49. The detention order dated 02.07.2025 had informed the petitioner detenue that he has a right to prefer a representation against the detention order before the District Magistrate, State Government as well as Central Government. The detention order further specified that if the representation is preferred after the confirmation of the detention order by the State Government or after the statutorily mandated period of 12 days for confirming the detention, then no representation would lie before the District Magistrate and only the State Government or the Central Government

would be empowered to decide the representation. The detenue was also informed about the right of being heard by the Advisory Board. Thereafter, since the representation dated 07.07.2025 was preferred prior to the confirmation of the detention by the State Government, thus, the District Magistrate, vide its order dated 11.07.2025, decided the same and communicated his decision to the petitioner detenue as well as the State and the Central Government.

50. The Advisory Board, vide its letter dated 05.08.2025, had informed the State Government that the petitioner's case was fixed for hearing on 08.08.2025 and the petitioner was free to attend the hearing along with his next friend (non-advocate), and the same was communicated to the petitioner through district authorities on 05.08.2025. The petitioner appeared before the Advisory Board on 08.08.2025 and after hearing the petitioner, the Advisory Board submitted a report affirming the presence of sufficient cause for the detention of the petitioner and the said report was communicated to the State Government vide letter dated 12.08.2025. The report of the Advisory Board reached the concerned section of the State Government on 13.08.2025 and on 18.08.2025, the State Government affirmed the detention of the petitioner for a period of 12 months from the date of detention under Section 12 of the Act and the same was communicated to the petitioner detenue on 19.08.2025.

51. The State Government, on its part, has explained the procedure followed in deciding the representation and the time taken by each concerned official. The State Government affirmed the detention order dated 02.07.2025 on 12.07.2025 and thereafter, decided the representation of the detenue petitioner on 23.07.2025 after considering all the material on record including the comments of the District Magistrate dated 11.07.2025. The Central Government, on its part, decided the representation on 30.07.2025 after considering the detention order, grounds, comments of the District Magistrate as well as the State Government. The Central Government has furnished the details about the time taken by each concerned official and has also furnished records of emails and other communication to establish that while some time had been spent in obtaining the comments from the State Government, the same cannot be said to be indicative of lethargy, indifference or callous attitude on the part of the Central Government as it was dealing with the matter promptly and had requested for the comments immediately after receiving the representation.

52. In the case of **Kamarunnissa Etc. vs Union Of India And Ors, 1991 (1) SCC 128,** the Hon'ble Supreme Court, while holding that the time taken by the concerned authorities in obtaining the views or comments of the sponsoring authority cannot be said to be futile, made the following observations:

"7. The learned counsel for the petitioners raised several contentions including the contentions negatived by the High Court of Bombay. It was firstly contended that the detenus had made representations on 18th December, 1989 which were rejected by the communication dated 30th January, 1990 after an inordinate delay. The representations dated 18th December, 1989 were delivered to the Jail Authorities on 20th December, 1989. The Jail Authorities despatched them by registered post. 23rd, 24th and 25th of December, 1989 were non-working days. The representations were received by the COFEPOSA Unit on 28th December, 1989. On the very next day i.e 29th December, 1989 they were forwarded to the sponsoring authority for comments. 30th

and 31st December, 1989 were non-working days. Similarly 6th and 7th January, 1990 were non-working days. The comments of the sponsoring authority were forwarded to the COFEPOSA Unit on 9th January, 1990. Thus it is obvious that the sponsoring authority could not have received the representations before 1st January, 1990. Between 1st January, 1990 and 8th January, 1990 there were two non-working days, namely, 6th and 7th January, 1990 and, therefore, the sponsoring authority can be said to have offered the comments within the four or five days available to it. It cannot, therefore, be said that the sponsoring authority was guilty of inordinate delay. The contention that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could have been saved does not appeal to us because consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. After the COFEPOSA Unit received the comments of the sponsoring authority it dealt with the representations and rejected them on 16th January, 1990. The comments were despatched on 9th January, 1990 and were received by the COFEPOSA Unit on 11th January, 1990. The file was promptly submitted to the Finance Minister on the 12th; 13th and 14th being non-working days, he took the decision to reject the representations on 16th January, 1990. The file was received back in the COFEPOSA Unit on 17th January, 1990 and the Memo of rejection was despatched by the post on 18th January, 1990. It appears that there was postal delay in the receipt of the communication by the detenus but for that the detaining authority cannot be blamed. It is, therefore, obvious from the explanation given in the counter that there was no delay on the part of the detaining authority in dealing with-the representations of the detenus. Our attention was drawn to the case law in this behalf but we do not consider it necessary to refer to the same as the question of delay has to be answered in the facts and circumstances of each case. Whether or not the delay, if any, is properly explained would depend on the facts of each case and in the present case we are satisfied that there was no delay at all as is apparent from the facts narrated above. We, therefore, do not find any merit in this submission."

53. The view that calling for the views of the sponsoring authority cannot be said to be intentional delay on the part of the deciding authority has been further affirmed by the Hon'ble Supreme Court in ***Union of India v. Yumnam Anand (2007) 10 SCC 190.*** Similarly, in ***Union of India v. Laishram Lincola (2008) 5 SCC 490***, the Hon'ble Supreme Court held that the explanation pertaining to the time taken by the Central Government in obtaining the comments of the State Government must be considered while determining whether the delay in deciding the representation of the detenue was fatal or not.

54. Certainly, no hard and fast rule exists for determining the timeline within which the representation is supposed to be determined by the concerned authority and it has to be decided on the basis of the facts of each individual case. The affidavits filed by the respondent authorities demonstrate their conduct in dealing with the representation of the detenue petitioner and it cannot be said that they acted with indifference. The petitioner was also provided an opportunity to present his case before the Advisory Board which he duly exercised. Thus, the argument pertaining to the delay in deciding the representation is rejected.

Regarding detenue already being in custody and apprehension of grant of bail

55. Another contention raised by the learned counsel for the petitioner is that the since the petitioner was already in jail at the time of passing of the detention order, there was no occasion for the detaining authority to have passed the detention order dated 02.07.2025. On the other hand, the learned counsel for the respondents has urged that the detaining authority had recorded its satisfaction to the effect that the petitioner detenue is likely to engage in activities prejudicial to public order upon being released on bail, as is evident from his previous conduct, and thus, the authorities passed the detention order dated 02.07.2025 in order to prevent the detenue from disturbing the public order and societal peace.

56. After hearing arguments of both the parties in this regard, it is appropriate to mention here that there is no dispute regarding regarding the fact that the tila had collapsed due to the unauthorized construction and digging activities carried out by the petitioner and others. As a result, the shopkeepers shut down their shops and the local residents protested against such illegal acts which resulted in the death of three persons, including children, and the collapse of several houses. The incident was also broadcast on news channels and published in newspapers. Subsequently, an FIR was lodged under Section 105 of the Bharatiya Nyaya Sanhita, 2023 (B.N.S., 2023) and the petitioner was arrested. The bail application had been filed by the petitioner detenue on 30.06.2025 and the detention order was passed on 02.07.2025.

57. Now the question that arises for our consideration is whether a detention order can be passed against an accused who is already in jail and in anticipation of his release on bail and for the purpose of preventing him from committing acts prejudicial to public order. We find the answer to be in the affirmative. Reasons for this is clear from the plain reading of Section 3 of the Act, 1980 which stipulates that the government can pass an order of preventive detention for the purpose of preventing an accused persons from committing acts prejudicial to public order. Thus, where the detaining authority is of the opinion that a person, who is in jail, is likely to be released and upon being released, there is a reasonable apprehension of such person indulging in acts prejudicial to public order, then the detaining authority may pass a detention order under Section 3 of the Act, 1980.

58. Therefore, where the detaining authority is of the opinion that the circumstances of a particular case necessitate the passing of a detention order despite the presence of the accused in jail, then in such a scenario, the detaining authority, while recording its reasons and satisfaction for such compelling circumstances, may pass the detention order.

59. The Hon'ble Supreme Court, in the case of ***Kamarunnissa (supra)***, while dealing with the issue of whether a person who is already in jail can be detained under the preventive detention law on the basis of probability of him being released on bail, made the following observations after referring to a catena of judgments relating to the same issue:

"13. From the catena of decisions referred to above it seems clear to us that ***even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in***

prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. *What this court stated in the case of Ramesh Yadav (supra) was that ordinarily a detention order should not be passed merely to preempt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand. resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore. find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the, detenus were in custody."*

(Emphasis supplied by Court)

60. From a perusal of the detention order dated 02.07.2025, it is apparent that the detaining authority was conscious of the pending bail application of the petitioner detenue. After the bail application was filed by the petitioner on 30.06.2025, the Station House Officer of Govind Nagar Police Station, District Mathura made a representation to the Senior Superintendent of Police for requesting the District Magistrate for the detention of the petitioner under Section 3 of the Act and thereafter, on 02.07.2025, the detention order was passed by the District Magistrate.

61. Further, this is also not disputed by the learned counsel for the petitioner that the bail application dated 30.06.2025 had been withdrawn only after the passing of the detention order dated 02.07.2025. The detention order further records that the people of the affected area were apprehensive that the petitioner, upon being released on bail, will continue his illegal demolition activities. The criminal history of the petitioner was also relied upon by the detaining authority. Thus, we find this ground to be lacking merits in the backdrop of the facts of the instant case.

Regarding the alleged extraneous grounds pertaining to criminal history

62. The last contention of the petitioners is that extraneous grounds, such as criminal history of the dentenue, were taken into consideration while passing the detention order dated 02.07.2025. Per contra, the learned counsel for the respondents have submitted that the previous criminal history of the detenue is a valid ground for arriving at the subjective satisfaction. The learned counsels for the respondents have vehemently stressed that all the relevant grounds had been specified in the detention order and the court is not required to substitute its own satisfaction in place of the subjective satisfaction of the detaining authority.

63. While passing an order of detention under the Act, 1980, the detaining authority has to record its satisfaction to the effect that the detention of the detenue is necessary in order to prevent him from acting in any manner prejudicial to the public order or any of the other grounds specified in Section 3. The previous conduct or criminal antecedents of the detenue can be considered in arriving at such subjective satisfaction.

64. FIRs pertaining to serious offenses such as murder, criminal intimidation and sexual offenses against children had been lodged against the petitioner dentue in the years 2018, 2019, 2020 and 2024. On 16.06.2025, another FIR had been lodged against the petitioner under Section 105 of the B.N.S., 2023. These facts were taken into consideration by the detaining authority while arriving at the subjective satisfaction that the detention of the petitioner was needed in order to prevent him from engaging in activities prejudicial to the public tranquility and social harmony. Further, the detaining authority was also conscious of the fact that a charge-sheet could not be filed in any of the cases filed lodged the petitioner as the witnesses and complainants did not come forward to support the allegation against him due to the fear of the petitioner. Facts pertaining to the criminal history of the petitioner which have found place in the detention order is a significant factor while assessing whether a person will contribute positively to the society after being released on bail or will he prejudice the momentum of society by engaging in activities prejudicial to public order. Thus, the detention order cannot be set aside solely because the detaining authority took into consideration the previous criminal cases lodged against the detenue. Hence, there is no substance in the arguments of the petitioner regarding this ground.

65. The Court is not required to delve into the subjective satisfaction of the detention authority and has to only consider whether relevant and material circumstances and grounds were considered by the detaining authority. The detention order dated 02.07.2025 clearly specified the grounds on the basis of which the petitioner was detained. The detaining authority had considered the illegal and unauthorized excavation activities of the detenue which resulted in the demolition of several houses in a crowded area, claiming lives of 3 persons including children. Several houses had been affected due to the unauthorized drive of the petitioner. Evidently, people were forced to abandon their own homes and those who decided to stay had to witness tractors and heavy machineries clamping down on their homes. The fear, apprehension and panic of the general public has also been considered by the detaining authority.

66. The petitioner was provided a detailed description of the grounds considered by the authority while passing the detention order dated 02.07.2025. He was also informed about his right to prefer a representation before the concerned authorities and the right to appear before the Advisory Board. As such, we not find any infirmity in the detention order dated 02.07.2025 (wrongly indicated as 02.07.2024 in prayer clause of the writ petition.

67. Accordingly, the instant habeas corpus petition is **dismissed.**

68. Before parting with the case, we may also record that the operative portion of the judgment including maintainability was dictated in open Court. However, as voluminous pleadings had to be gone into including consideration of the detailed arguments as had been advanced by the learned counsels for the contesting parties for four days from 28.01.2026 to 30.01.2026 and thereafter, on 02.02.2026 (31.01.2026 and 01.02.2026 being holidays), consequently, the judgment itself became voluminous which took some time to dictate and upload. Some time was also taken as one of us was not available for four days at the station.

(2026) 2 ILRA 1355
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Transfer Application (Civil) No. 141 of 2024

Ayushi Singh ...Applicant
Versus
Dharmendra Kumar ...Opposite Party

Issue for Consideration

(i) Whether, in absence of objection by the opposite party, transfer of matrimonial proceedings under Section 24 CPC was justified on the ground of inconvenience and hardship to the applicant-wife;
(ii) Whether conduct of the opposite party during mediation and proceedings could be taken into account while exercising discretion under Section 24 CPC.

Headnotes

Civil Procedure Code, 1908 — Section 24 — Transfer of matrimonial proceedings — Non-filing of objection:

Held: Where despite opportunity no objection or reply is filed by the opposite party and the matter is decided on the basis of uncontroverted pleadings of the applicant- Court may proceed to adjudicate the transfer application on available material — Absence of contest lends credence to the assertions of hardship made by the applicant. [Paras 2–3, 14]

Civil Procedure Code, 1908 — Transfer — Matrimonial dispute — Convenience of wife:

Held: In matrimonial disputes, convenience of the wife is of paramount consideration — Where the applicant-wife has no independent source of income, has no one to escort her and is required to travel long distance to attend proceedings, the transfer deserves to be allowed — Socio-economic realities and access to justice justify such transfer. [Paras 7, 21]

Civil Procedure Code, 1908 — Transfer — Conduct of parties — Abuse of process:

Held: Conduct of the opposite party in frustrating mediation proceedings, withdrawing settlement amount and taking advantage of interim protection reflects malafide intention and abuse of process of Court — Such conduct can be taken into account while exercising discretion under Section 24 CPC. [Para 19]

Civil Procedure Code, 1908 — Transfer — Mediation proceedings — Effect of failure:

Held: Failure of mediation and subsequent conduct of the opposite party defeating settlement process reinforce the necessity of judicial intervention to prevent injustice and ensure fair adjudication. [Paras 12, 19]

Civil Procedure Code, 1908 — Transfer — Application of principles:

Held: Where the applicant-wife is financially dependent, faces threat and hardship, and the opposite party neither contests the application nor shows prejudice, the case is fit for transfer — Accordingly, proceedings pending at Agra were liable to be transferred to Unnao. [Paras 21–22]

Civil Procedure Code, 1908 — Costs — Imposition:
Held: Considering the inconvenience, harassment and conduct of the opposite party, costs of Rs.50,000/- were imposed upon him payable to the applicant-wife — In default, recovery was directed as arrears of land revenue. [Paras 24–25]

Transfer application allowed. (E-14)

Case Law Cited

***Anjali Ashok Sadhwani v. Ashok Kishinchand Sadhwani*, AIR 2009 SC 1374 — relied on; *Fatima v. Jafri Syed Husain (Parvez)*, AIR 2009 SC 1773 —relied on; *Sumita Singh v. Kumar Sanjay and another*, (2001) 10 SCC 41 —relied on; *N.C.V. Aishwarya v. A.S. Saravana Karthik Sha*, AIR 2022 SC 4318 — relied on.**

List of Acts / Statutes

Code of Civil Procedure, 1908; Hindu Marriage Act, 1955 ; Indian Penal Code, 1860; Dowry Prohibition Act, 1961**.**

List of Keywords

Transfer of proceedings; Matrimonial dispute; Convenience of wife; Unopposed application; Mediation failure; Abuse of process; Costs; Financial hardship; Access to justice**.**

Case Arising From

Case No. 71 of 2024 (Dharmendra Kumar Versus Smt. Ayushi Singh) pending before the Court of Principal Judge, Family Court, Agra.

Appearance for Parties

For Appellant: Sri Akash Deep Singh
For Respondent: Sri Sudhir Shukla.

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

1. Sri Akash Deep Singh, learned Counsel for the applicant, Sri Sudhir Shukla, learned counsel for the opposite party are present.

2. This Court repeatedly allowed time to the learned counsel for the opposite party to file objection but till date, no objection has been filed.

3. Today, on the matter being taken up, Sri Sudhir Shukla Advocate, who appears for the opposite party, at the very outset, stated that despite his best efforts, he could not get any instructions from his client (opposite party), as such, he is unable to file any reply or objection on behalf of the opposite party. Thus, the Court proceeds to dispose of the present Application on the basis of the material available on record.

4. The present application under Section 24 of C.P.C. has been filed by the applicant seeking transfer of Case No. 71 of 2024 (Dharmendra Kumar Versus Smt. Ayushi Singh) filed by the

opposite party under Section 13(1)(a) of Hindu Marriage Act, from the Court of Principal Judge, Family Court, Agra to the Court of equivalent jurisdiction at District Unnao.

5. The case in brief as put-forth by learned counsel appearing for the applicant is that the applicant was married to the Opposite Party on 01.12.2022 as per Hindu rites and customs. At the time of marriage, an amount of Rs.10,00,000/- was transferred through RTGS along with various customary gifts by the applicant's parents and relatives. After marriage, the applicant initially lived peacefully at her matrimonial house, but subsequently, she was subjected to physical and mental harassment, by the opposite party and his family members, for want of dowry and ultimately the applicant was forcefully ousted from her matrimonial house.

6. It is pleaded on behalf the applicant that on 09.01.2024, the Opposite Party instituted a divorce petition dated 09.01.2024 before the Court of learned Principal Judge, Family Court, Agra. Furthermore, on 28.05.2024, the Opposite Party threatened the applicant with dire consequences, including life threat, in order to stop her from participating in the Court proceedings.

7. It is submitted by the learned counsel for the applicant that on account of serious threats from the opposite party and also due to the financial constraints as well as unavoidable personal difficulties, the applicant, being a lady, having no one in her family to escort her to attend the Court proceedings on every date fixed in the case; preferred the instant Application under section 24 of Code of Civil Procedure, 1908, praying therein for the transfer the case from Agra, which is approximately 300 Kms. away to Unnao.

8. As is evident from the record that with the consent of the parties the matter was initially referred to the Mediation and Conciliation Centre of this court vide order dated 04.02.2025. For ready reference the same is quoted herein below:

"1. Heard learned counsel for applicant and Mr. Krishan Tiwari, Advocate holding brief on behalf of Mr. Sudhir Shukla, learned counsel for opposite party.

2. Application under Section 24 of the Code of Civil Procedure has been filed seeking transfer of Case No.71 of 2024; (Dharmendra Kumar versus Smt. Ayushi Singh) instituted by opposite party under Section 13(1)(A) of Hindu Marriage Act, from the Court of learned Principal Judge, Family Court, Agra to equally competent Family Court, Unnao.

3. Learned counsel for applicant on the basis of instructions submits that the matter may be referred to mediation.

4. Learned counsel appearing for opposite party also on the basis of instructions concedes to the aforesaid prayer.

5. In view thereof, applicant and opposite party are directed to appear before Mediation and Conciliation Center of this Court on 25.02.2025.

6. Endeavor shall be made by the Center to file its report within a period of four weeks.

7. List this case on 27.03.2025.

8. Till next date of listing, proceedings of Case No.71 of 2024; (Dharmendra Kumar versus Smt. Ayushi Singh) pending in the Court of Principal Judge, Family Court, Agra shall remain stayed."

9. It is testified by the applicant in the supplementary affidavit dated 15.10.2025 that mediation proceeding started on 25.02.2025 and the parties agreed for settlement on Rs.32,00,000, out of the said amount, the respondent deposited only Rs.16,00,000 on 25.07.2025 by way of 'demand draft' and took a month's time for depositing rest of the amount on 25.08.2025. It is averred by the applicant that during the pendency of the mediation proceeding, the opposite party filed a case before this Court under Section 482 Cr.P.C. having Application U/S 482 No. 7060 of 2025, wherein this Court taking into consideration the ongoing mediation proceedings, stayed the criminal proceedings arising out of Case Crime No. 0084 of 2024, under Sections 498-A, 323, 504, 506 IPC and Section 3/4 D.P. Act, Police Station Dahi, District Unnao vide order dated 27.08.2025. After passing of the aforesaid stay/order the opposite party herein just to defeat the mediation proceedings immediately withdrew the said amount of Rs. 16,00,000/-,

10. It is very emphatically argued by the learned counsel for the applicant that due to the above-mentioned vicious conduct of the opposite party, the applicant has suffered serious mental agony as she was made to run from pillar to post for doing 'Pairvi' of the cases.

11. For ready reference the relevant part of the Order dated 27.08.2025 passed on Application under section 482 having case No. 7060 of 2025 is extracted herein below:

"Instant application under section 482 Cr.P.C./528 of the B.N.S.S.,2023, has been filed with the prayer to quash the Charge-Sheet no. 01/2024, dated 07.08.2024, under sections-498-A, 323, 504, 506 of I.P.C. & section 3/4 of the Dowry Prohibition Act, Police Station Dahi, District Unnao, as well as Bailable Warrant Order Dated 11.04.2025, passed by Learned J/JD/FTC/LAW, Unnao, in Case No. 1460/2024, 'State Vs Dharmendra Kumar', arising out of Case Crime No. 0084/2024, under section 498-A, 323, 504, 506 of I.P.C. & section 3/4 D.P. Act, Police Station Dahi, District - Unnao.

It is argued by the learned counsel for the applicants that the instant matter is arising out of a matrimonial dispute and a divorce petition was instituted by the applicant no. 1,Dharmendra Kumar, whereafter, the transfer application was moved before this court bearing Transfer Application No.(TACL) 141 of 2024, wherein the order dated 04-02-2025 was passed and the proceeding of the divorce case was stayed and the matter was referred to the Mediation and Conciliation Centre of this court, which is still going on and in pursuance thereof, the applicant no. 1 has deposited Rs. 16 Lac in the form of demand draft in favour of the informant/opposite party no. 2 before the Mediation and Conciliation Centre of this court.

He argued that the proceedings of Case Crime No. 0084 of 2024, under sections 498-A,323,504,506 of I.P.C. and section 3/4 of the Dowry Prohibition Act, are still continuing and since

the matter is pending before the Mediation and Conciliation Centre of this court, thus, the proceedings of Case Crime No. 0084 of 2024, may be stayed.

Learned counsel appearing for the State has no objection to the contentions aforesaid.

In view of the aforesaid, matter requires consideration.

Let notice be issued to opposite party no. 2 returnable at an early date.

Steps be taken within a week.

If the steps are taken, the office shall proceed accordingly.

List/put up this matter in the week commencing 06-10-2025.

In the meantime, the opposite parties may file their Counter Affidavits.

Till the next date of listing, the criminal proceedings arising out of Case Crime No. 0084/2024, under section 498-A, 323, 504, 506 of I.P.C. & section 3/4 D.P. Act, Police Station Dahi, District - Unnao, shall remain stayed so far as the present applicants are concerned."

12. Mediation Report dated 03.09.2025, reflects failure of mediation. On the failure of the mediation proceedings a report to that effect was sent by the Mediation and Conciliation Centre was sent this Court for adjudication.

13. After the re-start of the adjudicatory process, this Court on the request of the learned counsel for the opposite party granted him sufficient opportunity to file objections/reply in the matter. However, no objection/reply has been filed on behalf of the opposite party, till date.

14. In the absence of any reply from the side of the opposite party, this Court proceeded to decide the instant matter on the basis of the pleadings/averments made in the present Application duly supported by affidavit.

15. Learned counsel for the applicant in support of his case relied upon the judgements passed by the Hon'ble Apex Court in the case of **Anjali Ashok Sadhwani Versus Ashok Kishinchand Sadhwani**, reported in **AIR 2009 SC 1374**, and also in **Fatima Versus Jafri Syed Husain (Parvez)**, reported in **AIR 2009 SC 1773.**

16. In the case of **Anjali Ashok Sadhwani (supra)** the Hon'ble Supreme Court has held as under:

“1. Heard learned counsel for the parties. This is an application for transfer filed at the instance of the petitioner wife under Section 25 of the Code of Civil Procedure read with Order 13-B of the Supreme Court Rules, 1966 seeking transfer of Petition No. 83 of 2006 (Ashok

Kishinchand Sadhwani v. Anjali Ashok Sadhwani) now pending in the Family Court at Indore to the Family Court at Bandra in Mumbai, Maharashtra.

2. Having heard the learned counsel for the parties and after going through the materials on record and considering the fact that the distance between Mumbai, Maharashtra and Indore, Madhya Pradesh is about 900 kms and also considering the fact that the petitioner wife has no one in her family to escort her during her journey from Mumbai to Indore, we feel it proper to transfer the case from Family Court of Indore, Madhya Pradesh to Family Court at Bandra, Mumbai. Accordingly, the case being Petition No. 83 of 2006 stands transferred from Family Court of Indore, Madhya Pradesh to Family Court of Bandra at Mumbai, Maharashtra."

17. The Hon'ble Supreme Court in the case of **Fatima (supra)** has been pleased to pass the following order:-

"1. This is a petition for transfer of Petition No. A-55 of 2008 pending before the Family Court at Aurangabad Jafri Syed Husain (Parvez) v. Fatima to the Civil Court at Srinagar, in the State of Jammu and Kashmir.

2. Having heard the learned counsel for the parties and after going through the materials on record and considering the fact that the petitioner wife is only 22 years of age and therefore, it would be difficult for her to attend the court proceedings at Aurangabad from Srinagar. Accordingly, we allow this petition for transfer of the aforesaid case now pending before the Family Court at Aurangabad to the Civil Court at Srinagar, Jammu and Kashmir for final disposal. The learned Judge, Family Court at Aurangabad is directed to transmit the case records of the aforesaid case to the Family Court at Srinagar, Jammu and Kashmir within a period of two months from the date of supply of a copy of this order to him."

18. Further, the Hon'ble Supreme Court while deciding in the case of **Sumita Singh versus Kumar Sanjay and another** reported in **(2001) 10 Supreme Court Cases 41** in paragraph no. 3 of its judgment has observed as under:

"3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

19. Taking into consideration the uncontroverted facts and particularly the fact that once the opposite party expressed readiness for the settlement of the dispute through mediation and the Court accepting the request of the parties, referred the matter to the Mediation and Conciliation Centre of this Court, where on 25.02.2025 the opposite party agreed to pay Rs.32 Lacs, and submitted a bank-draft of Rs.16 Lacs on 21.07.2025 out of the total amount before the Mediation Centre of this court and sought further time to deposit the balance amount on 25.08.2025. At the same time, on the other hand, he preferred an application under Section 482 Cr.P.C. before the Court, which was registered as Application U/S 482 No. 7060 of 2025, wherein the Court granted stay of the proceeding of Case Crime No. 0084 of 2024 vide order dated 27.08.2025 in his favour on the premise of pendency of mediation proceeding going on before the Mediation and

Conciliation Centre of this Court. From the perusal of the order dated 27.08.2025 passed by this Court, it is evident that the Court by taking note of the fact that the opposite party herein has deposited Rs.16 Lacs in the form of Demand Draft in favour of the informant/applicant herein passed the stay order, in favour of the opposite party. Taking advantage of the protection in the criminal proceeding vide order dated 27.08.2025 passed by this court, the opposite party-husband withdrew the aforesaid amount of Rs.16 Lacs on 03.09.2025 from the Mediation Centre causing mediation process to fail. There was no occasion for the opposite party to withdrew the same knowingly well that his withdrawal of amount deposited as part payment towards settlement would defeat the mediation process. This strategical move on the part of the opposite party-husband goes to show his malafide intention to defeat the process of law and is nothing but abuse of Court. Further, the statement of the learned counsel for the opposite party that despite his best efforts, the opposite party is not providing any instructions to him to defend his case, goes to show his disrespectful behaviour towards the Court's proceeding.

20. The Hon'ble Supreme Court while deciding in the case of **N.C.V. Aishwarya versus A.S. Saravana Karthik Sha** reported in **AIR 2022 SC 4318** as held as under:

"9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio- economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

21. In the light of the observations made by the Hon'ble Apex Court as quoted herein above, this Court taking into consideration the facts pleaded on behalf of the applicant that the applicant is a lady aged about 31 years, having no independent source of income and having no one in her family to escort her during the journey between Unnao and Agra to regularly attend the proceedings of the case filed by the opposite party under Section 13 of the Hindu Marriage Act, 1955 on each and every date, finds it to be a reasonable case for exercise of its power under Section 24 of the Code of Civil Procedure as the inconvenience caused to the applicant wife in the above uncontradicted facts of the present case is evident and cannot be ignored or disbelieved.

22. The instant transfer application is accordingly **allowed.** The Case No. 71 of 2024 (Dharmendra Kumar Versus Smt. Ayushi Singh) filed by the opposite party under Section 13(1)(a) of Hindu Marriage Act, be transferred from the Court of Principal Judge, Family Court, Agra to the Court of Principal Judge, Family Court, at Unnao.

23. The concerned Court at Agra shall ensure early transmission of the record to the learned Family Court at Unnao, which shall proceed in the matter from the stage it has been transferred to the said Court.

24. Looking to the inconvenience caused to the applicant-wife as discussed herein above, this court is inclined to levy costs on the opposite party-husband of Rs.50,000/- (Rs. Fifty Thousand) to be paid to the applicant-wife, who appears to have endured suffering during the pendency of the present transfer application.

25. Costs as directed shall be paid by the opposite party-husband to the applicant-wife within a period of one month from today. If the costs are not paid, the same shall be recovered in accordance with law as arrears of land revenue by the Collector, Agra and shall be paid over to the applicant-wife. A copy of the receipt/acknowledgement of payment of costs shall be placed before the Transferee Court by the opposite party-husband.

(2026) 2 ILRA 1362
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.02.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 940 of 2023

Smt. Akansha Saxena ...Applicant
Versus
Shikhar Saxena ...Opposite Party

Issues for Consideration

(i) Whether transfer of matrimonial proceedings under Section 24 of the Code of Civil Procedure, 1908 can be allowed on the basis of consent or non-opposition of the opposite party;
(ii) Whether, in matrimonial disputes, the convenience of the wife and attending socio-economic circumstances justify transfer of proceedings to another jurisdiction.

Headnotes

Civil Procedure Code, 1908 — Section 24 — Transfer of proceedings — Scope and nature of power:

Held: Section 24 CPC confers wide, discretionary and equitable jurisdiction upon the Court to transfer proceedings at any stage to secure ends of justice — The power is supervisory and remedial in character and intended to prevent hardship, inconvenience or failure of justice. [Para 7, 13.1]

Civil Procedure Code, 1908 — Transfer — Dominus litis — Limitation of principle:

Held: Though plaintiff is dominus litis and entitled to choose forum, such right is not absolute — The Court may override such choice where insistence on chosen forum results in hardship, inequity or denial of access to justice — Section 24 CPC constitutes statutory exception to the doctrine. [Paras 8, 13.2]

Civil Procedure Code, 1908 — Transfer by consent — Permissibility:

Held: Transfer of proceedings on the basis of consent or non-opposition of the opposite party is legally permissible — Procedural right to object to forum can be waived — Where parties are ad idem, apprehension of prejudice stands substantially mitigated. [Paras 9, 13.3–13.4]

Civil Procedure Code, 1908 — Transfer — Consent — Scope of judicial scrutiny:
Held: In consent-based or unopposed transfer applications, necessity for elaborate comparative analysis of balance of convenience stands diluted — The Court is only required to be satisfied that transfer is lawful, fair and subserves ends of justice — Detailed reasoning is not mandatory in absence of contest. [Paras 10–11, 13.5–13.6]

Civil Procedure Code, 1908 — Matrimonial disputes — Transfer — Convenience of wife:
Held: In matrimonial matters, convenience of wife deserves priority consideration having regard to socio-economic realities — Where wife has no independent source of income, is residing with minor child and faces hardship in travelling long distance, transfer is justified — The overarching test remains advancement of justice and prevention of hardship. [Paras 12, 13.7–13.8, 14]

Civil Procedure Code, 1908 — Transfer — Application of principles:
Held: Where the applicant-wife resides at Agra with minor child, has no independent income, and the opposite party does not oppose transfer, and no prejudice is caused to either side, the transfer of proceedings from Ghaziabad to Agra is justified and in furtherance of justice. [Para 14]

Transfer application allowed. (E-14)

Case Law Cited

-None-

List of Acts / Statutes

Code of Civil Procedure, 1908; Hindu Marriage Act, 1955

List of Keywords

Transfer of proceedings; Consent; transfer; Dominus litis; Matrimonial dispute; Convenience of wife; Balance of convenience; Access to justice; Hardship; Waiver.

Case Arising From

Matrimonial Petition No. 2130 of 2023 instituted under Section 13 of the Hindu Marriage Act, 1955, pending before the Court of Additional Family Court No. 5, Ghaziabad**.**

Appearance for Parties

For the Appellant: Sri Madhav Jain
For the Respondents: Sri Mahesh Narain Singh, Smt. Akansha Saxena

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Madhav Jain, learned counsel for the applicant and Sri Mahesh Narain Singh, learned counsel for the opposite party.

2. The present transfer application has been filed by the applicant?wife under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Matrimonial Petition No. 2130 of 2023, instituted by the opposite party under Section 13 of the Hindu Marriage Act, 1955, pending before the Court of Additional Family Court No. 5, Ghaziabad, to the Court of competent jurisdiction at Agra.

3. Though the lis arises out of a matrimonial dispute between private parties, the issues which arise for consideration transcend the individual facts of the case and touch upon the nature, scope,

and contours of the jurisdiction exercised by this Court under Section 24 CPC, particularly in cases where transfer is sought by consent or where the opposite party does not oppose the prayer. The matter, therefore, calls for a consideration of the applicable legal principles governing exercise of powers of transfer under Section 24, on the basis of consent of parties.

4. The factual position brought on record indicates that the marriage between the applicant and the opposite party was solemnized on 18.02.2011 at Agra in accordance with Hindu rites and rituals. Out of the wedlock, a son was born on 31.01.2020. Due to matrimonial discord, the applicant is presently residing at her parental home at Agra along with her minor son. It has been specifically pleaded that the applicant has no regular or independent source of income and is entirely dependent upon her parents for her sustenance as well as that of the minor child. It has further been stated, and not disputed, that the opposite party is not paying any maintenance either to the applicant or to the minor child.

5. The opposite party has instituted Matrimonial Petition No. 2130 of 2023 under Section 13 of the Hindu Marriage Act, 1955, seeking dissolution of marriage, which is pending before the Court of Additional Family Court No. 5, Ghaziabad. The applicant has asserted that the distance between Agra and Ghaziabad is approximately 200 kilometers and that repeated travel to Ghaziabad would cause grave inconvenience, financial strain, and physical hardship, particularly in view of her limited financial means and her responsibility towards a school-going minor child. It has also been pleaded that the applicant's father, aged about 65 years, is suffering from serious ailments and is not in a position to accompany her during such travel. It has further been pointed out that the opposite party himself is a resident of Agra, where his parental house is also situated. These facts are not controverted and form the factual substratum of the present application.

6. Significantly, the opposite party has categorically stated before this Court that he does not wish to oppose the present transfer application. The prayer for transfer is, therefore, not contested and is, in effect, founded on the consent or at least the unequivocal non-opposition of the opposite party. This aspect assumes considerable importance, as it has a direct bearing on the nature of scrutiny required to be undertaken by the Court while exercising its jurisdiction under Section 24 CPC.

7. Section 24 of the Code of Civil Procedure, 1908, confers wide and discretionary jurisdiction upon the High Court and the District Court to transfer or withdraw any suit, appeal, or other proceeding at any stage, either on the application of any of the parties or even suo motu. The provision is couched in broad and enabling language and does not prescribe rigid conditions or straitjacketed parameters for the exercise of power. The legislative intent underlying Section 24 CPC is to vest the superior courts with sufficient flexibility to ensure fairness of procedure, to avoid hardship, inconvenience, or oppression, and to secure the proper administration of justice. The power is remedial, equitable, and supervisory in character and is intended to prevent failure of justice that may otherwise result from a rigid adherence to procedural form.

8. It is no doubt a settled principle that ordinarily the plaintiff, being *dominus litis,* has the right to choose the forum of institution and that such choice is not to be interfered with lightly. This principle recognises the autonomy of a litigant to prosecute his cause in a forum permitted by law.

However, the doctrine of *dominus litis* is not an inflexible or absolute rule. Section 24 CPC itself constitutes a statutory exception to this principle and empowers the Court to override the plaintiff's choice on an application for transfer by any of the parties or of its own motion. The right of forum selection cannot be elevated to a position where it defeats substantive justice or imposes undue hardship upon the opposite party. Where the insistence on the chosen forum results in inequity, prejudice, or denial of effective access to justice, the doctrine of dominus litis must necessarily yield in order to prevent hardship and ensure fairness in proceedings.

nothing in the provision prohibits the Court from ordering a transfer where both parties agree or where the opposite party raises no objection. The provision is enabling and permissive, not restrictive. Procedural rights, including the right to object to a particular forum, are capable of being waived. When a party expressly consents to transfer or states that he or she has no objection to the prayer, the procedural privilege flowing from the principle of *dominus litis* stands voluntarily relinquished. In such a situation, the foundational concern of prejudice, which ordinarily animates contested transfer applications, stands substantially diluted, if not entirely removed.

10. Where parties are ad idem on the question of transfer, the necessity for an elaborate comparative examination of balance of convenience stands considerably reduced. Consent reflects a mutual acceptance of the proposed forum and carries with it a presumption that no party apprehends injustice or disadvantage. In such cases, the Court is not required to engage in a hyper-technical or mechanical exercise of weighing relative inconvenience. A consensual transfer ordinarily advances the interest of justice by avoiding unnecessary procedural contest, conserving judicial time, and facilitating expeditious adjudication. Where no legal impediment is shown to exist, insistence on continuation of proceedings at the original forum serves no substantive or meaningful purpose.

11. The requirement that judicial orders must be reasoned is well settled. However, the nature and extent of reasons required depend upon the context and the nature of controversy involved. In consent-based or unopposed transfer applications, the requirement of recording reasons is sufficiently met by noting the consent or non-opposition of the parties and the Court's satisfaction that the transfer is lawful, fair, and does not occasion injustice. The law does not mandate an elaborate reasoning exercise where the factual foundation of contest is absent and where the parties themselves invite the Court to exercise its jurisdiction.

12. Matrimonial disputes occupy a distinct position in transfer jurisprudence owing to their personal nature and the socio-economic realities that attend them. In such matters, the "balance of convenience" assumes particular significance and must be assessed not in abstract or theoretical terms but in the context of lived realities. In the Indian socio-economic milieu, it is often the wife who bears primary responsibility for the care and upbringing of minor children and who is more likely to be financially constrained or dependent. Courts have, therefore, consistently recognised that while convenience is a relative concept, the convenience of the wife deserves priority consideration in matrimonial transfer petitions. This approach is rooted not in any presumption of preference but in pragmatic considerations of access to justice and fairness. The overarching and controlling principle remains that the ends of justice must be subserved.

13. From the statutory framework and the foregoing discussion, the following general principles may be stated:

13.1 Section 24 of the Code of Civil Procedure confers wide, discretionary, and equitable power upon the Court to transfer proceedings at any stage in order to secure the ends of justice.

13.2 The plaintiff's right as dominus litis to choose the forum of institution is subject to judicial control and may be overridden where adherence to such choice would result in hardship or injustice.

13.3 Transfer of proceedings by consent or where the opposite party raises no objection is legally permissible and well within the scope of Section 24 CPC.

13.4 Consent to transfer operates as a voluntary waiver of objection to the forum, and in such cases, the apprehension of prejudice stands substantially mitigated.

13.5 Where transfer is sought by consent or is unopposed, the necessity for an elaborate comparative analysis of balance of convenience stands diluted, though the Court must be satisfied as to the legality and fairness of the transfer.

13.6 In consent-based transfer orders, the requirement of recording reasons is adequately satisfied by noting the consensual stand of the parties and the Court's satisfaction that the transfer advances the ends of justice.

13.7 In matrimonial proceedings, having regard to social realities, the convenience of the wife, particularly where her personal, familial or economic circumstances place her at a comparative disadvantage, deserves priority consideration.

13.8 The ultimate and controlling test for exercise of power under Section 24 CPC is whether the transfer prevents hardship and subserves the cause of justice.

14. Applying the aforesaid principles to the facts of the present case, this Court finds that the applicant-wife resides at Agra with her school-going minor son. It is stated that she has no independent source of income, and is dependent upon her parents. The distance between Agra and Ghaziabad would necessitate repeated travel entailing financial strain and physical hardship. The applicant has also pleaded lack of adequate assistance and the ill-health of her aged father. The opposite party has categorically stated that he does not oppose the transfer. No prejudice, actual or apprehended, is shown to be caused to either side. The transfer sought is bona fide, consensual, and clearly in furtherance of justice.

15. For all the reasons aforesaid, this Court is of the considered opinion that the present case is a fit one

16. Accordingly, the Civil Misc. Transfer Application is allowed with the following directions:

(ii) Matrimonial Petition No.2130 of 2023, pending before the Court of Additional Family Court No. 5, Ghaziabad, is hereby withdrawn and transferred to the Court of competent jurisdiction at Agra.

(iii) The Court at Ghaziabad shall transmit the entire original record of the case to the transferee court within a period of fifteen days from the date of receipt of a certified copy of this order.

(iv) The transferee Court shall proceed with the matter from the stage at which it is transferred and shall endeavour to decide the same expeditiously, in accordance with law.

(2026) 2 ILRA 1367
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.02.2026

BEFORE

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

Special Appeal No. 28 of 2026

Ratan Buildtech Pvt. Ltd. **...Appellant**
Versus
Anil Kumar **...Respondent**

Issue(s) for consideration

Whether special appeal is maintainable against an order passed u/s 58 of the Real Estate (Regulation and Development) Act, 2016, before the Division Bench?

Headnotes

A. Real Estate Law - Civil Procedural Law – Real Estate (Regulation and Development) Act, 2016: Section 58 – Tribunals which are set up in an organised State for the Administration of Justice are courts and have been described as bodies of men which are appointed to decide controversies arising under certain special laws. The procedure before the Tribunal and Courts may differ but the functions are not essentially different. Further, it depends on a particular Act whether the functions of a particular Tribunal are akin to those of the courts which provide for the basic administration of justice. (Para 24)

When Company Law Board ('CLB') exercised its powers, it exercised its quasi-judicial power as original authority, it may not be a court but it has all the trappings of a court. Therefore, CLB, while exercising its original jurisdiction passed the order and against that order, appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed. (Para 15)

In the present case, the proceedings were initiated before the Real Estate Adjudicating Officer u/s 31 of the Act, 2016. A bare perusal of provisions reveals that the Act, 2016 provides for a complete machinery for adjudication of disputes between promoters and allottees or the real estate agents. The Adjudicating Officer u/s 35 has the same powers as are vested in a civil court under the CPC, 1908 and the Appellate Tribunal u/s 53(4) has same powers as are vested in civil courts under the CPC in respect of the matters enumerated in

the said sub-section, and sub-section (5) provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings and Appellate Tribunal shall be deemed to be civil court for the purpose of certain provisions of IPC and CrPC respectively. (Para 16 to 20)

The appellate provision u/s 58 of the Act, 2016 provides for appeal from the order of the Appellate Tribunal to the High Court. (Para 21)

B. A comparison of provisions of Section 10E(4C) and (4D) of the Companies Act, 1956 with provisions of Section 53 of the Act, 2016 dealing with powers of the Appellate Tribunal, would reveal that the same are almost in identical terms, wherein both the CLB and the Tribunal have been deemed to be civil court and proceedings before them to be judicial proceedings. Further, the power of review along with their orders being executable, are also identical in nature. Therefore, it can safely be concluded that the UPREAT has trappings of the court similar to the CLB and, thereby no special appeal would be maintainable against an order passed u/s 58 of the Act, 2016 before the Division Bench. (Para 26, 27)

C. Recently the Calcutta High Court in *Glorious Investment Limited* Vs. *Dunlop International Limited & Ors.* (*infra*)*,* has come to the conclusion that **Letters Patent appeal against judgment of learned Single Judge sitting in the Intellectual Property Rights Division under the Trade Marks Act, 1999 would not be maintainable.** (Para 30)

The present appeal u/Chapter VIII Rule 5 of the Rules, 1952 against order passed by learned Single Judge on an appeal u/s 58 of the Act, 2016, would be barred u/s 100-A CPC. (Para 31)

Special appeal dismissed. (E-4)

Case Law Cited

1. Sheet Gupta Vs. State of U.P. & others, AIR 2010 All 46 (FB) (Para 8)
2. Kamal Kumar Dutta & Anr. Vs. Ruby General Hospital Ltd. & Ors., (2006) 7 SCC 613 (Para 11)
3. Promoshirt SM SA Vs. Armassuisse & Anr., 2023:DHC:6352-DB (Para 12)
4. Kihoto Hollohan Vs. Zachillhu & Ors., 1992 Supp (2) SCC 651 (Para 22)
5. State of Gujarat & Anr. Vs. Gujarat Revenue Tribunal Bar Association & Anr., (2012) 10 SCC 353 (Para 23)
6. Glorious Investment Limited Vs. Dunlop International Limited & Ors., 2025 SCC Online Cal 8647 (Para 30)

List of Acts

Real Estate (Regulation and Development) Act, 2016; Code of Civil Procedure, 1908.

List of Keywords

Real estate, regulation, development, maintainable, special, appeal.

Appearances for Parties

For Appellant(s): Sudeep Kumar (Sr. Adv.), Mahima Pahwa, Shreshth Srivastava, Alok Kumar Mishra, Prashant Kumar Singh
For Respondent(s): Shivendra Rao

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

1. This special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 ('Rules, 1952') is directed against order dated 04.09.2025 passed in RERA Appeal No. 72 of 2025, whereby learned Single Judge dismissed the appeal filed by the appellant against judgment dated 14.05.2025 passed by the U.P. Real Estate Appellate Tribunal, Lucknow ('UPREAT').

2. The facts, in brief, may be noticed thus:

3. The respondent made a booking in the project of the appellant and was allotted a flat/apartment and a builder buyer agreement was executed between the parties in which the expected offer of possession was in December 2019. On account of the delay, the respondent made a complaint for grant of compensation under the Real Estate (Regulation and Development) Act, 2016 ('Act, 2016') before the Adjudicating Officer at Gautam Buddha Nagar. The appellant filed objections to the complaint and raised preliminary objections with regard to the absence of jurisdiction.

4. The Adjudicating Officer, by order dated 10.02.2023, granted certain reliefs to the respondent. The appellant assailed the judgment and order dated 10.02.2023 by filing appeal before the UPREAT. The UPREAT, by its judgment and order dated 14.05.2025, quashed and set aside the order dated 10.02.2023 passed by the Adjudicating Officer and substituted the same by its own directions for payment of delayed interest on the deposited amount.

5. Feeling aggrieved, the appellant filed appeal under Section 58 of the Act, 2016 before the learned Single Judge. The learned Single Judge, after hearing the parties, dismissed the appeal.

6. Aggrieved of the order passed by the UPREAT and the learned Single Judge, the present appeal has been filed.

7. The appeal was initially reported to be barred by limitation by the office which delay has been condoned by order dated 19.01.2026.

8. When the appeal came up before the Court for admission, a preliminary objection was raised by counsel for the respondent that special appeal under Chapter VIII Rule 5 of the Rules, 1952 was not maintainable. Reliance was placed on the judgment of a Full Bench of this Court in S**heet Gupta Vs. State of U.P. & others**: AIR 2010 All 46 (FB).

9. Learned counsel for the respondent made submissions that from a plain reading of provisions of Chapter VIII Rule 5 of the Rules, 1952, it is very clear that a special appeal from the judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the superintendence of the Court will not lie, as has been laid down by judgment in the case of **Sheet Gupta** (supra) as well and as neither the adjudicating authority nor the Tribunal are a court, therefore, the appeal deserves to be dismissed as not maintainable.

10. Learned Senior Counsel for the appellant made submissions that judgment in the case of **Sheet Gupta** (supra) as well as provisions of Chapter VIII Rule 5 of the Rules, 1952 do not bar filing of the appeal against judgment impugned, inasmuch as the restriction is 'in respect of a decree or order made by a Court subject to the superintendence of the Court' and that the judgment impugned before the learned Single Judge was of the Tribunal and not Court and therefore, the plea raised in this regard has no substance.

11. Learned counsel for the appellant was confronted with the law laid down by Hon'ble Supreme Court in **Kamal Kumar Dutta & Anr. Vs. Ruby General Hospital Ltd. & Ors.**: (2006) 7 SCC 613, wherein Hon'ble Supreme Court, based on provisions of Section 100-A CPC, came to the conclusion that special appeal, irrespective of the provisions of Letters Patent of a particular High Court, would not be maintainable.

12. Counsel for the appellant made detailed submissions placing all his emphasis on a Division Bench judgment of Delhi High Court in **Promoshirt SM SA Vs. Armassuisse & Anr.:** 2023:DHC:6352-DB and submitted that the Division Bench of Delhi High Court in the said case, has thoroughly considered the effect and implication of judgment in the case of **Kamal Kumar Dutta** (supra) and in a case where the special appeal was filed against a judgment of learned Single Judge under Section 91 of the Trade Marks Act, 1999, it was held that such an appeal would be maintainable. Based on the said judgment, it was sought to be emphasised that the appeal would not be barred under Section 100-A CPC.

13. We have considered the submissions made by counsel for the appellant and have perused the judgments in the case of **Kamal Kumar Dutta** (supra) and **Promoshirt (supra).**

14. It would be appropriate to notice that Hon'ble Supreme Court in the case of **Kamal Kumar Dutta** (supra), in a case where Special Leave Petition was filed from judgment of a Single Judge passed under Section 10F of the Companies Act, 1956, wherein an objection was raised that Letters Patent appeal was maintainable before Division Bench of the High Court and therefore, the Special Leave Petition should not be entertained, came to the following conclusion:

'21. But after the amendment the power which was being exercised under Sections 397 and 398 of the Act by the learned Single Judge of the High Court is being exercised by CLB under Section 10-E of the Act. Appeal against the order passed by CLB, lies to the High Court under Section 10-F of the Act. Therefore, the position which was obtaining prior to the amendment in 1991 was that from any order passed by the Single Judge exercising the power under Sections 397 and 398 of the Act, the appeal used to lie before the Division Bench of the High Court. But after the amendment the power has been given to CLB and appeal has been provided under Section 10-F of the Act. Thus, Part 1-A was inserted by the amendment with effect from 1.1.1964. But the constitution of the Company Law Board and the power to decide application under Sections 397 and 398 of the Act was given to CLB with effect from 31.5.1991 and appeal was provided under Section 10-F of the Act with effect from 31.5.1991. Therefore, on reading of Sections 10-E, 10-F, 397 and 398 of the Act, it becomes clear that it is a complete code that applications under Sections 397 and 398 the Act shall be dealt with by CLB and the order of CLB is appealable under Section 10-F of the Act before the High Court. No further appeal has been provided against the order of the learned Single Judge. Mr. Nariman, learned Senior Counsel for the respondents submitted that an appeal is a vested right and, therefore, under clause 15 of the Letters Patent of the Calcutta High Court, the appellants have a statutory right to prefer appeal irrespective of the fact that no appeal has been provided against the order of the learned Single Judge under the Act. In this connection, learned counsel invited our attention to a decision of this Court in Garikapatti Veeraya v. N. Subbiah Choudhury and in that it has been pointed out that the appeal is a vested right. The majority took the view that the appeal is a vested right. It was held as follows: (SCR p.488)

'... that the contention of the applicant was well-founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment either expressly or by necessary intendment."

22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment either expressly or by necessary intendment. Parliament while amending Section 100-A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1.7.2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of the learned Single Judge to the Division Bench. Section 100-A of the Code of Civil Procedure reads as follows:

'100-A. No further appeal in certain cases.-Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

23. Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by CLB and against that an appeal has been provided before the High Court under Section 10-F of the Act, that is an appeal from the original order. Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where learned Single Judge hears an appeal from the original order. Original order in the present case was passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10-F of the Act before the High Court. Learned Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100-A. The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single Judge has decided the appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under

Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, the CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.'

15. Hon'ble Supreme Court observed that when Company Law Board ('CLB') exercised its powers, it exercised its *quasi-judicial* power as original authority, it may not be a court but it has all the trappings of a court. Therefore, CLB, while exercising its original jurisdiction passed the order and against that order, appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.

16. In the present case, the proceedings were initiated before the Real Estate Adjudicating Officer under Section 31 of the Act, 2016. Section 35 of the Act, 2016 deals with powers of officer to call for information, conduct investigations and Section 36 thereof grants power to issue interim orders, Section 37 confers the power to issue directions and Section 38 confers the power to impose penalty or interest. Section 39 gives power for rectification of orders and Section 40 provides for procedure for recovery of interest or penalty or compensation and enforcement of orders.

17. Section 44 of the Act, 2016 provides for appeals to the Appellate Tribunal against the decision of the Adjudicating Officer. The powers of the Appellate Tribunal are enumerated in Section 53, which reads as under:

'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.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examinations of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or directing it ex parte; and

(g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).'

18. Further, under Section 57 of the Act, 2016, orders passed by the Appellate Tribunal are executable as a decree, which provision reads as under:

'**57. Orders passed by Appellate Tribunal to be executable as a decree.**-(1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.'

19. Against an order passed by the Appellate Tribunal, the appeal lies to the High Court under Section 58, which reads as under:

'**58. Appeal to High Court.**- (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.'

20. A bare perusal of above provisions reveals that the Act, 2016 provides for a complete machinery for adjudication of disputes between promoters and allottees or the real estate agents. The Adjudicating Officer under Section 35 has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 and the Appellate Tribunal under Section 53(4) has same powers as are vested in civil courts under the CPC in respect of the matters enumerated in the said sub-

section, and sub-section (5) provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings and Appellate Tribunal shall be deemed to be civil court for the purpose of certain provisions of IPC and CrPC respectively.

21. The appellate provision under Section 58 of the Act, 2016 provides for appeal from the order of the Appellate Tribunal to the High Court.

22. In **Kihoto Hollohan Vs. Zachillhu & Ors:** 1992 Supp (2) SCC 651, the Hon'ble Supreme Court observed as under:

'98. But then is the Speaker or the Chairman acting under Paragraph 6(1) a Tribunal? "All tribunals are not courts, though all courts are tribunals". The word "courts" is used to designate those tribunals which are set up in an organised State for the Administration of Justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the courts are there to restore the vinculum juris, which is disturbed. (See *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwal*a: (1962) 2 SCR 339. In that case Hidayatullah, J. said: (SCR p. 362)

"...By 'courts' is meant courts of civil judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that the courts have 'an air of detachment'. But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

23. Hon'ble Supreme Court in **State of Gujarat & Anr. Vs. Gujarat Revenue Tribunal Bar Association & Anr.**: (2012) 10 SCC 353, has dealt with the aspect in the following manner:

'18. Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialised adjudication alongside the courts. Therefore, a particular Act/set of rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority i.e. a situation where, (a) a statutory authority is empowered under a statute to do any act; (b) the order of such authority would adversely affect the subject; and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject; and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all.

In case certain powers under CPC or CrPC have been conferred upon an authority, but it has not been entrusted with the judicial powers of State, it cannot be held to be a court.'

24. From the above judgments of Hon'ble Supreme Court, it is apparent that Tribunals which are set up in an organised State for the Administration of Justice are courts and have been described as bodies of men which are appointed to decide controversies arising under certain special laws. The procedure before the Tribunal and Courts may differ but the functions are not essentially different. Further, it depends on a particular Act whether the functions of a particular Tribunal are akin to those of the courts which provide for the basic administration of justice.

25. The powers of CLB, which were the subject matter before Hon'ble Supreme Court in the case of **Kamal Kumar Dutta** (supra), *inter alia* under Section 10E(4C) and (4D) of the Companies Act, 1956, provided as under:

"10E. Constitution of Board of Company Law Administration.-

' ...

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c) compelling the production of documents or other material objects producible as evidence and impounding the same;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and for the purpose of section 196 of that Code.'

26. As would be seen, the emphasis of Hon'ble Supreme Court in the case of **Kamal Kumar Dutta** (supra) for applicability of provisions of Section 100-A CPC was that the CLB has all the trappings of a court.

27. A comparison of provisions of Section 10E(4C) and (4D) of the Companies Act, 1956 with provisions of Section 53 of the Act, 2016 dealing with powers of the Appellate Tribunal, would reveal that the same are almost in identical terms, wherein both the CLB and the Tribunal have been deemed to be civil court and proceedings before them to be judicial proceedings. Further, the power of review along with their orders being executable, are also identical in nature. Therefore, it can safely be concluded that the UPREAT has trappings of the court similar to the CLB and therefore, the ratio of **Kamal Kumar Dutta** (supra) would apply with all force to the present case as well, thereby no special appeal would be maintainable against an order passed under Section 58 of the Act, 2016 before the Division Bench.

28. So far as the Division Bench judgment in the case of **Promoshirt** (supra), heavily relied on by counsel for the appellant is concerned, one of the considerations for coming to the conclusion regarding maintainability of appeal and for distinguishing the judgment in the case of **Kamal Kumar Dutta** (supra) can be noticed in para 58, which reads as under:

'58. In *Kamal Kumar Dutta* the Supreme Court came to conclude that Section 100-A of the Code would bar a further appeal in terms of a letters patent provision since it found that while the erstwhile Company Law Board may not be a court it had all the trappings thereof. We in this regard bear in mind the provisions of Section 10E (4D) of the Companies Act, 1956, which had ordained that all proceedings before the Company Law Board would be deemed to be judicial proceedings albeit for the limited purposes indicated therein. We note that similar is the position which prevails under the Motor Vehicles Act, 1988 with Section 169 thereof, prescribing that the Motor Vehicle Claims Tribunal shall be deemed to be a civil court for purposes enumerated therein. It is also relevant to note that the Intellectual Property Appellate Board, as it existed prior to the promulgation of the Tribunals Reforms Act, 2021 had been clothed with an identical status by virtue of Section 92. The decisions that thus came to be rendered in Kamal Kumar Dutta, Gandla Pannala Bhulaxmi, Rouf Ahmad Zaroo and United India Insurance all emanated from special statutes with a deeming provision. The decision of the Full Bench of the Kerala High Court in Kesava Pillai Sreedharan Pillai arose out of proceedings instituted under the Land Acquisition Act, 1894 and the Motor Vehicles Act, 1988 whose distinguishing characteristics have already been explained hereinabove.'

29. The Division Bench attempted to distinguish the judgment on the ground that in case of CLB, there is a deeming provision under Section 10E(4D) of the Companies Act, 1956, quoted herein before, which features distinguish the case. In view of the fact that such deeming provisions, as existed in Section 10E(4D) of the Companies Act, 1956, are available under Section 53 of the Act, 2016, the judgment as such would have no application to the present case.

30. Besides the above, recently the Calcutta High Court in **Glorious Investment Limited Vs. Dunlop International Limited & Ors**.: 2025 SCC Online Cal 8647, has dissented with the view taken in the case of Promoshirt (supra) and has come to the conclusion that Letters Patent appeal against judgment of learned Single Judge sitting in the Intellectual Property Rights Division under the Trade Marks Act, 1999 would not be maintainable.

31. In view of above discussion, we are firmly of the opinion that the present appeal under Chapter VIII Rule 5 of the Rules, 1952 against order passed by learned Single Judge on an appeal under Section 58 of the Act, 2016, would be barred under Section 100-A CPC.

32. Consequently, the appeal is **dismissed** as not maintainable.

(2026) 2 ILRA 1377
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.02.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Special Appeal No. 48 of 2026

S.B.I. Stressed Assets Recovery Branch Thru. Chief Manager ...Appellant
Versus
M/s G.S.M. Bricks & Tiles & Ors. ...Respondent

Issue(s) for consideration

Whether in the present case, learned Single Judge Bench of this Court could exercise its jurisdiction u/Articles 226/227 of the Constitution of India?

Headnotes

A. Debt Recovery Law – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002: Section 17(3), 18 - It is well-settled that ordinarily relief u/Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (Para 22)

B. The writ petition could not have been allowed on the very first day without giving any opportunity to the appellant-bank to file any counter affidavit and also that learned Single Judge Bench did not have jurisdiction to decide a matter u/Article 227 of the Constitution of India on the date on which the writ petition was listed before him.

According to the roster determined by Hon'ble the Chief Justice of this Court on 31.07.2025, the jurisdiction of entertaining petitions u/Article 227 of the Constitution of India and exercising such powers was not vested with the learned Single Judge Bench rather these matters were assigned to two Courts i.e. Court No. 5 and 7, but, Court No. 5 had such jurisdiction only in respect of specified matters under which an order passed by the DRT would not fall, therefore, such powers remained only with Court No. 7, whereas, the learned Single Judge Bench has passed the order while sitting in Court No. 6. (Para 23, 24)

Therefore, the order passed by the learned Single Bench is in the teeth of the law, is without jurisdiction and is unsustainable on the reasons given for entertaining the writ petition in spite of availability of a statutory remedy u/s 18 of the SARFAESI Act, 2002, the same is liable to be quashed. (Para 25)

The respondent nos. 1 to 3 are at liberty to prefer an appeal u/s 18 of the SARFAESI Act, 2002 and seek such reliefs as may be permissible in law.

Special appeal allowed. (E-4)

Case Law Cited

1. United Bank of India Vs. Satyawati Tondon and Ors., (2010) 8 SCC 110 (Para 6)
2. Leelawati N. and Ors. Vs. State of Karnataka and Ors. and connected appeals, SLP (C) Nos. 27984-27988 of 2023 (Para 6)
3. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 3 SCC 1, (Para 15)
4. Phoenix ARC Private Limited Vs. Vishwa Bharti Vidya Mandir, AIR 2022 SC 1045 (Para 75.1, 75.2, 8 and 10) (Para 20)
5. South Indian Bank Limited Vs. Naveen Mathew Philip, AIR Online 2023 SC 427 (Para 15 and 17) (Para 20)
6. PHR Invent Educational Society Vs. UCO Bank and Ors., (2024) 6 SCC 579 (Para 22 to 30, 36, 37 and 41) (Para 20)
7. Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and Ors., (2024) 2 SCC 1 (Para 21)
8. Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors., (2011) 2 SCC 782 (Para 22)

List of Acts

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

List of Keywords

securitisation, reconstruction, financial, assets, debt, recovery, alternative remedy.

Appearances for Parties

For Appellant(s): Alok Saxena
For Respondent(s): Jitendra Saksena

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Alok Saxena, learned counsel for the appellants, Shri Jitendra Saxena, learned counsel for the respondent nos. 1 to 3 and Shri Sarvesh Kumar Tiwari, learned counsel for the respondent no. 4.

2. By means of this special appeal the appellant-Bank has assailed a judgment and order passed by learned Single Judge Bench of this Court in a Writ Petition filed under Article 226 of the Constitution of India albeit exercising powers under Article 227 thereof, as stated therein.

3. By the impugned judgment the learned Single Judge has quashed an order dated 20.09.2025 passed by the Debt Recovery Tribunal, Lucknow in S.A. No. 290 of 2025 rejecting the interim relief application of the applicant before the DRT, Lucknow.

4. As regards maintainability of this appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 we may fruitfully refer to a Co-ordinate Bench judgment of this Court rendered in ***Special Appeal No. 220 of 2023; Sharp Industries Vs. Bank of Maharashtra and Ors.,*** wherein, after considering Chapter VIII Rule 5 of the Rules, 1952 and the decision of a Full Bench of this Court it has been held that constitution of Debt Recovery Tribunal being in exercise of powers by the Parliament under Entry 45 of List I i.e. banking, and not under any entry of the State List or Concurrent List, the exclusionary clauses contained in Rule 5 of Chapter VIII referred above does not apply and a special appeal in such matters would be maintainable. The said decision has been followed by another Division Bench of which one of us (Rajan Roy, J.) was a Member in

Special Appeal No. 61 of 2024; M/s Susheela Taxfab Private Limited Vs. Debts Recovery Tribunal, Lucknow decided on 03.04.2024.

5. In view of the aforesaid exposition of law, we hold that this special appeal under Chapter VIII Rule 5 of the Rules, 1952 challenging the judgment and order passed by learned Single Judge, is maintainable.

6. As regards merits of the appeal it has been contended by the learned counsel for the appellant-bank that there is an effective statutory remedy available under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act, 2002') against the order passed by Debt Recovery Tribunal (hereinafter referred to as 'DRT') but, instead of availing of said remedy and in violation of the law declared on this issue by Hon'ble the Supreme Court right from the case of ***United Bank of India Vs. Satyawati Tondon and Ors.*** reported in ***(2010) 8 SCC 110*** to the latest decision rendered on 16.10.2025 in Civil Appeal arising out of ***SLP (C) Nos. 27984-27988 of 2023; Leelawati N. and Ors. Vs. State of Karnataka and Ors***. and connected appeals, a writ petition was filed by the respondent nos. 1 to 3 under Article 226 of the Constitution of India challenging the above-mentioned interim order passed by the DRT, Lucknow in proceedings under Section 17 of the SARFAESI Act, 2002 and the writ Court not only entertained the writ petition but allowed it on the first day itself without giving any opportunity to the appellant-bank to file a counter affidavit in the matter nor issuing any notice to the auction purchaser who was arrayed as an opposite party therein.

7. It is submitted that a mention was made in the morning for taking up the case and the case was taken up on the same day and the writ petition was allowed. The submission was that Hon'ble the Supreme Court has deprecated entertainment of writ petitions by the High Court under Article 226 or petitions under Article 227 of the Constitution of India against such an order in spite of availability of statutory remedy under the SARFAESI Act, 2002. He invited our attention in this regard to Para 43 to 46 and 55 of the judgment in ***Satyawati Tandon*** (supra), especially, Para 55 wherein Hon'ble the Supreme Court expressed its serious concern that despite its repeated pronouncements the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the rights of banks and other financial institutions to recover their dues as also the hope expressed by the Supreme Court that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection. Reliance was also placed on subsequent decisions wherein the said concerned and hope was reiterated.

8. In spite of it, the writ petition was filed, entertained and allowed on the first day itself quashing the interim order passed by the DRT, Lucknow, though, it was amenable to challenge under Section 18 of the SARFAESI Act, 2002.

referred in Satyawati Tandon (supra) and other cases, as, the order impugned before the writ Court was one which had been passed after hearing learned counsel for the parties and noticing in detail the submissions of rival parties and giving reasons for rejection of the interim relief application.

10. It was also his submission that very basis of the impugned order passed by the learned Writ Court that the order passed by the DRT, Lucknow was a non speaking order, is factually incorrect. The fallacy of it would be evident on a bare reading of the interim order passed by the DRT, Lucknow.

11. He also invited our attention to Section 17(3) of the SARFAESI Act, 2002 under which the DRT after examining the facts and circumstances of the case and evidence produced by the parties, comes to conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of the Act, 2002 and the rules made thereunder, can pass restitutive orders, to the effect of restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, and in that regard may, pass suitable orders in terms of Clause (a), (b) and (c) referred therein.

12. Learned counsel for the auction purchaser Shri Sarvesh Kumar Tiwari heavily relied upon the recent decision of Hon'ble the Supreme Court rendered in the case of ***Leelawati N.*** **(supra)** to contend that the writ petition itself was not maintainable in the first place what to say of it being allowed on the very first day without even issuing any notice to his client i.e. auction purchaser.

13. He further emphasized the fact that though the writ petition was filed under Article 226 of the Constitution of India, the learned Single Judge allowed the writ petition and passed the impugned order exercising the powers under Article 227 of the Constitution of India, though, he did not have jurisdiction to exercise such powers under Article 227 of the Constitution of India and the said jurisdiction vested, by order of Hon'ble the Chief Justice, in two different Benches as per the roster determined by him on 31.07.2025 which was effective as on 23.09.2025 i.e. date of passing of the impugned order.

14. Learned counsel for the respondent nos. 1 to 3 on the other hand contended that his clients had taken three loans in respect of three bank accounts and had also applied under the OTS Scheme for one time settlement which was accepted and in spite of closure of one of the accounts the notice for recovery etc. was issued including the loan amount in respect of all the three accounts. The loan amount pertaining to the closed bank account was about 5 lac and odd and total loan amount, according to him, was Rs.55 lacs and odd, but, ignoring this fact the proceedings were held.

15. He also submitted that various submissions made before the DRT, Lucknow on behalf of his clients were not taken note of and the order was a non speaking order. He attempted to address the Court on the merits of the order passed by the DRT, Lucknow to contend that it is wholly illegal order. He also emphasized the fact that the order passed on 20.09.2025 by the DRT, Lucknow which was a Saturday and the next day being a Sunday and as 23.09.2025 was the date fixed for taking of the possession, therefore, his clients had no other remedy but to file a writ petition before the High Court and on a mention being made the same was taken up on 23.09.2025 itself and requisite orders were passed. He relied upon a decision of Hon'ble the Supreme Court rendered in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 3 SCC 1,*** wherein, exceptions have been carved out for entertaining a writ petition in spite of availability of statutory remedy, to support the impugned judgment of the learned Singh Judge Bench.

16. In response, learned counsel for the appellant- Bank refuted the contention of the learned counsel for the respondent nos. 1 to 3 by stating that one of three bank accounts was closed only after settlement had been arrived at in the OTS Scheme and not because loan amount had been paid, but, subsequently respondent nos. 1 to 3 failed to deposit the amount as per the OTS Scheme, as such, they were liable to be proceeded for the due amount and there was no illegality in this regard. He submitted that all these objections were brought on record before the DRT, Lucknow. He reiterated that no opportunity was given to the appellant- Bank to file any counter affidavit before the writ Court. Though, orally an objection was raised by him with regard to the maintainability of the writ petition itself which has been noted but cursorily rejected on the ground that the order impugned was a non speaking order which was not the case. He also submitted that in view of the loan advanced by the bank in respect of three bank accounts the same house, which was belonging to respondents no. 1 to 3, was mortgaged and on non satisfaction of the loan, proceedings were undertaken under the SARFAESI Act, 2002. Consequently, an auction was held on 06.05.2025, wherein, respondent no. 4 was the auction purchaser. A Sale Certificate was also issued. Prior to the said auction, S.A. No. 290 of 2025 was filed by the respondent nos. 1 to 3, belatedly. During its pendency order was passed under Section 14 of the SARFAESI Act, 2002 for handing over possession of the secured assets to the secured creditor bank, therefore, amendment application was filed which was allowed. Thereafter, an interim application was filed for restraining the concerned Bank from taking possession of the secured assets which was rejected by the DRT, Lucknow by speaking order on 20.09.2025 after hearing all the necessary parties, against which there was a statutory remedy under Section 18 of the SARFAESI Act, 2002 which was not availed, therefore, the writ petition was not maintainable.

17. After hearing learned counsel for the parties and perusing the records, especially, the impugned order as also the order dated 20.09.2025 passed by the DRT, Lucknow in proceedings under Section 17 of SARFAESI Act, 2002 bearing S.A. No. 290 of 2025, what comes out is that the only ground on which the writ petition was entertained was that the interim order passed by the DRT, Lucknow is a non speaking order. With respect, we have perused the order passed by the learned DRT, Lucknow. We find that the order notices contentions of the parties and the factual aspects in detail in at least three pages and thereafter, DRT has recorded its conclusion that all statutory compliances had been made by the Bank and the Sale Certificate had been issued in favour of the auction purchaser, hence there was no ground to restrain the appellants- bank from taking physical possession of secured assets in order to hand over the same to the auction purchaser, since after issuance of Sale Certificate the auction purchaser is the real owner of the property.

18. Now, in the light of the order passed by the DRT, Lucknow it can not be said that it is a non speaking order. Whether the reasons given by the DRT, Lucknow are justified in the facts of the case can be a matter of challenge on the grounds which are permissible and available in an appeal under Section 18 of the SARFAESI Act, 2002. An appeal under Section 18 of the SARFAESI Act, 2002 can be filed against any order passed by the DRT, Lucknow under Section 17 of the SARFAESI Act, 2002. The scope of an appeal under the very provision is wide and it does not foreclose an appeal against an interim order passed by the DRT, Lucknow under Section 17 of the SARFAESI Act, 2002 whether granting or declining the interim relief.

19. Hon'ble the Supreme Court has repeatedly held right from the case of ***Satyawati Tondon*** (supra) till the latest decision in the case of ***Leelawati N.*** (supra) that the High Court should not entertain a writ petition under Article 226 or a petition under Article 227 of the Constitution of India where effective statutory remedies are available under the SARFAESI Act, 2002 and has, in fact, expressed serious concern in respect to such practice. The only exception being, if the order of the Tribunal is against the provisions of the SARFAESI Act, 2002 or rules made thereunder, it is against the principle of natural justice or is without the jurisdiction or vires of any provisions of SARFAESI Act, 2002 or Rules made thereunder are under challenge.

20. In the case at hand it is not as if the respondent nos. 1 to 3 were not heard before the DRT, Lucknow. In fact, it is their application which was argued and was rejected vide order dated 20.09.2025. As regards the order of the DRT, Lucknow being non speaking order we have already expressed our opinion that it can not be said to be a non speaking order. It can also not be said to be an order without jurisdiction. The learned Single Judge while setting it aside has not mentioned apparent violation of any provision of the SARFAESI Act, 2002 or the rules made thereunder. It was also not a case where vires of provision of SARFAESI Act, 2002 or rules made thereunder were under challenge. In this view of the matter we have no hesitation in saying that the impugned judgment of the learned Single Judge Bench is in the teeth of repeated pronouncements of Hon'ble the Supreme Court. We may in this regard refer to decisions of Hon'ble the Supreme Court rendered in the case of ***Satyawati Tondon*** (supra) (Para 43 to 46 and 55)***; Phoenix ARC Private Limited Vs. Vishwa Bharti Vidya Mandir reported in AIR 2022 SC 1045*** (Para 75.1, 75.2, 8 and 10)***; South Indian Bank Limited Vs. Naveen Mathew Philip reported in AIR Online 2023 SC 427*** (Para 15 and 17)***; PHR Invent Educational Society Vs. UCO Bank and Ors. reported in (2024) 6 SCC 579*** (Para 22 to 30, 36, 37 and 41). In fact, Para ***41*** of ***UCO Bank (supra)*** needs to be quoted for obvious reasons. It reads as under:-

"41. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in Satyawati Tondon since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy: (SCC p. 128, para 55)

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

21. Para 97 to 101 and 110.1 of ***Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and Ors***. reported in ***(2024) 2 SCC 1*** are also relevant. They are quoted below:-

"97.This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the Sarfaesi Act. This Court in Satyawati Tondon [United

Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)

"43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the Sarfaesi Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

99. In Phoenix ARC (P) Ltd.v.Vishwa Bharati Vidya Mandir [Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345 : (2022) 3 SCC (Civ) 153] , it was observed as under : (SCC pp. 359-61, paras 18 & 21)

"18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the Sarfaesi Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the Sarfaesi Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. [Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585] and Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

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21. Applying the law laid down by this Court in Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the Sarfaesi Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the Sarfaesi Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

100. In Varimadugu Obi Reddy [Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168 : (2023) 1 SCC (Civ) 58] , it was held as under : (SCC p. 183, para 36)

"36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the Sarfaesi Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under the second proviso to Section 18 of the 2002 Act."

101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the Rdbfi Act and the Sarfaesi Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the Rdbfi Act and the Sarfaesi Act.

110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the Sarfaesi Act."

22. Relevant extract of Para 23 of ***Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors***. reported in ***(2011) 2 SCC 782*** is also quoted herein below:-

23. ..... It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: Sadhana Lodh v. National Insurance Co. Ltd. & Anr., Surya Dev Rai v. Ram Chander Rai & Ors. and SBI v. Allied Chemical Laboratories)."

23. Moreover, we find merit in the submission of Shri Sarvesh Kumar Tiwari, learned counsel for the respondent no. 4 that the writ petition was allowed on the very first day without even issuing notice to the auction purchaser.

24. We also find merit in the contention of learned counsel for the appellant-bank that the writ petition in any case could not have been allowed on the very first day without giving any opportunity to the appellant-bank to file any counter affidavit and also that learned Single Judge Bench did not have jurisdiction to decide a matter under Article 227 of the Constitution of India on the date on which the writ petition was listed before him. We have perused the roster determined by Hon'ble the Chief Justice of this Court on 31.07.2025 and find that in fact, the jurisdiction of entertaining petitions under Article 227 of the Constitution of India and exercising such powers was not vested with the learned Single Judge Bench rather these matters were assigned to two Courts i.e. Court No. 5 and 7, but, Court No. 5 had such jurisdiction only in respect of specified matters under which an order passed by the DRT would not fall, therefore, such powers remained

only with Court No. 7, whereas, the learned Single Judge Bench has passed the order while sitting in Court No. 6. The roster dated 31.07.2025 be kept on record.

25. In view of the above discussion, as, the order passed by the learned Single Bench is in the teeth of the law declared by Hon'ble the Supreme Court and its dictum, is without jurisdiction and is unsustainable on the reasons given for entertaining the writ petition in spite of availability of a statutory remedy under Section 18 of the SARFAESI Act, 2002, the same is liable to be quashed. We accordingly quash the impugned order.

26. The respondent nos. 1 to 3 are at liberty to prefer an appeal under Section 18 of the SARFAESI Act, 2002 and seek such reliefs as may be permissible in law.

27. The Special Appeal is **allowed.**

(2026) 2 ILRA 1386
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 118 of 2026

Committee of Management Sri Gandhi Inter College Harpur ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Maintainability of writ petition filed by the Manager against an order of authority without having resolution of authorization of the Committee of Management.

Headnotes

(A) Service law – Constitution of India – Article 226 – Writ – Maintainability – D.I.O.S. passed the impugned order turning down the suspension order of the Committee of Management – Manager challenged it without having resolution of authorization of the Committee of Management – As per the scheme of administration, the Manager is authorised to represent on behalf Committee of Management i.e to plead, to affirm or to file any case or swear an affidavit, but it does not specifically authorise the Manager to take a decision to institute any suit or a writ petition – Relevance – Preliminary objection regarding maintainability of writ was raised by the respondent – Permissibility : (E-1)

Held : In case of any adverse order is passed by the State-Respondent, then Committee of Management has to take a decision for further legal recourse and the Manager alone not being competent to take a decision on it's own or on behalf of Committee of Management, to take a decision for further legal recourse as it would be a collective decision of the Committee of Management. This is the reason that such power is not specifically dedicated to the Manager under Scheme of Administration rather it authorise Manager to act subsequent to decision of taking legal recourse – The Manager cannot act contrary to the decision of Committee of Management. In a case where Committee of Management takes a decision not to challenge an action of

State-Respondent, can Manager under the grab of above referred clause still challenge it taking a contrary view and answer to it obviously would be 'No' – Preliminary objection is sustained. [Para 13, 14 and 17]

Case Law Cited

Saraswati Vidya Mandir vs. State of Uttar Pradesh, 2003 (3) AWC 1917; C/M Junior High School Sayar vs. State of U.P. and 2 Ors, 2019:AHC:19863; Umesh Chandra and Anr. vs. Mahila Vidyalaya Society, Aminabad, Lucknow and Ors., 2006(24) LCD 1373 **– referred to.**

List of Acts

UP Intermediate Education Act, 1921 – Section 16-A – Sub-section (1) to (6); Intermediate Education (Amendment) Act, 1980; Scheme of Administration.

List of Keywords

Preliminary objection, Maintainability, Resolution of Committee of Management, Scheme of Administration, Collective decision, General body of society, Bye laws.

Case Arising From

Orde of District Inspector of School dated 24.12.2025, whereby a proposal dated 26.10.2025 to suspend Respondent No. 3 has been turned down.

Appearances for Parties

Advs. for the Petitioner : R. K. Ojha, Sr. Adv.; Astha Mishra, Avneesh Tripathi.
Advs. for the Respondents : C.S.C., Ramesh Chandra Dwivedi.

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

1. In the present case, contesting private respondent has raised a preliminary objection to the maintainability of present writ petition in it's present form that it is not accompanied with a resolution of the Committee of Management to challenge the impugned order and to further authorise it's Manager to act on their behalf.

2. The present writ petition is filed by the Committee of Management of a College namely, Sri Gandhi Inter College, Harpur Budhat, Gorakhpur being Petitioner No. 1 through its Manager being Petitioner No. 2. against an order dated 24.12.2025 passed by District Inspector of Schools, Gorakhpur, whereby a proposal dated 26.10.2025 to suspend Respondent No. 3 has been turned down.

3. Sri R.K. Ojha, learned Senior Advocate assisted by Sri Avneesh Tripathi, learned counsel for petitioners, has submitted that there is a Scheme of Administration to run various affairs of the College through Committee of Management, which also provides responsibility and powers of each Office Bearer. The Manager of Committee of Management has wide powers and responsibilities including being authorized to sign pleadings etc. on its behalf. For reference relevant clause of Scheme of Administration is mentioned here in after:-

*'17. **प्रबन्ध समिति के कर्तव्य एवं कृत्य-** प्रबन्ध समिति के अधिकार कर्तव्य एवं कृत्य जहां तक विनियमों से असंगत न हो निम्नलिखित होंगेः-*

माध्यमिक शिक्षा अधिनियम की धारा 16क एवं 16ख के अधीन बने परिषद के विनियम के अध्याय-

1- प्रशासन की योजना के अन्तर्गत विनियम 13 में निहित अधिकार एवं कार्य प्रबन्ध समिति द्वारा सम्पादित किये जायेंगे, जो निम्नलिखित रूप से परिभाषित किये गये हैं-

2- संस्था के प्रधान प्रबन्धक द्वारा शिक्षकों / कर्मचारियों की सेवापंजिका में की गयी प्रविष्टियों के विरूद्ध अपीलों पर निर्णय देना।

3- जहाँ प्रधानाध्यापक अथवा आचार्य को अधिकार प्राप्त है उनके अतिरिक्त संस्था के कर्मचारियों को समस्त अवकाश स्वीकृत करना।

4- बालकों की निधियों (छात्रनिधियों) को छोड़कर संस्था के समस्त धनराशियों, प्रतिभूतियों (जमानतों) सम्पत्ति तथा संदानों का नियंत्रण तथा प्रबन्धन एवं उनकी निरापद परिरक्षा, विनियोग, मरम्मत, अनुरक्षण और विधिक रक्षा हेतु आवश्यक कार्यवाही करना।

5- शासन से प्राप्त अनुरक्षण और विकास अनुदानों तथा प्रतिपूर्तियों के उचित उपयोग को सुनिश्चित करना।

6- संस्था के लिए समस्त आय (छात्रवृत्तियाँ और बालकों की निधियों को छोड़कर) चंदा, दान, भेंट, लाभांश, ब्याज, अनुदान, आदि प्राप्त करना तथा उसके अधिकारों एवं कार्यों से उठाने वाले वित्तिय दायित्वों को पूरा करना।

7- शिक्षा विभाग द्वारा समय समय पर दिये जाने वाले आदेशों / निर्देशों का पालन करना।

8- एक्ट के उपबन्ध एवं विनिमय व अनुबन्धों के रहते हुए प्रधानाध्यापक, प्रधानाचार्य एवं शिक्षक पदों पर उ०प्र० माध्यमिक शिक्षा सेवा चयन बोर्ड द्वारा समय समय पर संशोधित शासनादेशों के अनुसार चयनित अभ्यर्थियों की नियुक्ति उ०प्र० माध्यमिक शिक्षा सेवा चयन बोर्ड अधिनियम के प्राविधानानुसार/शासनादेशानुसार की जायेगी। लिपिक की नियुक्ति प्रबन्ध समिति द्वारा तथा चतुर्थ श्रेणी कर्मचारी की नियुक्ति प्रधानाध्यापक/प्रधानाचार्य द्वारा विहित प्रक्रिया अनुसार विभागीय अनुमोदन से की जायेगी।

6. उ०प्र० हाईस्कूल तथा इण्टरमीडिएट कालेज (अध्यापकों तथा अन्य कर्मचारियों के वेतन का भुगतान) अधिनियम 1971 की धारा 9 के अन्तर्गत सृजित रिक्त पद एवं विहित प्रक्रिया के आभाव में तथा उ०प्र० माध्यमिक शिक्षा सेवा चयन बोर्ड द्वारा चयनित अभ्यर्थी समय समय पर संशोधित शासनादेशों से परे अन्य अनियमित/फर्जी नियुक्ति की स्थिति पाये जाने पर उक्त वर्णित अधिनियम/विनियम के प्राविधानों के अन्तर्गत प्रबन्ध समिति के विरूद्ध कार्यवाही की जायेगी।

7. विद्यालय में छात्रों का फर्जी नामांकन पाये जाने की स्थिति में प्रबन्ध समिति को अतिक्रमित करने की कार्यवाही माध्यमिक शिक्षा अधिनियम एवं अधिनियम में जारी शासनादेशों, विभागीय निर्देशों के अन्तर्गत की जायेगी।"

'20. प्रबन्ध समिति के पदाधिकारियों के अधिकार तथा कर्तव्य- *पदाधिकारियों के अधिकार तथा कर्तव्य निम्नलिखित होंगेः-*

1. अध्यक्ष-

क- समिति की बैठक की अध्यक्षता करना।

ख- बैठक करने के लिए तिथि समय एवं स्थान का अनुमोदन करना परिवर्तन करना और बैठक को स्थगित करना।

ग- इस बात की देखभाल करना कि यह प्रशासन योजना समस्त सम्बद्ध व्यक्तियों द्वारा निष्ठा के साथ कार्यान्वित की जाय।

घ- संस्था तथा उसकी सम्पत्ति से सम्बन्धित समस्त अनुबन्धों, संविदाओं के समस्त अभिलेखों तथा अन्य लेखों पर प्रबन्धक के साथ संयुक्त रूप से हस्ताक्षर करना।

ङ- समिति की स्वीकृति की प्रत्याशी में अधिक से अधिक रूपया 500/- (रूपया पाँच सौ) तक की धनराशि को व्यय करना।

च- आपत्ति की स्थिति में जब कोई बैठक बुलाई न जा सके तो जिला विद्यालय निरीक्षक की सहमति से समिति की ओर से उस सीमा तक कार्य करना जिस सीमा तक उस समिति के संकल्प द्वारा एतर्थ प्राधिकृत किया गया हो, अपने द्वारा की गई कार्यवाही की सूचना तत्काल समिति को देना।

छ- ऐसे अन्य अधिकारों को प्रयोग करना और ऐसे कर्तव्यों का पालन करना जो इस योजना या तत्तसमय प्रचलित किसी नियम अथवा उप नियम द्वारा उसे दिये गये हो, उस पर आरोपित किये गये हो।

2. उपाध्यक्ष-

क- अध्यक्ष की अनुपस्थिति में या उसके अपने कर्तव्यों का पालन करने से असमर्थ हो जाने पर अध्यक्ष के रूप में कार्य करना।

ख- ऐसे समस्त अधिकारों के प्रयोग तथा कर्तव्यों का पालन करना जो अध्यक्ष द्वारा उसे लिखित रूप से प्रतिनिहित किये गये हो।

3. प्रबन्धक-

1. संस्था के लिए समस्त अनुदान, दान तथा चन्दे आदि प्राप्त करना और उनके लिए यथाविधि रसीद देना।

2. समिति के निर्देशों के अधीन रहते हुए संस्था के समस्त सम्पत्तियों तथा धनराशियों के प्रबन्ध तथा प्रशासन के लिए उत्तरदायी होगा।

3. नियमों तथा स्वीकृति की शर्तों के अधीन रहते हुए बजट में की गयी व्यवस्था के भीतर संस्था के वित्त का प्रशासन तथा नियंत्रण करना।

4. कोषाध्यक्ष के साथ संयुक्त रूप से संस्था के समस्त लेखों को संचालित और उसकी वार्षिक लेखा परीक्षा का प्रबन्ध करना।

5. संस्था के शिक्षकों तथा सभी कर्मचारियों के वेतन वृद्धियों तथा देय धनराशि का भुगतान सुनिश्चित करना और जब कोषाध्यक्ष शिफारिश करे तो समिति द्वारा प्राधिकृत व्यय में से अन्य सेवाओं तथा सामग्रियों के लिए भुगतान सुनिश्चित करना।

6. संस्था से संबंधित समस्त अनुबन्ध तथा संस्था की अचल सम्पत्ति से संबंधित हस्तान्तरण संविदा के समस्त विलेखों तथा अन्य लेखों पर अध्यक्ष के साथ-साथ संयुक्त हस्ताक्षर करना।

7. वार्षिक बजट तैयार करना और समिति/सभा के समक्ष रखें जाने के लिए उन्हें अध्यक्ष को प्रस्तुत करना।

8. संस्था की वार्षिक रिपोर्ट तैयार करना।

9. संस्था को संबधित मामलों में समिति संस्था तथा सभा की समस्त कानूनी कार्यवाहियों में प्रतिनिधित्व करना और उनकी कार्यवाहियों तथा मामलों में उनकी ओर से अभिकथनो (प्लीडिंग्स) पर हस्ताक्षर करना तथा उन्हें सत्यापित करना।

10. अध्यक्ष की स्वीकृति से बैठक बुलाना और संस्था के प्रबन्ध और प्रशासन से सम्बन्ध समस्त पत्र व्यवहार रजिस्टरों तथा पुस्तकों को अभिलेख करना।

11. उस दशा को छोडकर जब प्रधानाचार्य में ऐसा अधिकार निहित हो, समिति द्वारा प्राधिकृत सीमा तक संस्था के कर्मचारियों की छुट्टी स्वीकृत करना।

12. समिति की स्वीकृति की प्रत्याशी में अधिक से अधिक रू0 500/- (पाँच सौ रूपये) तक की धनराशि व्यय करना।

13. यदि समिति ने तदर्थ अधिकार दिया हो तो संस्था के किसी शिक्षक, लिपिक पुस्तकालयाध्यक्ष की जाँच तथा समिति का अन्तिम आदेश होने तक के लिए विनियमों के अनुसार निलम्बन करना तथा की गयी कार्यवाही की सूचना समिति को देना।

14. एक ओर समिति तथा दूसरी ओर प्रधानाचार्य के माध्यम से संस्था के कर्मचारी वर्ग, शिक्षा विभाग तथा बोर्ड के बीच पत्र व्यवहार के सामान्य माध्यम के रूप में कार्य करना।

15. समिति तथा सभा के निर्णयों को कार्यान्वित करने के लिए उनके मुख्य कार्यपालक के रूप में कार्य करना।

16. विद्यालय के समस्त कर्मचारियों को नियुक्त करना तथा नियुक्ति पत्र निर्गत करना।

17. ऐसे अन्य अधिकारों का प्रयोग और ऐसे अन्य कर्तव्यों का पालन करना जो इस योजना द्वारा तत्समय प्रचलित किसी नियम अथवा विधि द्वारा उसे दिये गये हो या उस पर रोपित किये गये हो।

18. संस्था की तरफ से पत्र व्यवहार करना।

19. सदस्यों के नाम सदस्यता रजिस्टर पर नोट करना।

20. संस्था के कार्यवाही को लिपिबद्ध करना एवं सुनाना।

4- उप प्रबन्धक:-

1. प्रबन्धक को उसके कर्तव्यों का पालन करने में सहायता देना और उसकी ओर से उन मामलों में काम करना जो उसे प्रबन्धक द्वारा लिखित रूप से निर्दिष्ट तथा प्रतिनिहित किये गये हो तथा प्रबन्धक को उसके कर्तव्यों का पालन करने में अस्मर्थ हो जाने पर और प्रबन्धक का पद रिक्त होने पर कोई स्थाई व्यवस्था होने तक प्रबन्धक के रूप में कार्य करना।

5. कोषाध्यक्ष:-

1. संस्था की समस्त धनराशियों तथा निधियों के लेखों को रखना।

2. प्रबन्धक के साथ संयुक्त रूप से संस्था के सभी लेखों को संचालित करना।

3. प्राधिकृत व्यय के लिए भुगतान की जाने वाली धनराशियों की सिफारिश प्रबन्धक से करना।

4. सदस्यता हेतु बैंक ड्राफ्ट प्राप्त कर प्रबन्धक को भेजना तथा सदस्यता स्वीकार होने पर उसे विद्यालय के खातों में जमा करना। सदस्यता से प्राप्त समस्त आय मेन्टीनेन्स खाते में जमा होगी।

5. प्राधिकृत लेखा परीक्षक द्वारा लेखा परीक्षा के लिए सभी लेखें, रजिस्टर, प्रमाणक (बाउचर) रसीदें तथा अन्य पत्र जो लेखा परीक्षा के लिए आवश्यक हो प्रस्तुत करना।

6. आय तथा व्यय का वार्षिक विवरण तैयार करना और लेखा परीक्षा रिपोर्ट के साथ उसे प्रबन्धक को प्रस्तुत करना।"

4. Learned Senior Advocate further submits that said Scheme of Administration has incorporated all clauses of model Scheme of Administration provided under U.P. Intermediate Education Act, 1921 as well as various other clauses and it was approved also.

5. Learned Senior Advocate has referred a resolution dated 13.01.2026 (adopted subsequent to filing of present writ petition) in a meeting of the Committee of management to authorise it's Manager to sign pleadings on behalf of it, in terms of above referred clause as an abundant caution to meet the preliminary objection, despite it was not required.

6. Learned Senior Advocate has not disputed a settled position of law that a Manager of the Committee of Management, in sole capacity, cannot file a writ petition and it is always the Committee of Management who could file a writ petition, if aggrieved by any action of State-Respondent, through it's Manager.

7. According to learned Senior Advocate above referred Clauses 20 (3) (9) of Scheme of Administration completely authorise the Manager to take a decision so as to challenge an order passed by State-Respondent or by any other authority, before a Competent Court and for that there is no mandatory requirement to adopt a fresh resolution by the Committee of Management to the effect whether a proceeding is required to be instituted before a Competent Court and the Manager being authorised to plead on it's behalf, can take a decision on his own for institution of such cases.

8. Per contra, Sri R.C. Dwivedi, learned counsel for Private Respondent-3 has referred judgments passed in the cases of **Saraswati Vidya Mandir Vs. State of Uttar Pradesh, 2003 (3) AWC 1917; C/M Junior High School Sayar Vs. State of U.P. and 2 Ors, 2019:AHC:19863; Umesh Chandra and Anr. Vs. Mahila Vidyalaya Society, Aminabad, Lucknow and Ors., 2006(24) LCD 1373** that it is Committee of Management who could only be aggrieved by any act of State-Respondent and not it's Manager independently, therefore, a decision to institute a challenge to it, could only be taken by the Committee of Management and not by it's Manager alone. The referred clause of Scheme of Administration authorise the Manager to act on behalf of the Committee of Management, to plead pleadings and to represent before Court or forum, as the case may be, and does not authorise to take a policy decision on behalf of the Committee of Management to institute a proceeding before a Court of Law since Committee of Management may resolve otherwise.

9. Heard learned counsel for parties and perused the material available on record.

10. The Scheme of Administration provides for constitution of a Committee of Management having authority to manage and conduct the affairs of the institution. Sub-section (6) of section 16-A of U.P. Intermediate Act, 1921, provides that every recognized institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with sub-section (1) to sub-section (5) of the said Section and Section 16-B and Section 16-C. Section 16-CC of the Act provides that a Scheme of Administration in relation to an institution, whether recognized before or after the commencement of the Intermediate Education (Amendment) Act, 1980, shall not be inconsistent with the principles laid down in the 3rd Schedule. The 3rd Schedule provides the principles on which approval to a Scheme of Administration shall be accorded. It provides that every Scheme of Administration shall provide for proper and effective functioning of the Committee of Management.

11. In the present case, College concerned has Scheme of Administration duly approved. It provides duties and responsibilities of Office Bearers of Committee of Management including President and Manager. A Manager in individual capacity can not file any suit or writ petition. It is the Committee of Management who can file a suit or writ petition and for that Manager or any other can be authorised to file it and to sign pleadings. The Counsels for rival parties are also in agreement on this issue.

12. In the present case, as per the scheme of administration, the Manager is authorised to represent on behalf Committee of Management i.e to plead, to affirm or to file any case or swear an affidavit, but it does not specifically authorise Manager to take a decision to institute any suit or a writ petition. In other words a Manager can carry out a decision of Committee of Management. In some eventualities, the Manager is being authorise to take decision also but such authorization must be specific.

13. Under any circumstance, if any one could aggrieved by an action of State-Respondent would only be the Committee of Management since in maximum cases orders are passed on basis of decision of Committee of Management through resolutions adopted in their meetings such as order of termination or suspension, therefore, in case of any adverse order is passed by the State-Respondent, then Committee of Management has to take a decision for further legal recourse and the Manager alone not being competent to take a decision on it's own or on behalf of Committee of Management, to take a decision for further legal recourse as it would be a collective decision of the Committee of Management. This is the reason that such power is not specifically dedicated to the Manager under Scheme of Administration rather it authorise Manager to act subsequent to decision of taking legal recourse.

14. The Manager cannot act contrary to the decision of Committee of Management. In a case where Committee of Management takes a decision not to challenge an action of State-Respondent, can Manager under the grab of above referred clause still challenge it taking a contrary view and answer to it obviously would be 'No'.

15. There is an evident difference between a decision to take legal recourse and to authorise Manager to act accordingly. Under no circumstance, a Manager can question a decision of the Committee of Management or General Body of a Society, as the case may be, or to proceed on it's

own will, since it would be against the bye laws of a society or a decision of the Committee of Management under Scheme of Administration.

16. In above background Court takes note of **Saraswati Vidya Mandir (supra), C/M Junior High School Sayar (supra) and Umesh Chandra (supra)**, wherein same view was taken. Relevant part of said judgments are reproduced hereinafter :-

Saraswati Vidya Mandir

'(3) THIS Court in Writ Petition No. 10663 of 1976, Sardar Patel Higher Secondary School, Dev nagar, Mathura v. Deputy Director of Education, Agra Region, Agra and Ors. , 1976 AWC 18, vide judgment and order dated 1. 3. 1976 observed :

"sri N. C. Upadhyay, learned counsel for the respondent No. 3, Babu Lal Sharma raised a preliminary objection to the maintainability of the petition at the instance of the manager Kedar nath. He urged that the Committee of Management had authority to hold enquiry and to dismiss the petitioner from service, its proposal to dismiss respondent No. 3 was disapproved by the deputy Director of Education in appeal, therefore, the aggrieved party was the Committee of management and the petition could be filed only by it, the manager Sri Kedar Nath had no locus standi to maintain this petition. I find considerable force in this contention. In paragraph 43 of the second affidavit of respondent No. 3, it was clearly stated that the petition was not maintainable on behalf of the school as it was not the legal entity itself and it ought to have been filed by the Committee of Management. It was further stated that no proof has been shown that the Managing Committee had directed the manager to file the petition. Reply to this assertion is contained in paragraph 45 of the rejoinder-affidavit filed by the petitioner. It states that the contents of paragraph 43 are wholly misconceived and are not admitted, the same being argumentative will more adequately be replied at the time of arguments. There is thus no assertion in the rejoinder-affidavit that the Committee of Management had adopted any resolution to challenge the order of the Deputy Director of Education nor there is any assertion that Kedar Nath was authorised by the Committee of Management to file the present petition. There is further no assertion in the rejoinder-affidavit that the Committee of Management was aggrieved or that it had permitted the manager to file the petition. In fact the averments contained in paragraph 45 of the rejoinder-affidavit have been shown on legal advice, it does not contain any assertion of facts. The present petition has been filed by Sadar Patel Higher Secondary School through its Manager sri Kedar Nath. The petition has not been filed on behalf of the Committee of Management or on behalf of the Society, if any, registered under the Societies Registration Act. Obviously, the school or the manager cannot be aggrieved on behalf of the Committee of Management. It is the society and the Committee of Management which is legally entitled to challenge the orders of the Deputy Director of Education. The Manager cannot assume the functions of the Committee of Management unless he is authorised to do so. Sardar Patel Higher Secondary School is not a legal entity to maintain any legal action on behalf of the Society or the Committee of management. In Civil Misc. Writ Petition No. 5808 of 1970, Mahtab Rai, Manager, Har Narain intermediate college v. Deputy Director of Education, decided on 7th January, 1974, a learned single Judge of this Court, almost in similar circumstances, held that the Manager or the school has no locus standi to maintain petition against the order of the District Inspector of Schools or the Deputy director of Education refusing to grant approval. The

learned single Judge observed that the appointment of Principal of college and termination of his services were within the powers of the managing Committee or the Society and it was the Managing Committee alone which exercises control. That being so, the Manager is not the Managing Committee or the Society and he cannot maintain a writ petition in this Court unless he is authorised to do so. Relying on a Full Bench decision of this Court in Hart Raj Swarup v. Security to Government of U. P. , AIR 1951 All 1, the learned Judge dismissed the petition on the ground that it was not filed on behalf of the managing Committee or the Society. I am in respectful agreement with the view taken by the learned single Judge in Mahtab Rais case. In the instant case, neither the Society nor the managing Committee has filed the writ petition nor there is any material before the Court to show that the Committee of Management or the Society authorised the Manager to file this petition. In the circumstances the petition is not maintainable. During the course of hearing, learned counsel for the petitioner made a request for adjournment of the hearing to enable him to file documentary evidence to show that he had been authorised by the Committee of Management. I find no good ground to adjourn the hearing to enable the petitioner to produce evidence to show authorisation by the Committee of Management. As already noted, respondent No. 3 had clearly stated that the petitioner had no locus standi to maintain the petition and no proof was placed before the Court that the Committee of management had authorised him. In the rejoinder-affidavit, the petitioner did not even whisper that he was been authorised. If the petitioner had made any statement in the rejoinder-affidavit that the Committee of Management had authorised him to file the petition, I would have granted adjournment but in the absence of any such averment in the rejoinder-affidavit I do not consider it desirable to adjourn the hearing to enable the petitioner to produce authorisation by the committee of Management. In the result the writ petition is dismissed as not maintainable. There will be no order as to costs. The stay order is vacated. Dated : 1. 3. 1976 sd. K. N. Singh. j"

(4) AGAIN in the Writ Petition Nos. 6879 of 1974 and 12582 of 1975 : V. V. Inter College, Shamli v. U. P. Shiksha Nideshak, Pratham Mandal, Meerut and Ors. , vide Judgment and order dated 7. 4. 1976 it was observed :

". . . . . These two petitions were taken up for hearing on 6th April, 1976. At the very outset of the hearing learned counsel for the respondent-principal raised preliminary objection about the maintainability of these two petitions. He urged that the petitions have not been filed by the aggrieved party, instead these have been filed by V. V. Inter College, Shamli, which is neither aggrieved party nor a juristic person to maintain the petitions. I find considerable force in the contention. It is admitted between the parties that there is a registered society which runs and maintains the Vaish College, Shamli, Muzaffarnagar. The college is recognised under the U. P. Intermediate Education Act, 1921. The college is run and managed by a Committee of management constituted in accordance with the Scheme of Administration approved by the authorities under the Act. Under the provisions of the Act and the Regulations framed thereunder, it is the Committee of Management which is empowered to make appointments, to take disciplinary action and to pass orders of removal or suspension against the Principal or a teacher. No other member, or authority of the registered society has any power to exercise jurisdiction in these matters. The Committee of Management is empowered to file appeal against the order of the District Inspector of Schools. The Committee of Management is a statutory authority under the Act and the Regulations and it is legally entitled to take action in matters relating to the affairs of the administration of the college.

The Committee of Management has not filed these petitions. There is no material on record to show that the Committee of management adopted any resolution authorising the manager to file these petitions. The petitions as framed are not maintainable because the V. V. Inter College, Shamli, cannot be an aggrieved person to challenge the impugned orders. The aggrieved party, if any could be the Committee of management of the Society itself. In Writ Petition No. 10663 of 1975 decided on 1st March, 1976, I took a similar view. Another learned single Judge of this Court dismissed Writ Petition no. 580 of 1970 on 7th January, 1974, precisely on this very ground. The view taken by me and other learned single Judge is fully supported by a Full Bench decision of this Court in Indian sugar Mills Association through its President Hari Raj Swarup v. Secretary to Government, AIR 1951 All 1. During the course of hearing, amendment applications were filed seeking relief for the amendment of the writ petitions for adding Committee of Management as petitioner. The applications have been rejected by me by a separate order. So far as Writ Petition No. 12582 of 1975 is concerned, there is another reason to dismiss the same without going into merits. The writ petition was presented before this Court on 17th december, 1975. It appears that during the course of the preliminary hearing the Bench observed that the petitioner should file appeal before the Deputy Director of Education. The petitioner college thereupon filed appeal before the Deputy Director of Education, Meerut Region, against the impugned order of the District Inspector of Schools dated 6th December, 1975. The appeal has not been disposed of as yet, instead it is still pending. There is no dispute that the appeal against the order of the District Inspector of Schools refusing to accord approval is maintainable under Section 16g (3) (c). There is further no dispute that the petitioner college has availed that remedy and appeal is pending before the Deputy Director of Education. It is thus, clear that the petitioner has availed statutory alternative remedy of appeal available to him in law and that remedy is still being perused by him. In the circumstances it would not be a sound exercise of discretion under Article 226 of the Constitution to hear and adjudicate the issues raised by the petitioner in the present petition which can effectively be decided by the Deputy Director of education. The petitioner is not entitled to relief on this ground also. In the result both the petitions fail and are dismissed. There will be no order as to costs. Dated : 7. 4. 1976 sd. K. N. S. "

(5) AFORESAID judgment was affirmed by Division Bench in intra court appeal, S. A. No. 154 of 1976, V. V. Inter College, Shamli v. U. P. Shiksha Nideshak Pratham Mandal, Meerut and Ors. , vide judgment and order dated 2. 8. 1976 quoted below :

"sri R. K. Jain, learned counsel for the appellant, states that he does not press this appeal. The appeal is accordingly dismissed. " dated : 2. 8. 1976 sd. G. C. M. Sd. K. C. A. "

(6) IN view of the aforesaid decisions, petition is not maintainable in the name of the petitioner as it stands today.'

C/M Junior High School Sayar

'1. When the matter was taken up a preliminary objection has been raised by Mr. Kunal Shah, Advocate, holding brief of Mr. N. K. Singh, learned counsel for the respondent no.3 that the writ petition was filed by the Manager of the Committee of Management without their being any resolution of the Committee of Management. In this regard, he also relied upon a judgement

rendered by the Lucknow Bench of this Court in Misc. Single No.2694 of 2013, Baba Hulasi Das Shiksha Sansthan Thru its Manager & Another Vs. Deputy Registrar, Firms, Societies & Chits Lucnow Region & An. decided on 2.5.2013, which is quoted belwo:-

"Short counter affidavit on behalf of opposite party no. 2 filed today in Court is taken on record.

Heard learned counsel for petitioner as well as learned Additional Chief Standing Counsel and learned counsel for opposite party no. 2.

Learned Additional Chief Standing Counsel has raised preliminary objection regarding maintainability of writ petition on the ground that there is no resolution of the Committee of Management authorizing petitioner to challenge the impugned order, as such, the writ petition is not maintainable.

On the basis of instructions, it is further submitted by learned Additional Chief Standing Counsel that there is no dispute to the election held on 21.8.2010 wherein the petitioner no. 2 was said to be elected as Manager and opposite party no. 2 as President, however, subsequently the petitioner no. 2 had resigned from the post of Manager and his resignation was duly accepted by the Committee of Management in the meeting dated 11.9.2012 and vide resolution dated 18.9.2012 list of office bearers for 2012-13 was sent to the Deputy Registrar which contain the name of one Sunder Lal as Manager who was earlier elected as Deputy Manager in the election held on 21.8.2010. The Deputy Registrar has accepted the said list of office bearers for the year 2012-13.

Learned counsel for petitioner submitted that petitioner no. 2 had categorically denied the resignation as alleged by the opposite party no. 2, as such, there arose a dispute with respect to continuation of an office bearer of the Society and, as such, it was required to be referred to the Prescribed Authority for adjudication under Section 21 (1) of Societies Registration Act.

In support of his submission, learned counsel for petitioner relies on a Division Bench judgment of this Court in the case of Maha Narayan Pandey and others Vs. Registrar, Chit Funds, Firms & Societies, U.P. Lucknow and others; [1984 UPLBEC 550], particularly paragraphs 7 & 9 which on reproduction read as under:

"7. In his impugned order the Registrar formulated the points requiring his determination as follows:-

(1) Removal of Mewa Ram Tewari and Bharat Singh from the membership of the Society.

(2) Resignation of Maha Narayan Pandey from the office of Manager.

(3) Amendment in Smriti Patra and Niyamawali.

(4) List of new office bearers of the Society.

9. In respect of the amendment of Smriti Patra and Niyamawali the Registrar held that the Basic Education Department had been requiring the petitioner No. 1 to amend the said documents so as to bring them in conformity with law, but petitioner No. 1 was not taking any steps in that behalf. The Registrar further held that the amendment now made in the Smriti Patra and Niyamawali are in accordance with the requirement of law and they are, therefore, valid. The question of amendment of Smriti Patra and Niyamawai is not mentioned in sub-section (1) of Section 25 reproduced above. Obviously this question was not one which was required to be decided by the Prescribed Authority. However, point Nos. 2 and 3 are clearly covered by the provisions of sub-section (1) of Section 25. Annexure No. 1-A shows that Bharat Singh was Agriculture Secretary. He was, thus, an office bearer of the Society. Implicit in his alleged removal from the membership of the Society was his removal from the office of the Agriculture Secretary. Therefore, one of the questions that arose and which has been decided by the Registrar was whether Bharat Singh could continue to hold office of the Agriculture Secretary. In view of the finding recorded by the Registrar, Bharat Singh continues to hold that office. Again there was dispute as to whether petitioner No. 1 continue to hold office of the Manager or the said office had devolved upon opposite party No. 2 on the basis of the alleged nomination made by petitioner No. 1. This dispute became necessary to be decided in view of the new list of the office bearers submitted to the Registrar by opposite party No. 2. The new list could be accepted or rejected only after recording finding on the disputed question mentioned hereinbefore. In other words, point No. 4 formulated by the Registrar required determination of the question whether petitioner No. 1 continued to hold office of the Manager or he ceased to hold that office. this question was clearly covered by sub-section (1) of Section 25. The Registrar, of course, held that it was not necessary to decide the question of resignation, but if he had entered into the factual controversy raised in this regard by the parties it would have involved determination of the question whether petitioner No. 1 continued to hold office of the Manager or ceased to hold the office by resigning from the office and nominating opposite party No. 2 as his successor. This question was also necessary to be decided as even after amendment of the Rules, Petitioner No. 1 would continue to hold the office till fresh elections took place, unless he resigned. In view of the discussion herein the Registrar proceeded to decide ta part of the dispute which did not fall within his jurisdiction. Reference under sub-section (1) of Section 25 could be made by one-fourth of the members of the Society as well as by the Registrar. In the present case no reference was made to the Prescribed Authority by the members of the Society. But once it came to the notice of the Registrar that a dispute which could be decided by the Prescribed Authority alone had arisen between the parties, he should have referred the matter to the Prescribed Authority instead of assuming jurisdiction in himself to decide the said dispute."

Before deciding the controversy involved in the writ petition, it would be appropriate to decide the maintainability of writ petition.

Learned counsel for petitioner admits that no resolution has been passed in favour of the Society or its Manager, Shankar Lal Yadav to challenge the impugned order.

The Deputy Registrar vide impugned order has accepted the list of office bearers of the Committee of Management for the year 2012-13 wherein one Sunder Lal has been shown as Manager of the Committee of the Management of the Society.

I am of the view that in absence of a resolution authorizing the Society through its Manager or Shankar Lal Yadav in his individual capacity, the writ petition as such is not maintainable.

It is to be noted that Shankar Lal Yadav does not have any independent right to challenge the impugned order.

It is to be observed that the Division Bench of this Court in the case of Umesh Chandra and another Vs. Mahila Vidyalaya Society, Aminabad, Lucknow and others; [2006 (24) LCD 1373] has observed that the writ petition filed by the Manager on behalf of the society was not maintainable unless he was authorized to file the same. The view of the Court is that in absence of any resolution the writ petition by the Manager for that purpose or by any other person on behalf of the committee of management is not maintainable.

The relevant paragraph 34 on reproduction reads as under:

"34. The Full Bench of Allahabad High Court in a case reported in AIR (38) 1951 Allahabad 1, Indian Sugar Mills Association through its President Shri Hari Rai Swarup V. Secretary to Government, Uttar Pradesh Labour Department and others, held that writ petition under Article 226 may be maintainable on behalf of Association through a person only in case it is proved that the Association had right to move a writ petition on behalf of a person who preferred the writ petition.

For convenience relevant portion from the Full Bench judgment of Indian Sugar Mills Association is reproduced as under:

"It has been urged by learned counsel for the applicant that, though the amount may not be payable out of the property of the Association, yet inasmuch as the payments have to be made out of the funds of the Sugar Mills, a large number of which are members of the Association, the Association has the right to move the application on their behalf. We have already said that it is the interest of the applicant which must be directly affected by the statute or the order complained against and the applicant cannot claim that its interests are directly affected."

The Full Bench judgment of this Court referred hereinabove has been relied upon in a case reported in (2002) 3 UPLBEC 2777, Saraswati Vidya Mandir, Rewatipur, Ghazipur through its Manager Smt. Ram Rakhi Devi V. State of U.P. and others, where writ petition filed on behalf of Society was dismissed this Court on teh ground that petition filed by the Manager on behalf of Managing Committee or Society was not maintainable unless he was authorized to file the same. Hon'ble Single Judge of this Court had relied upon the earlier unreported judgment of this Court.

Relevant portion from the judgment of Sarswati Vidya Mandir (supra) is reproduced as under:

"Mahtab Rai, Manager, Har Narain Intermediate College V. Deputy Director of Education (Civil Misc. Writ Petition No. 5808 of 1970 decided on 7th January, 1974) a learned

Single Judge of this Court, almost in similar circumstances, held that the Manager or the School has no locus standi to maintain petition against the order of the District Inspector of Schools or the Deputy Director of Education refusing to grant approval. The learned Single Jude observed that the appointment of Principal of College and termination of his services were within the power of the Managing Committee or the Society and it was the Managing Committee alone which exercises control. That being so, the Manager is not the Managing Committee or the Society and he cannot maintain a writ petition in this Court unless he is authorized to do so. Relying on a Full Bench decision of this Court in Hari Rai Swarup V. Secretary to Government of U.P., AIR 1951 Allahabad 1, the learned Judge dismissed the petition on the ground that it was filed on behalf of the Managing Committee or the Society."

Reliance placed by Shir Raghvendra Kumar Singh, learned counsel for the respondents on the Division Bench judgment of this Court in the case of Shanti Sarup seems to be misconceived. In the case of Shanti Sarup as to whether the Secretary can institute a suit on behalf of Society in the absence of any specific delegation of power by the Rules of the Society or by the resolution of the governing body. Accordingly the case of Shanti Sarup does not seem to be applicable under the facts and circumstances of the present case.

In the case of Sardar Patel Higher Secondary School, Deve Nagar, Mathura (supra) again Hon'ble Single Judge of this Court held that a writ petition under Article 226 of the Constitution of India shall not be maintainable by the Manager of Institution. Only the Managing Committee or Society can maintain a writ petition. The Manager can not assume the function of Committee of Management unless he is authorized to do so.

In the case of Arya Samaj Ganesh Ganj (supra) a Division Bench of this Court had held that in the event of dissolution of Society, Secretary or Manager have got no right to file a suit in view of provision contained in Section 6 of the Societies Registration Act."

In view of above, the writ petition is dismissed.

Since the writ petition has been dismissed on the ground of maintainability, as such, there is no need to adjudicate the controversy involved in the writ petition."

2. In view of the same, learned counsel for the petitioner makes a prayer for dismissal of the writ petition as not pressed with liberty to file a fresh writ petition.

3.The liberty as prayed is granted.

4.The writ petition is dismissed.'

Umesh Chandra

'2. Substantial question of law raised by the appellants in the present appeal, is as to whether in the absence of any resolution of Committee of Management or General Body of a Society, a writ petition can be filed by its office bearer(in the present case, Secretary of the Society)

to plead the cause of Society? Whether after deciding the controversy while exercising appellate power under the Rules of Court one of the member of the Division Bench deciding the appeal may decide the writ petition while sitting single? Other questions raised by the appellants relates to power of review of an order passed by the Deputy Registrar as well as applicability of Section 340 of the Code of Criminal Procedure and other co-related issues.'

'68. In view of above, we proceed to record our finding as under:

(i) The word "determine" or "determination" used in the Section 6 of the Act means that while framing the rules, bylaws or constitution of the Society. General Body of the Society must provide specifically in the rules by discussing the matter as to who shall be authorized to institute a suit representing the Society. In the absence of such specific provisions under the rules of a Society it is for the Committee of Management or governing body to determine as to who shall represent the Society in the Court of competent jurisdiction for institution of a suit. Only a person authorized by the rules or by the governing body or the executive body to institute a suit shall be entitled to file a suit or a petition in this Court or in other Courts or tribunals.

(ii) Under Section 6 of the Act, it shall be incumbent upon the members of a Society while framing rules or byelaws to categorically provide as to who shall be entitled to sue on behalf of Society in representative capacity. In the absence of categorical provision in the rules or byelaws of the Society, none of the office bearer like President, Secretary or Manager or the Chairman shall be entitled to institute a suit or file an objection in representative capacity. Mere conferment of administrative or executive power on an office bearer shall not be sufficient to meet the requirement of Section 6 of the Act.

(iii) In the absence of specific or categorical provisions in the rules or bylaws of the Society constituted under the Act, only such person shall be entitled to represent a Society who is being duly authorized by the governing body of the Society vide its resolution.

(iv) A petition or suit filed by a person duly empowered shall be maintainable only in case it is being filed to represent the cause of Society in accordance to its aims and objects or rules or in accordance to the resolution of the Committee of Management. In the absence of such specific pleading in a petition or suit, such suit or petition shall not be maintainable.

(v) Ordinarily under extraordinary remedy of Article 226 of the Constitution of India writ petition shall not be maintainable in case the outcome of the election or irregularity committed during the course of election can be challenged by adopting other alternative remedy provided by the Act or Statute or bye laws of the Society.

(vi) While exercising power under Article 226 of the Constitution it is not open for this Court to decide a disputed question of fact co-related with the membership issue of a Society registered under the Act. Membership issue should be decided in accordance to

provision contained in the Act or Rules framed thereunder or according to bylaws of the Society or aggrieved party may approach the competent civil Court by filing a regular suit. Accordingly interference by Hon'ble Single Judge on membership issue by recording a finding seems to be not permissible.

(vii) In the present case Shri Y.C. Rai who had filed the writ petition has not been conferred power either by the rules, or the constitution of the Society or by the resolution of the executive body, hence, he was not competent to file the writ petition in this Court. Accordingly the writ petition was not maintainable.

(viii) The writ petition was also not maintainable because of the fact that there is no pleading on record in the memo of writ petition that it was filed to represent or protect the cause of the Society.

(ix) Legally and technically the judgment delivered by Hon'ble Single Judge does not seem to suffer for want of jurisdiction on the ground that Hon'ble Single Judge was one of the member of the Division Bench and after demanding the matter he had decided the writ petition on merit. However, in view of discussion made hereinabove ordinarily in such circumstances special care should be taken not to decide a controversy on merit by Hon'ble Judge of this Court who had been the member of Division Bench while remanding the matter for adjudication by Hon'ble Single Judge to maintain and strengthen the people's faith in the administration of justice. In case any objection is raised by the member of bar then it shall always be incumbent upon Hon'ble Single Judge transfer such cases to other Hon'ble Judge to decide the controversy.

(x) While finalizing the electoral roll in pursuance to power conferred by the sub-section 2 of Section 25 of the Act it shall always be incumbent upon the Deputy Registrar or the competent authority to comply with the principle of natural justice keeping in view the observation made in the present judgment Without providing reasonable opportunity, to defend the members of the Society can not deprive to participate in the election process.,'

17. In the present case, a subsequent resolution is adopted by the Committee of Management, which is placed by way of a supplementary affidavit, however it still not contains a decision of Committee of Management to file present writ petition, therefore, even it would not fill the lacunae. Therefore, this writ petition in present form is not maintainable since it is not accompanied with a resolution of Committee of Management to file present writ petition. Preliminary objection is sustained and writ petition is accordingly dismissed reserving a liberty to file a fresh alongwith a resolution of Committee of Management to file it.

18. Registry is directed to check that writ petitions filed by Committee of Management shall accompany a copy of resolution of Committee of Management to file a writ petition and further authorize the Manager to act accordingly.

19. Registrar (Compliance) to take necessary steps.

(2026) 2 ILRA 1402
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.02.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 226 of 2026

Amit Gupta & Ors. **...Petitioners**
Versus
U.O.I. & Ors. **...Respondents**

Issue(s) for consideration

Whether the present writ petition is maintainable?

Headnotes

A. Administrative Law - Administrative Tribunal Act, 1985: Section 14 - The tribunals created u/Article 323A and 323B of the Constitution of India, are possessed of the competence to test the constitutional validity of statutory provisions and rules and even the *vires* of the act of the statutory legislation can also be looked into, by the Tribunals. Such Tribunals have all jurisdiction from the day, they came into existence. (Para 18)

The issue herein, is w.r.t. the advertisement for the recruitment of two posts, namely, the Assistant Store Officer as well as Private Secretary, which essentially is the subject matter of clause 14(i)(a) of the 'Act 1985'. (Para 14)

The case in hand is that the advertisement for recruitment of the posts in question, was published on 11.11.2025 and Institution has subsequently been notified on 13.01.2026 by Ministry of Personnel, Public Grievances and Pensions. The further fact is that the writ petition was also preferred on 08.01.2026 that too was prior to the notification dated 13.01.2026. (Para 15)

It emerges that Section 14 of the Act 1985 provides the jurisdiction, powers and authority of the Central Administrative Tribunal and it says that 'the administrative tribunals shall exercise, on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before the day, by all courts.' The appointed day is 'the day', when any 'authority' mentioned section 14(2) is notified. **The institution, who published the advertisement for recruitment of posts, has been notified by the Central Govt. on 13.01.2026, on the appointed day, the instant writ petition is pending. Section 29 of the Act 1985 envisages the provision of transfer of pending cases.** (Para 12, 15)

In the above-noted provisions the word <u>'pending before a court or authority'</u> has substantive meaning. Every suit or other proceeding before any court or other authority, immediately before the date of establishment of a tribunal under the Act 1985, shall stand transferred, on that date to the Tribunals. (Para 17)

The writ petition remained pending until the notification dated 13.01.2026 was issued, therefore, the mandate of Section 29 of the Act 1985 would be applicable to the present case and the plea taken by the counsel for the petitioner that the notification has subsequently been issued than that of filing of the writ petition would have no contrary effect. (Para 17)

B. Where an efficacious alternative remedy is available, the High Court should not entertain a Writ Petition u/Article 226 of the Constitution of India, in matters falling squarely within the domain of Tribunals. Petitioners have failed to substantiate their arguments that their case do not fall under the domain of the Tribunals, constituted under the scheme of the Constitution of India. (Para 19)

Writ petitions dismissed as not maintainable. (E-4)

Case Law Cited:

1. L. Chandra Kumar Vs. Union Of India, AIR 1997 SC 1125 (Para 5)
2. Leelavathi N. And Ors. Etc. Vs. The State of Karnatata, SLP (Civil) No(s). 27984-27988 of 2023 (Para 9)

List of Acts

Administrative Tribunal Act, 1985; Recruitment Rules For Non-Faculty Posts For New AIIMS, 2015.

List of Keywords

administrative, recruitment, service, advertisement, alternative remedy.

Appearances for Parties

For Petitioner(s): Anand Dubey
For Respondent(s): A.S.G.I., Anagh Misra

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

1. Heard Mr. Anand Dubey, learned counsel for the petitioners, Mr. Varun Pandey, learned counsel for respondent nos. 1 & 2, Mr. Surya Bhan Pandey, learned D.S.G.I. assisted by Mr. Anagh Mishra and perused the record.

2. Instant petition has been filed with the following reliefs:-

"Issue a writ order direction in the nature of certiorari thereby quashing the advertisement dated 11.11.2025 with respect to recruitment of two posts of Assistant Store Officer and three post of Private Secretary in AIIMS Raebareli same are annexed as Annexure no.1 to this writ petition.

ii. Issue a writ order direction in the nature of mandamus commanding the opposite party No.-3 to 5 to fill up two vacant posts of Assistant Store Officer and three post of Private Secretary through promotion in AIIMS Raebareli by mechanism provided in office memorandum dated: 20.11.2024 issued by AIIMS New Delhi.

ii. Any appropriate order/direction which this Hon'ble court may deem fit and proper, in the circumstances of the case.

iv. Award the cost of the writ petition."

3. In Writ A No. 132 of 2026, additionally, the advertisement dated 11.07.2025 is also under challenge.

4. Preliminary objection is raised by counsels for the respondents that the writ petition is not maintainable, as the advertisement dated 11.11.2025 and 11.07.2025, which are published by the competent authority of All India Institute of Medical Science, Raebareli(hereinafter referred to as "Institution"), under challenge herein, in fact, put the recruitment in motion/process, whereas, the provisions of Section 14 of the Administrative Tribunal Act, 1985 (hereinafter referred to as "the Act 1985") prescribes the jurisdiction, power and authority of the administrative tribunals, therefore, the efficacious alternative remedy is available to the petitioners to approach the Central Administrative Tribunal sitting at Lucknow.

5. He further submitted that the law rendered in the case of **L. Chandra Kumar V. Union Of India** reported in **AIR 1997 SC 1125**, it has been held in paragraphs 94 to 100 that every suit or case subject matter as given under Article 14, shall be triable before the tribunals, established under the Act 1985. The aforesaid paragraphs of the judgment and order are extracted as under:-

"94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

95. We are also required to address the issue of the competence of those who man the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the Administrative Members who have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. It must be remembered that the setting up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of Judicial Members and those with grassroot experience would best serve this purpose. To hold that the Tribunal should consist only of Judicial Members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that Administrative Members are chosen from amongst those who have some background to deal with such cases.

96. It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. To this end, it is suggested that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall. We

are, however, of the view that this may not be the best way of solving the problem. We do not think that our constitutional scheme requires that all adjudicatory bodies which fall within the territorial jurisdiction of the High Courts should be subject to their supervisory jurisdiction. If the idea is to divest the High Courts of their onerous burdens, then adding to their supervisory functions cannot, in any manner, be of assistance to them. The situation at present is that different Tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. However, even in the case of Tribunals created by parliamentary legislations, there is no uniformity in administration. We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out.

97. The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of expert bodies like the LCI and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department.

98. Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in Dr Mahabal Ram case [(1994) 2 SCC 401 : 1994 SCC (L&S) 642 : (1994) 27 ATC 97] , we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a Single Member Bench or a Bench which does not consist

of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

100. All these matters may now be listed before a Division Bench to enable them to be decided upon their individual facts in the light of the observations contained in this judgment.""

6. Further submission is that the present writ petition is not maintainable, as there is an efficacious statutory remedy is available to the petitioners, under section 14 of Act 1985, thus, the writ petition is liable to be dismissed.

7. On the other hand, Mr. Anand Dubey, learned counsel appearing for the petitioners has submitted that the present writ petition is maintainable, as the advertisement has been published under the provisions of the Recruitment Rules For Non-Faculty Posts For New AIIMS, 2015(hereinafter referred as 'Rules 2015') and the writ petition was instituted prior to the notification of the Institution, under Section 14 of the Act 1985. He also added that the recruitment process has also been initiated prior to that notification.

8. He further argued that, in fact, two posts are advertised; one of the Assistant Store Officer and the second one is of Private Secretaries and as per the rules, 75% of total posts of Assistant Store Officer shall be filled up either on promotion or on the deputation and 25% of posts by the direct recruitment, whereas, no promotion has ever been done. Further also, so far as the post of Private Secretaries are concerned, there are six posts, out of which three posts have already been filled up through direct recruitment and by way of the present advertisement, three other posts have been advertised, for appointment, through direct recruitment. He also submitted that as per the Rules 2015, there is 50% quota for promotion for the post of Private Secretaries, which has

apparently been violated by the respondent institute as the same is in derogation of the rules. He submitted that, in fact, if there is any illegal exercise of powers by a statutory authority, then the writ petition can be entertained, under Article 226 of the Constitution of India.

9. In support of his contention, he has placed reliance on the judgment rendered in the case of **Leelavathi N. And Ors. Etc. Versus The State of Karnatata** passed in **SLP (Civil) No(s). 27984-27988 of 2023** and has referred paragraph 37, which is quoted hereinunder:-

"37. Nevertheless, a writ petition under Article 226 may still be maintainable notwithstanding the existence of such an alternative remedy in exceptional circumstances, including the enforcement of fundamental rights guaranteed under Part III of the Constitution; instances of ultra vires or illegal exercise of power by a statutory authority; violation of the principles of natural justice; or where the vires of the parent legislation itself is under challenge. While these exceptions have been carved out and reiterated by this Court in a catena of decisions, the facts of the present case do not fall within any of these exceptions so as to warrant the maintainability of the writ petitions before the High Court."

10. Referring the aforesaid, he submitted that it has been held in so many words that the alternative remedy would be no bar, in the exceptions, where there is prayer for enforcement of fundamental rights guaranteed under Part III of the Constitution of India, instances of ultra vires or illegal exercise of power by statutory authority or there is violation of principle of natural justice. He submitted that in fact it is apparent that the respondent-institute, by way of the advertisement for the post of private secretaries, has proceeded for the direct recruitment, thus, has violated the law prescribed under the Rules 2015, which is an unlawful exercise of powers by the authority concerned, therefore, the writ petition is maintainable.

11. Having heard learned counsel for the parties and after perusal of the records, it transpires that the petitioners have instituted the present writ petition, challenging the advertisement, which has been published by the 'Institution,' for recruitment, under the provisions of 'Rules 2015.'

12. Upon considering the preliminary objection regarding availability of alternative remedy, it is apt to say that section 14 of the Act 1985, envisaged the jurisdiction and power of the Central Administrative Tribunal, which says that 'the administrative tribunals shall exercise, on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before the day, by all courts.'

13. Section 14 of the Act 1985 reads as under:-

*""14. Jurisdiction, powers and authority of the Central Administrative Tribunal.?(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court 2***) in relation to?*

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning?

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation 3[or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation 3[or society] or other body, at the disposal of the Central Government for such appointment.

4[Explanation.?For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations 3[or societies]

owned or controlled by Government, not being a local or other authority or corporation 3[or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations 1[or societies].

*(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation 1[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court 2***) in relation to?*

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation 1[or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation 1[or society] and pertaining to the service of such person in connection with such affairs.""

14. The issue herein, is with respect to the advertisement for the recruitment of two posts, namely, the Assistant Store Officer as well as Private Secretary, which essentially is the subject matter of clause 14(i)(a) of the 'Act 1985'.

15. The case in hand is that the advertisement for recruitment of the posts in question, was published on 11.11.2025 and Institution has subsequently been notified on 13.01.2026 by Ministry of Personnel, Public Grievances and Pensions. The further fact is that the writ petition was also preferred on 08.01.2026 that too was prior to the notification dated 13.01.2026. When this court examines the aforesaid facts under the prevalent law, it emerges that Section 14 of the Act 1985 provides the jurisdiction, powers and authority of the Central Administrative Tribunal and it says that the Central Administrative Tribunal shall exercise on and from the appointed day, all the jurisdiction, authority and powers, exercisable by all the courts. The appointed days is 'the day', when any 'authority' mentioned section 14(2) is notified. The institution, who published the advertisement for recruitment of posts, has been notified by the Central Govt. on 13.01.2026, on the appointed day, the instant writ petition is pending. Section 29 of the Act 1985 envisages the provision of transfer of pending cases.

16. Section 29 of the Act 1985 reads as under:-

*""29. Transfer of pending cases.?(1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court 4***.*

*(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation 5 [or society], being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court 1*** Explanation.?For the purposes of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation 2 [or society], means the date with effect from which the provisions of sub-section (3) of section 14 or, as the case may be, sub-section (3) of section 15 are applied to such local or other authority or corporation 2 [or society].*

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation.?For the purposes of this sub-section, "State Tribunal" means a Tribunal established under sub-section (2) of section 4.

(4) Where any suit, appeal or other proceeding stands transferred from any court or other authority to a Tribunal under sub-section (1) or sub-section (2),?

(a) the court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

3[(6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunals (Amendment) Act, 1987 (51 of 1987), being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred on such commencement to such court.

(7) Where any case stands transferred to a court under sub-section (6), that court may proceed to deal with such case from the stage which was reached before it stood so transferred.]""

17. The aforesaid provision is very clear in its terms that every suit or other proceeding before any court or other authority, immediately before the date of establishment of a tribunal under the Act 1985, shall stand transferred, on that date to the Tribunals. In the above-noted provisions the word 'pending before a court or authority' has substantive meaning. The question is that when a matter could be said to be pending before any court or authority, is the date, when it is filed and the date, when it's decided finally. So far as the case in hand is concerned, admittedly, the date of notification of the Institution is 13.01.2026 and the present writ petition has been filed on 08.01.2026, while the date of advertisement is 11.11.2025 as is apparent from the advertisement itself and the writ petition has been filed with the main prayer of quashing the aforesaid advertisement. This is an undisputed fact that the writ petition remained pending until the notification dated 13.01.2026 was issued, therefore, the mandate of Section 29 of the Act 1985 would be applicable to the present case and the plea taken by the counsel for the petitioner that the

notification has subsequently been issued than that of filing of the writ petition would have no contrary effect.

18. The law rendered in the case of **L. Chandra Kumar(Supra)**, it has been held that such Tribunals have all jurisdiction from the day, they came into existence and even in paragraph 99, it has been said that the tribunals created under Article 323A and 323B of the Constitution of India, are possessed of the competence to test the constitutional validity of statutory provisions and rules and even the vires of the act of the statutory legislation can also be looked into, by the Tribunals.

19. The law, relied upon by the counsel for the petitioners, rendered in the case of **Leelavathi N.(Supra)**, it has been held in paragraph 36, that where an efficacious alternative remedy is available, the High Court should not entertain a Writ Petition under Article 226 of the Constitution of India, in matters falling squarely within the domain of Tribunals. Counsel for the petitioners has failed to substantiate his arguments that the case of the petitioners do not fall under the domain of the Tribunals, constituted under the scheme of the Constitution of India.

20. Consequently, this Court finds force in the argument of learned counsel for respondents, thus, preliminary objection sustains.

21. Ergo, both the writ petitions are hereby **dismissed as not maintainable**.

22. Liberty is given to the petitioners to pursue the appropriate remedy provided under the law.

(2026) 2 ILRA 1411
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

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

Special Appeal No. 1195 of 2025

Dr. Sushil Kumar Sinha, President, Kayasth Pathshala, Prayagraj ...Appellant

Versus

State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Scope of writ jurisdiction in interfering with the certificate dated 28.03.2025 granted by the Assistant Registrar after recounting done in pursuance of the order of the Prescribed Authority dated 22.03.2025, against which statutory appeal is pending before the Commissioner.

Headnotes

(A) Society law – Constitution of India – Article 226 – Writ – Scope – Election of society – Recounting of vote – In pursuance of order of Prescribed Authority dated 22.03.2025, the

Assistant Registrar held recounting and issued election certificate dated 28.03.2025 declaring respondent as President of society and cancelled the election certificate granted earlier to the appellant – Statutory appeal against order dated 22.03.2025 was filed u/s 25(1)(d) proviso – While appeal was pending, writ petition against certificate dated 28.03.2025 was filed – Against refusal to grant interim relief, Special Appeal and Special Leave Petition was dismissed – Effect – Jurisdiction of Assistant Registrar to grant certificate dated 28.03.2025 was challenged in writ petition :

Held : Assistant Registrar was bound to obey the directions issued by the Prescribed Authority vide his order dated 22.03.2025 'to get the recount done and declare its result' and, hence, questioning the nature of the said direction or its consequence could only possibly be entertained in proceedings raising a challenge to the order dated 22.03.2025 itself and not in the writ petition where the said order is not impugned **–** Admittedly, the order dated 22.03.2025 passed by the Prescribed Authority is not the subject matter of the writ petition and a statutory appeal under Clause (d) of proviso to sub-Section (1) of Section 25 of the Act against the said order is still pending before the Commissioner concerned. Therefore, neither the writ Court nor this Appellate Court can record a finding which may, directly or indirectly, result in either setting aside or upholding the order passed or directions issued by the Prescribed Authority. The same, if done, would amount to going beyond the scope of the writ petition and the appeal. [Para 20 and 21] (E-1)

Case Law Cited

All India Council and another vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another, 1988 (2) AWC 1154 **– referred to.**

List of Acts

Society Registration Act, 1860 – Ss. 4(1) and 25(2); Representation of People Act, 1951.

List of Keywords

Election, Reference, Recounting of votes, Election certificate, Interim relief, Statutory appeal, Scope of the writ petition, Legal status, Consequential act, Attestation of signature, Legal impediment, Interim relief, Two parallel proceedings, Jurisdiction.

Case Arising From

Judgment and order dated 15.11.2025 passed by the learned Single Judge in Writ C No. 9752 of 2025.

Appearances for Parties

Advs. for the Appellant: Anil Tiwari, Sr. Adv.; Uday Pratap Singh, Anmol Bartaria, and Adiba Khatoon.
Advs. for the Respondents: Radha Kant Ojha, Sr. Adv.; Prabhakar Awasthi, Sr. Adv.; Ram M Kaushik, Anuj Srivastava, Varad Nath; A.K. Goyal, A.C.S.C.; Jagdish Pathak, S.C.

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Anil Tiwari, learned Senior Advocate assisted by Shri Uday Pratap Singh, Shri Anmol Bartaria and Ms. Adiba Khatoon Advocates appearing for the appellant, Shri A.K. Goyal, learned Additional Chief Standing Counsel alongwith Shri Jagdish Pathak, learned Standing Counsel appearing for respondents no. 1 to 3 and Shri Radha Kant Ojha alongwith Shri Prabhakar Awasthi, learned Senior Advocates assisted by Shri Anuj Srivastava and Shri Varad Nath Advocates appearing for the respondent no. 4.

THE CHALLENGE

2. The present intra-court appeal has been filed challenging the final order dated 15.11.2025, whereby the learned Single Judge has dismissed the Writ-C No. 9752 of 2025 which had been filed by the appellant questioning the order (election certificate) dated 28.03.2025 issued by the Assistant Registrar, Firms, Societies and Chits, Prayagraj, pursuant to an order dated 22.03.2025 passed by the Prescribed Authority/Sub-Divisional Magistrate, Sadar, Prayagraj on a reference earlier made to him.

3. The dispute is regarding Kayasth Pathshala, Prayagraj, a Society registered under the Societies Registration Act, 1860 ('the Act'). The appellant and the respondent no. 4 (in short 'the respondent') contested the election for the post of President of the Society. Elections were held on 25.12.2023, counting of votes was done on 26.12.2023 and the appellant, having received highest number of votes, was declared elected President on 26.12.2023, consequent whereupon a certificate of his election was issued to him by the Returning Officer.

Reference before the Prescribed Authority

4. The respondent approached the Assistant Registrar questioning the election of the appellant. The Assistant Registrar, by order dated 06.04.2024, referred the matter to the Prescribed Authority who, by his order dated 22.03.2025, directed the Assistant Registrar to conduct recounting of votes and declare the result. In pursuance of the said order, the Assistant Registrar, after getting the recounting of votes done, issued an election certificate dated 28.03.2025 declaring the respondent as President of the Society and also cancelled the election certificate dated 25.12.2023 earlier issued by the Returning Officer in favour of the appellant.

Statutory Appeal before the Commissioner

5. Against the order dated 22.03.2025 passed by the Prescribed Authority, the appellant has filed an appeal under the proviso (d) of Section 25(1) of the Act before the Commissioner, Prayagraj, which appeal is still pending.

PROCEEDINGS BEFORE THIS COURT AT INTERIM STAGE

6. Assailing validity of the certificate dated 28.03.2025 issued by the Assistant Registrar, the writ petition giving rise to the present appeal was filed and interim relief was claimed requesting the Court to stay effect and operation of the order dated 28.03.2025 and to restrain respondent no. 4, i.e. the elected President, not to interfere in the functioning of the appellant as President of the Society during the pendency of the writ petition.

7. The writ court, by an order dated 25.04.2025, refused to grant interim relief to the appellant. Challenging the said order, the appellant filed Special Appeal No. 388 of 2025, which was dismissed by order dated 21.05.2025. The said order was carried to Hon'ble Supreme Court in the form of S.L.P. No. 16985 of 2025, however, the same was also dismissed on 04.07.2025. Thereafter, the writ petition was finally heard by the learned Single Judge and by the order impugned dated 15.11.2025, the same has been dismissed.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Learned Senior Counsel appearing for the appellant has made following submissions:-

(i) The Learned Single Judge has failed to consider the mandate of Section 25(2) of the Act and has proceeded on an erroneous premise that, after recounting under Section 25, one candidate can simply be substituted by another in terms of declaration made by him and without holding fresh elections.

(ii) The Learned Single Judge has failed to appreciate that the challenge in writ petition was inter alia to the jurisdiction of the Assistant Registrar who has no statutory power to cancel or set aside election or to declare the respondent as elected and, therefore, the order passed by him is contrary to the mandate of Section 25(2) of the Act which provides that where by an order made by the Prescribed Authority under 25(1), the election is set aside and the office bearer is no longer entitled to continue in office, then the Registrar may call a meeting of the General Body of the Society for electing office bearers and such meeting shall be presided by the Registrar or any officer authorized by him.

(iii) Although in the order of the Prescribed Authority, there is no indication or mention that election of the appellant has been set aside, alternatively, if the Prescribed Authority is deemed to have set aside the election of the appellant, the only consequence could be that the Assistant Registrar, in exercise of powers under Section 25(2) of the Act, shall proceed to hold a fresh meeting to elect the President, however the same having not been done, the order/certificate issued by the Assistant Registrar becomes invalid as per the statutory scheme itself.

(iv) Only the Prescribed Authority could have decided the dispute in respect of the election and continuance or removal of the appellant as the President of the Society and the Assistant Registrar could not have cancelled the appellant's election or the certificate earlier issued in his favour and, simultaneously, appoint the respondent as the President.

(v) The Prescribed Authority has, after passing order dated 22.03.2025, closed the proceedings before him, whereas, even if he was of the view that recounting should take place, he could have asked the Assistant Registrar to get recounting done and, then, to send the record before him (Prescribed Authority). The same, having not been done, closure of proceedings by the Prescribed Authority and leaving everything to the Assistant Registrar, amounts to illegal exercise of power by the Prescribed Authority.

(vi) The Prescribed Authority and the Assistant Registrar, by declaring the losing candidate as the winning candidate after recount, have assumed such power within themselves which otherwise is available only to the High Court while entertaining an election petition under the provisions of **Representation of the People Act, 1951 (in short 'R.P. Act'),** which analogy could not be applied in society matters which are governed by the statutory scheme contemplated under the Act of 1860. Reference was made to Sections 84, 98, 100 and 101 of the R.P. Act in this regard.

(vii) Pleadings contained in paragraph 24 of the writ petition to the effect that, as per Section 25 of the Act of 1860, it is only the Prescribed Authority who is authorized by the State Government by notification to set aside the election of office bearers of the Society, having been specifically admitted in paragraph 15 of the counter affidavit filed on behalf of the State-respondents, such admission, in itself, is sufficient to set aside the order/election certificate dated 28.03.2025.

9. Placing reliance on a co-ordinate Bench judgment of this Court in the case of **All India Council and another vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another, 1988 (2) AWC 1154**, submission has been made that the scope of Section 4(1) being different from the one under Section 25 of the Act, if a dispute of the nature covered by Section 25 is raised before the Registrar in connection with the submission of annual list under Section 4(1) of the Act, the same must be referred by him to the Prescribed Authority.

10. Accordingly, prayer has been made to set aside the order of the learned Single Judge and to allow the writ petition granting reliefs claimed therein; alternatively, to direct the Assistant Registrar to hold a fresh meeting to elect the President as per Section 25(2) of the Act.

SUBMISSIONS ON BEHALF OF THE STATE RESPONDENTS NO. 1, 2 AND 3

11. Learned Standing Counsel submits that the appellant, on the one hand, has challenged the basic order dated 22.03.2025 passed by the Prescribed Authority by way of statutory appeal which is pending before the Commissioner, on the other hand, challenge has been laid to the consequential order/certificate issued by the Assistant Registrar by means of writ petition which was not maintainable. It is further submitted that this Court, while dismissing the Special Appeal No. 388 of 2025, has already found election certificate dated 28.03.2025 as of no legal status and, therefore, dismissal of writ petition by the learned Single Judge cannot be faulted.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 4

12. Learned Senior Counsel appearing for the respondent has made following submissions:-

(i) In the elections held on 25.12.2023, 148 valid votes were not counted and, therefore, the Prescribed Authority rightly directed recount of votes and, on recount having been lawfully and fairly done, the appellant lost by 77 votes.

(ii) The result of recounting of votes having never been challenged by the appellant, the writ petition against a mere election certificate dated 28.03.2025 was legally not maintainable and, therefore, the same has rightly been dismissed.

(iii) Once the appeal against the order dated 22.03.2025 passed by the Prescribed Authority is still pending before the Commissioner, any indirect challenge to the said order by way of challenge to the consequential act done by the Assistant Registrar, through the writ petition, is untenable.

(iv) The Assistant Registrar, by his order dated 02.04.2025, has already registered the list of office bearers under Section 4(1) of the Act and signatures of the respondent have also been attested and there being no challenge to registration of list or attestation of signatures, no relief can be granted to the appellant in these proceedings.

DISCUSSION AND ANALYSIS

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

Prayers in the writ petition

14. A perusal of the writ petition indicates that the first prayer made therein was to quash the order dated 28.03.2025 passed by the Assistant Registrar which is in the form of a certificate. Second prayer was to direct the respondents not to interfere in the functioning of the appellant as President of Kayastha Pathshala, Prayagraj.

The impugned order/election certificate

15. It would be apt to reproduce the order/certificate impugned in the writ petition, which reads as under:-

"निर्वाचन प्रमाण पत्र

सन्दर्भ वाद संख्या: 6998/2024, चौधरी राघवेंद्र नाथ सिंह बनाम आर ओ कायस्थ पाठशाला अंतर्गत धारा 25(1) उत्तर प्रदेश सोसाइटीज रजिस्ट्रीकरण अधिनियम 1860 में नियत प्राधिकारी/उप जिलाधिकारी सदर प्रयागराज द्वारा पारित आदेश दिनांक 22.03.2025 के अनुपालन में व माननीय जिला अधिकारी द्वारा प्रेषित पत्र संख्या 3033 दिनांक 26.03.2025 के क्रम में समस्त मत पत्रों की पुनर्मतगणना के पश्चयात चौधरी राघवेंद्र नाथ सिंह कायस्थ पाठशाला के अध्यक्ष निर्वाचित घोषित किया जाता है।

दिनांक 25.12.2023 को निर्वाचन अधिकारी कायस्थ पाठशाला श्री प्रमोद कुमार के हस्ताक्षर से जारी निर्वाचन प्रमाण पत्र जो डॉ सुशील कुमार सिन्हा के पक्ष में जारी किया गया था एतद्वारा निरस्त किया जाता है।"

16. When prayer to stay the effect and operation of the order/certificate dated 28.03.2025 and to restrain the respondents from interfering in the functioning of the appellant as President of the Society was declined by the writ court by order dated 25.04.2025, the appellant laid challenge to the same by filing Special Appeal No. 388 of 2025. At that stage, the matter was extensively heard on nature and significance of the election certificate and the appeal was dismissed by recording following observations:-

"25. A perusal of above would reveal that the certificate indicated that pursuant to the recounting, respondent no. 4 is declared as elected President of the Society and went on to cancel the election certificate issued pursuant to the election dated 25.12.2023 in favour of the appellant. As specifically stated by learned counsel for the appellant that in so far as the result of the counting as declared by the Assistant Registrar is concerned, the appellant does not have any grievance in

the writ petition as his appeal against the order dated 22.03.2025 is pending. The grievance is qua the cancellation of his election certificate.

26. Nothing has been pointed out that the Act/Rules requires issuance of any such election certificate and, therefore, in our opinion, the same by itself, does not have any legal status. It is not in dispute that pursuant to the recounting held and the declaration of result on 28.03.2025, the Assistant Registrar by his order dated 02.04.2025 has registered the list of office bearers in terms of Section 4(1) of the Act and it is claimed that signatures also have been attested. The issuance of the certificate, whatever value can be attached to the said certificate, does not empower the elected President in any manner, the power is derived based on the registration of the office bearers under Section 4(1) of the Act and even the said order is appealable under Section 4(1A) of the Act.

27. In view of above fact situation, the submissions made by learned counsel for the respondent regarding the nature of challenge laid by the petitioner in relation to the election certificate, which on its own does not have any legal sanctity appear to be justified and consequently seeking of interim relief qua the working of the society despite passing of the order dated 02.04.2025 under Section 4(1) of the Act appears to be wholly misplaced.

28. So far as the judgements cited by both the sides are concerned, in view of what has been found, the same would have no application to the present circumstances.

29. In view of above, in the context of the submissions made, in a petition, seeking to question a part of the election certificate i.e. only regarding cancellation of appellant's certificate and seeking therein interim relief of restraint against the respondent no. 4 from working as President of the Society, the prayer made, cannot be countenanced.

30. In view of above discussion, the order passed by learned Single Judge does not call for any interference, though for different reasons.

31. Consequently, the appeal has no substance, the same is, therefore, dismissed."

17. The Hon'ble Supreme Court, on a further challenge laid on behalf of the appellant, dismissed the S.L.P. by order dated 04.07.2025, which reads as under:-

"1. We are informed that the main writ petition is now listed for final hearing. In this view of the matter, we are not inclined to interfere with the impugned order, which is interim in nature.

2. The Special Leave Petition is dismissed. Needless to say, we have not expressed any opinion on the merits of the case.

3. Pending application(s), if any, shall stand disposed of."

18. In light of aforesaid, if we proceed to examine the rival contentions of the parties, we first find that the Prescribed Authority, by order dated 22.03.2025, had issued following directions:-

"उपरोक्त तथ्यों को दृष्टिगत रखते हुए सभी 9543 मतपत्रों की पुर्न मतगणना का आदेश जारी किया जाता है। सहायक रजिस्ट्रार, फर्म्स, सोसाइटीज एवं चिट्स प्रयागराज को यह निर्देशित किया जाता है कि 7 दिवस के अन्दर पुर्न मतगणना कराना तथा उसका परिणाम घोषित करना सुनिश्चित करें। इसके साथ ही नायब तहसीलदार उत्तरी सदर प्रयागराज को यह निर्देशित किया जाता है कि मतगणना की पूरी प्रक्रिया के दौरान मतगणना स्थल पर उपस्थित रहकर सतत पर्यवेक्षण करेंगे। आदेश की दूसरी प्रति co कर्नलगंज को इस निर्देश के साथ भेजी जाय कि नियत स्थान एवं समय पर पर्याप्त पुलिस बल तैनात करें। यह भी आदेशित किया जाता है कि पुर्न मतगणना की सम्पूर्ण प्रक्रिया विडियोग्राफी में कराया जाय।"

19. Assistant Registrar, accordingly, through the State Machinery, got the recounting done and, then, issued the certificate dated 28.03.2025. The challenge to the said order/certificate is primarily on the ground that the Assistant Registrar had no power or jurisdiction, either to declare the respondent as President or to cancel the election of the appellant, which was earlier recognized in terms of issuance of certificate dated 25.12.2023 issued by the Returning Officer.

20. Though the argument advanced on behalf of the appellant to the effect that in terms of proviso to sub-Section (1) of Section 25 of the Act, election of an office bearer can be set aside only by the Prescribed Authority, if one or the other contingency enumerated in Clause (a), (b) and/or (c) occurs, is certainly in consonance with the scheme of the Act, the mere fact that the Assistant Registrar had issued the certificate and that the Prescribed Authority, in its order dated 22.03.2025, had not specifically indicated setting aside the election of the appellant, by itself, is not sufficient to grant reliefs, as prayed by the appellant. The reason is that the Assistant Registrar was bound to obey the directions issued by the Prescribed Authority vide his order dated 22.03.2025 **'to get the recount done and declare its result'** and, hence, questioning the nature of the said direction or its consequence could only possibly be entertained in proceedings raising a challenge to the order dated 22.03.2025 itself and not in the writ petition where the said order is not impugned.

21. Admittedly, the order dated 22.03.2025 passed by the Prescribed Authority is not the subject matter of the writ petition and a statutory appeal under Clause (d) of proviso to sub-Section (1) of Section 25 of the Act against the said order is still pending before the Commissioner concerned. Therefore, neither the writ Court nor this Appellate Court can record a finding which may, directly or indirectly, result in either setting aside or upholding the order passed or directions issued by the Prescribed Authority. The same, if done, would amount to going beyond the scope of the writ petition and the appeal.

22. We may add here certain aspects relating to the appeal against the order dated 22.03.2025 pending before the Commissioner. Therein also, the appellant moved an application seeking interim relief pending appeal. The Commissioner, Prayagraj, while admitting the appeal by order dated 11.09.2025, rejected the application observing that the said order would remain subject to any order to be passed in the pending Writ-C No. 9752 of 2025, i.e. the writ petition giving rise to the present appeal. Therefore, even in the appeal against the main order passed by the Prescribed Authority, the appellant did not get any interim relief and nothing has been brought on record

before us to demonstrate that at any point of time, arising out of the appeal, the appellant has got any interim relief.

23. Further, there is an order dated 23.11.2024 passed by this Court in another Writ-C No. 38500 of 2024 filed by the appellant wherein he had made certain prayers with regard to Reference Case No. 6998 of 2024 during its pendency before the Prescribed Authority. The said writ petition disposed of directing the Commissioner, Prayagraj Division, Prayagraj to decide the pending appeal expeditiously preferably within a period of one month from the date of production of certified copy of the order, if there is no legal impediment. As to what are the reasons for non-disposal of the pending appeal within the time fixed by this Court, is not a matter of concern of this Court in these proceedings; however the fact remains that the appeal is still pending and without any interim relief to the appellant.

24. Another significant aspect of the matter is that admittedly, list of office bearers pursuant to the election result after recount, has already been registered under Section 4(1) of the Act on 02.04.2025 and signatures of the respondent as President have also been attested. In such view of the matter, when basic order passed by the Prescribed Authority is under challenge in appeal before the Commissioner and the order subsequent to issuance of certificate registering the list of office bearers under Section 4(1) of the Act, has not been challenged in appropriate proceedings, challenge to an intervening event in terms of issuance of certificate dated 28.03.2025, in our opinion, has no substance.

25. We may reiterate that no provision under the Act or the Rules contemplates issuance of any such election certificate and, therefore, the same by itself does not have any legal status. While dismissing Special Appeal No. 388 of 2025, we have already held that issuance of certificate, whatever value can be attached to the same, does not empower the elected President in any manner and the power to act as such is derived based on the registration of the list of office bearers under Section 4(1) of the Act, which order is appealable under Section 4(1-A) of the Act. If the appellant chose not to challenge the same, we cannot restrain the respondent from acting as President and, therefore, both the reliefs claimed in the writ petition cannot be granted.

26. As far as reliance placed on behalf of the appellant on the judgment in the case of **All India Council (supra),** it would be necessary to refer paragraph 10 of the decision, much emphasis whereupon was laid on behalf of the appellant. The same reads as under:-

“10. It was urged that the Registrar derives jurisdiction under this provision to determine the dispute. We are unable to agree. In the first place, the dispute has not arisen in the' context of the submission of the annual list of the managing body which is required to be filed under Section 4(1). Secondly, the power of the Registrar to decide objections filed under the proviso to Section 4(1) must be held to operate in a field not covered by Section 25 of the Act. Under the proviso to Section 4(1), the Registrar deals only such matters as may arise in the context of the submission of the annual list of the managing body. Further in the present case we are concerned here not with the election of the managing body but with the election of the office-bearers of the Society. The managing body here is the AH India Council which is different from the Pratinidhi Sabha. In any case, insofar as the disputes relating to the election of the office-bearers of a society registered in

Uttar Pradesh is concerned, the same has to be decided only in the manner prescribed under Section 25(1) on the principle that the 'special excludes the general'. This is the only way in which the proviso to Section 4 can be harmonised with Section 25. Consequently if a dispute of the nature covered by Section 25 is raised before the Registrar in connection with the submission of the annual list under Section 4(1) of the Act the same must, in view of the Legislative mandate embodied in Section 25(1), be referred by him to the Prescribed Authority. The Bench deciding writ petn. No. 14879 of 1986 referred to above was also of the opinion that the proviso to Section 4(1) does not have the effect of whittling down the scope of Section 25(1)."

27. We find that the controversy before this Court in the case of **All India Council** (supra) had arisen from a situation where there was a Society namely, 'Bharat Dharm Mahamandal' registered under the Act, whereas its management and control was in the hands of its general body, namely 'All India Pratinidhi Sabha'. Elections of office bearers of Pratinidhi Sabha were held and parallel elections were also set up by the rival group and when two parallel proceedings and the decisions thereof regarding continuance of the beneficiaries of such proceedings came before the Assistant Registrar, he disposed of the proceedings, one pertaining to certain amendments in the by-laws which he had disapproved and the other relating to the question of continuance of a person as Chief Secretary after submission of his resignation. In that factual background, this Court had proceeded to examine the competence of Assistant Registrar to pass an order of the said nature and observed that such election dispute could only be referred by him to the Prescribed Authority under Section 25(1) of the Act.

28. The facts of the present case are totally different wherein there is no dispute regarding any parallel elections having been set up, rather the case in hand has arisen from a situation where, after the Assistant Registrar had made a reference to the Prescribed Authority, the latter exercised its power in terms of Section 25 (1) of the Act and passed the order dated 22.03.2025, which itself is under challenge in Appeal before the Commissioner. Therefore, the appellant cannot get any advantage out of the decision cited.

29. Submission made by Shri Tiwari that closure of proceedings by the Prescribed Authority after passing order dated 22.03.2025, and not requiring the Assistant Registrar to transmit record of recounting done before him (Prescribed Authority) amounts to illegal exercise of power by the Prescribed Authority, is essentially an attack on validity of the order passed by the Prescribed Authority, which is under challenge in appeal before the Commissioner and does not form subject matter of the proceedings before us or the writ court.

30. As far as alternative submission made by Shri Tiwari that if the election of the appellant is deemed to have been set aside vide order of the Prescribed Authority, the only consequence would be the one as provided under Section 25(2) of the Act requiring the Assistant Registrar to hold a fresh meeting, we are not inclined to accept the same. The reason is that once the certificate dated 28.03.2025 is of no independent legal status or consequence, what remains of significance is the order of the Prescribed Authority passed prior to issuance of certificate and registration of the list under Section 4(1) by the Assistant Registrar subsequent to issuance of certificate. Challenge to the order of the Prescribed Authority and registration of list by the Assistant Registrar having been statutorily recognized under the scheme of the Act, 1860, we are not inclined to hold in these

proceedings that occasion for the Assistant Registrar to hold meeting as per Section 25(2) of the Act has arisen, particularly when the appeal against the order of the Prescribed Authority is under challenge in Appeal pending before the Commissioner.

31. In order to appreciate submissions made on behalf of the appellant with reference to the provisions of R.P. Act, a composite reading of Sections 84, 98, 100 and 101 of the said Act makes it clear that the High Court, in an election petition filed under the said Act, can entertain a challenge to an election on various grounds and the relief that may be claimed by the election petitioner or that may be granted to him, includes a declaration that he himself or any other candidate has been duly elected. However to observe in this case that the declaration made in favour of the respondent vide certificate dated 28.03.2025 would amount to borrowing/importing powers from the Act of 1951, which otherwise are not available under the Act of 1860, the Court has to see the nature of challenge in its entirety and not on piecemeal basis. Once we have arrived at a concrete conclusion that the challenge laid to the certificate alone which has no independent or separate legal status in itself, we are not inclined to quash either the certificate or any part thereof or the order of learned Single Judge dismissing the writ petition.

32. The learned Single Judge, after taking note of the proceedings of previous round of litigation in terms of declining to grant interim relief by the writ Court, unsuccessful challenge made by the appellant in the Special Appeal and, then, before the Hon'ble Supreme Court, came to the conclusion that the writ petition is an indirect way to invoke jurisdiction of the writ Court to pass comments or return finding qua the order dated 22.03.2025 passed by the Prescribed Authority on merits, despite a challenge having been laid to the same by way of appeal pending before the Appellate Authority.

33. Although observation made by the learned Single Judge in paragraph no. 17 of the order impugned that after the respondent was declared elected, the only legal consequence would be that election certificate be issued in his favour and the election certificate already issued in favour of the appellant has to be set aside and the same was done by the concerned respondent who was empowered to do so, appears to be not in strict consonance with the scheme of the Act of 1860, the same, in itself, would not suffice reversal of the ultimate conclusion drawn by the writ Court. We are satisfied that the learned Single Judge has assigned cogent multiple reasons for dismissing the writ petition in light of statutory appeal being pending before the Commissioner against the order passed by the Prescribed Authority and no challenge having been laid to registration of the list under Section 4(1) of the Act, either way.

CONCLUSION

34. Consequently, we do not find any error in the order passed by the learned Single Judge and without making any comment on the validity of the order dated 22.03.2025 passed by the Prescribed Authority against which statutory appeal is pending before the Commissioner, or registration of list of office bearers under Section 4(1) of the Act, we are not inclined either to upset the order of the learned Single Judge or to grant any relief to the appellant.

35. The appeal has no merit and the same is, accordingly, **dismissed.**

(2026) 2 ILRA 1422
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 02.02.2026

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 2736 of 2023

Alok Kumar Mitra **...Petitioner**
Versus
U.O.I. & Anr. **...Respondents**

Issue for Consideration

(1) Permissibility of making plea of not getting approval of the Appointment Committee to challenge the order of compulsory retirement passed by the President, being the appointing authority.

Headnotes

(A) Service law – Compulsory retirement – Commissioner of Income Tax – Order of compulsory retirement was issued by the President – No approval of Appointment Committee was taken before compulsory retirement – Effect – Validity of compulsory retirement was challenged on one more ground that Review Committee failed to consider the entire service record – Permissibility : (E-1)

Held : Appointing authority of the petitioner is the President and the order of compulsory retirement has been issued by the President. Hence, the claim of the petitioner that no approval was taken from the competent authority before passing the order of compulsory retirement, is misconceived, as the President, being the appointing authority of the petitioner, has passed the order dated 10.06.2019 **–** The Review Committee considered the entire service record of the petitioner including his ACRs/APARs, charge memos communicated as well as uncommunicated remarks, disciplinary cases etc. and recommended the compulsory retirement of petitioner which was accepted by the Appropriate Authority i.e. the President **–** The contention of the petitioner that the procedure prescribed under the Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015 has not been followed is also misconceived. [Para 25, 27 and 28]

Case Law Cited

State of Gujarat vs. Umedbhai M. Patel reported in (2001) 3 SCC 314; S. Ram Chandra Raju vs. State of Orissa, (1994) 3 SCC 424; State of Gujarat and another vs. Suryakant Chunilal Shah, (1999) 1 SCC 529; Union of India vs. Col. J. N. Sinha, (1970) 2 SCC 458; Gian Singh Mann vs. High Court of Punjab and Haryana, (1980) 4 SCC 266; State of U.P. vs. Chandra Mohan Nigam, (1977) 4 SCC 345; Writ A No. 24856 of 2020, Captain Pramod Kumar Bajaj vs. Union of India and another decided on 31.05.2022; Baikuntha Nath Das vs. District Medical Officer, (1992) 2 SCC 299; Civil Appeal No. 6161 of 2022, Captain Pramod Kumar Bajaj vs. Union of India and another decided on 03.03.2023; State of Punjab vs. Gurdas Singh, (1998) 4 SCC 92; Rajasthan State Road Transport Corporation and others vs. Babu Lal Jangir, (2013) 10 SCC 551; Ram Murti Yadav vs. State of Uttar Pradesh and another reported in (2020) 1 SCC 801 **– referred to.**

List of Acts

Fundamental Rule 56(j); Office Memorandum dated 11.09.2015.

List of Keywords

Compulsory retirement, Integrity, Reference, Recommendation, Adverse material, Disciplinary proceeding, Arbitrary, Public interest, Standard of efficiency, Substantive appointment, Approval, Satisfaction, Charge-sheet, Service record, Subjective satisfaction, Due process, Character roll, Adverse remark.

Case Arising From

Judgment and order dated 20.02.2023 passed by the learned Central Administrative Tribunal, Lucknow in Original Application No. 332/00450/2019.

Appearances for Parties

Advs. for the Petitioners: J. N. Mathur, Sr. Adv.; Shobhit Mohan Shukla, Manoj Kumar Chaurasiya, Vatsala Singh.

Advs. for the Respondents: Devrishi Kumar.

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

1. Heard Shri J. N. Mathur, learned Senior Advocate assisted by Shri Shobhit Mohan Shukla, learned counsel for the petitioner and Shri Devrishi Kumar, learned counsel for the respondents.

2. The instant writ petition arises from the judgment and order dated 20.02.2023 passed by the learned Central Administrative Tribunal, Lucknow in Original Application No.332/00450/2019 "Alok Kumar Mitra vs. Union of India", whereby the petitioner had challenged before the learned Tribunal the order dated 10.06.2019, by which he was compulsorily retired from the post of Commissioner of Income Tax in the Indian Revenue Service by invoking Fundamental Rule 56(j) as well as the order dated 16.08.2019, by which his representation against the order of compulsory retirement was rejected.

3. The petitioner was an officer of the Indian Revenue Service, 1992 Batch. After selection through the Union Public Service Commission, he was initially appointed to the post of Assistant Commissioner (Income Tax). Upon completion of his training, he was posted in the Income Tax Department and served there from 1995 to 2014. From 2014 to 2017, he was on deputation to the Government of Uttar Pradesh as Chief Executive Officer of the State Agency for Comprehensive Health and Integrated Services (SACHIS). Thereafter, the petitioner was promoted to the post of Commissioner of Income Tax (Senior Administrative Grade) vide order dated 16.09.2015.

4. The petitioner was compulsorily retired from the post of Commissioner of Income Tax (Appeals) III, Kochi (Kerala) vide order dated 10.06.2019, which was challenged before the learned Central Administrative Tribunal, Lucknow. The said order was served upon the petitioner on 11.06.2019. He submitted a representation dated 30.06.2019 against the order of compulsory retirement in terms of paragraph 5 of the Office Memorandum dated 11.10.1976, which was rejected vide order dated 16.08.2019.

5. Learned counsel for the petitioner contends that the order of compulsory retirement dated 10.06.2019 passed under Fundamental Rule 56(j) is perverse, inasmuch as it is contrary to the guidelines contained in the Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015. It has been submitted that the due process prescribed therein was not followed and the petitioner s representation was rejected by a non-speaking and unreasoned order, without adhering to the timeline provided in the Office Memorandum dated 11.10.1976.

6. It has further been submitted that neither approval from the Appointments Committee of the Cabinet (ACC) was obtained nor the Central Vigilance Commission was consulted before passing the order of compulsory retirement dated 10.06.2019, which is contrary to the Office Memorandum dated 10.05.1974.

7. It has also been submitted that the Government of India issued Office Memorandum dated 21.03.2014 providing for periodical review under Fundamental Rule 56(j). Paragraphs 4 and 5 thereof prescribe the criteria to be followed by the Review Committee while making recommendations for compulsory retirement.

8. It has been submitted that as per the Office Memorandum dated 21.03.2014, only those officers whose integrity is doubtful or who have become ineffective in the discharge of their duties ought to be considered for compulsory retirement. For this purpose, only the immediate preceding five years of the service record or the service record post-promotion is required to be taken into consideration. In the specific case of the petitioner, both his past service record and his record after promotion are stated to be excellent.

9. It has also been submitted that the Office Memorandum dated 11.09.2015 issued by the Government of India makes reference to the judgment rendered by the Hon ble Supreme Court in **State of Gujarat vs. Umedbhai M. Patel** reported in **(2001) 3 SCC 314.** Paragraph 2 of the said Office Memorandum details the circumstances under which the candidature of an officer may be scrutinized for compulsory retirement.

10. It is the case of the petitioner that the guidelines contained in the Office Memorandum dated 11.09.2015 were also violated while considering his case for compulsory retirement by the Review Committee.

11. It has further been submitted that the petitioner was promoted to the post of Commissioner of Income Tax on the basis of merit-cum-seniority vide order dated 16.09.2015. His promotion itself is sufficient to indicate that his merit was beyond doubt. Prior to his promotion, vigilance clearance was granted and the recommendation of the Departmental Promotion Committee was duly scrutinized by the Appointments Committee of the Cabinet (ACC) and only thereafter the petitioner was promoted. As such, there was no adverse material available before the Review Committee to justify recommending compulsory retirement.

12. It has also been submitted that the remarks recorded in the Annual Confidential Reports of the petitioner consistently indicate that he was considered an officer of outstanding category, whose integrity was beyond doubt and whose general reputation was appreciated at various levels.

13. It has been submitted that a combined reading of the Office Memorandum dated 10.05.1974, 21.03.2014 and 11.09.2015 provides that screening under Fundamental Rule 56(j) is to be undertaken only in cases where the services of an officer are no longer useful to the general administration and for the purpose of weeding out dead wood. For arriving at such a conclusion, due regard must be given to the entire service record of the officer. Adverse material prior to promotion loses its significance and greater weightage is required to be given to the service record

post-promotion. It has further been submitted that if an officer is promoted despite adverse entries, such promotion operates in his favour and compulsory retirement in such circumstances cannot be used as a tool for punishment.

14. It is further submitted that after the petitioner s promotion to the post of Commissioner of Income Tax, his services were placed on deputation as Chief Executive Officer of the State Agency for Comprehensive Health and Integrated Services, where he remained posted in that capacity up to November 2017. During the period of deputation, his Annual Confidential Reports indicate that he was consistently graded as an outstanding officer.

15. On the contrary, the respondents, while denying the claims of the petitioner, have drawn attention to the minutes of the Review Committee, which form the sole basis for recommending compulsory retirement of the petitioner, as indicated in paragraph 7 of the counter affidavit filed along with the application for dismissal of the Original Application No.332/00450/2019.

16. It has been submitted that the Review Committee took into consideration the entire service record of the officer including his Annual Confidential Reports (ACR)/Annual Performance Appraisal Reports (APAR) and the charge sheets issued against the petitioner and only after recording its satisfaction recommended the petitioner s compulsory retirement.

17. Learned counsel for the respondents has further submitted that the Representation Committee duly considered the representation filed by the petitioner in accordance with the procedure prescribed in the various Office Memoranda against the order of compulsory retirement dated 10.06.2019. The Committee examined the entire service record of the petitioner and held that there was no illegality in the order of compulsory retirement. While taking the decision, the Office Memoranda issued from time to time on the subject were duly considered and after following the prescribed procedure of law, the petitioner was compulsorily retired.

18. With regard to the argument of learned counsel for the petitioner that no approval from the Appointments Committee of the Cabinet (ACC) was obtained, learned counsel for the respondents submitted that at the time of joining government service the petitioner was appointed by the President. His promotion to the Senior Administrative Grade was also made under the orders of the President after empanelment by the ACC. This does not mean that the ACC is the appointing authority; rather, the appointing authority of the petitioner continues to be the President. Thus, it has been argued that the petitioner s claim that he was not compulsorily retired after obtaining approval from the competent authority is misconceived.

19. In rejoinder submission, learned counsel for the petitioner contended that the Review Committee relied upon adverse material which, in fact, did not exist. In particular, the charge sheet dated 15.07.2013 initiating disciplinary proceedings against the petitioner was quashed by the learned Central Administrative Tribunal, Lucknow, vide judgment and order dated 09.04.2018 passed in Original Application No.332/00353/2013. The said order attained finality and was accepted by the department itself.

20. It has been submitted that once the charge sheet was quashed, the allegations contained therein could not have been taken into consideration by the Review Committee for forming an adverse opinion against the petitioner and could not have been made the basis for action under Fundamental Rule 56(j).

21. To sum up, learned counsel for the petitioner submitted:

(i) The petitioner has been targeted and the order of compulsory retirement has been passed in an arbitrary manner, inasmuch as when the department failed to take any action in the disciplinary proceedings, it adopted the course of compulsory retirement under Fundamental Rule 56(j) and compulsorily retired the petitioner.

(ii) The decision to invoke Fundamental Rule 56(j) against the petitioner was not taken in public interest. The Hon ble Supreme Court, in **S. Ram Chandra Raju vs. State of Orissa** reported in **(1994) 3 SCC 424**, explained the expression public interest to mean that the conduct and reputation of an officer must be such that his continuance in service would be a menace to public service and injurious to public interest. No such pleading has been made by the respondents in the counter affidavit. The Hon ble Supreme Court in **State of Gujarat and another vs. Suryakant Chunilal Shah** reported in **(1999) 1 SCC 529; Union of India vs. Col. J. N. Sinha** reported in **(1970) 2 SCC 458**; and **Gian Singh Mann vs. High Court of Punjab and Haryana** reported in **(1980) 4 SCC 266**, has further explained the expression public interest in the context of compulsory retirement to refer to cases where the interest of public administration requires the retirement of a government servant who, with the passage of time, has prematurely ceased to possess the standard of efficiency and utility expected in government service.

(iii) The order of compulsory retirement dated 10.06.2019 is based upon non-existent material and the opinion of the Review Committee cannot supersede the satisfaction of the appointing authority.

(iv) The opinion to compulsorily retire the applicant was formed by the Review Committee, however, the approval of the prescribed Appropriate Authority i.e.,the Appointments Committee of the Cabinet (ACC) was not obtained. Since the petitioner is an ACC appointee, such approval was mandatory under Fundamental Rule 56(j). Consequently, the opinion was not formed by the appropriate authority, rendering the action illegal.

(v) The Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015 mandate that an officer may be considered for screening only at the age of 50/55 years. For consideration at any other age, the Hon ble Supreme Court in S**tate of U.P. vs. Chandra Mohan Nigam** reported in **(1977) 4 SCC 345** (paragraph 29) has held that there must be fresh or new material (post 50 years) relating to integrity. By operation of law and as per the mandatory scheme of Fundamental Rule 56(j), as clarified by the Hon ble Supreme Court in various decisions, the fact that the petitioner continued in service till the age of 52.5 years clearly establishes that he had successfully cleared the mandatory screening at the age of 50 years, which is necessarily undertaken for all government servants as a statutory requirement.

(vi) While passing the judgment and order dated 20.02.2023, the learned Tribunal did not return any finding on the issues raised by the petitioner. Instead, it relied upon the judgment in Captain Pramod Kumar Bajaj vs. Union of India and another passed by the Hon ble High Court on 31.05.2022 in Writ-A No.24856 of 2020, which was subsequently set aside by the Hon ble Supreme Court on 03.03.2023 in Civil Appeal No.6161 of 2022. Thus, the judgment of the learned Tribunal is based upon a decision that stands overruled by the Hon ble Supreme Court.

(vii) The impugned order of compulsory retirement dated 10.06.2019 lacks approval of the Appropriate Authority , as defined in Note-1 to Fundamental Rule 56(j). On this ground alone, the order of compulsory retirement is void ab initio and in any case, deserves to be quashed as being vitiated by legal malice.

22. Having heard learned counsel for the parties, we proceed to examine the decision taken by the respondents to compulsorily retire the petitioner in the light of the statutory provisions governing compulsory retirement of a Government servant.

23. Fundamental Rule 56(j) is reproduced herein below :

CHAPTER IX

RETIREMENT

Fundamental Rule 56(a) .

(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interests so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

(1) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years:

Provided that nothing in this clause shall apply to a Government servant referred to in clause (c), who entered Government service on or before the 23rd July, 1966.

(j) (i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave, or by treating it as dies non depending upon the facts and circumstances of the case:

Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or, if the order of premature retirement is set aside by a Court of Law.

(ii) Where the order of premature retirement is set aside by a Court of Law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the court."

24. Fundamental Rule 56(j) provides that the appropriate authority has the absolute right to compulsorily retire a government servant. The term Appropriate Authority has been defined as the authority which has the power to make substantive appointments to the post or service. The Office Memorandum dated 30.05.2016, annexed as Annexure No.17 to the writ petition, issued under the subject Strengthening of Administration-Periodical Review clarifies that under Fundamental Rule 56(j), the Appropriate Authority is the authority competent to make substantive appointments. The Office Memorandum dated 30.05.2016 is reproduced herein below :

"DoP&T vide their O.M. dated 11.09.2015 has directed all the Ministries/Departments to conduct periodical review inder FR 56 (j) and Rule 48 of CCS (Pension) Rules to ascertain whether the Government servant should be retained in service or retired from Services in the Public interest.

1. FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972 provide as under :

FR 56 (j) Notwithstanding anything contained in this rule, 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 Government servant by giving him notice of not less than three months in writing or three months" pay and allowances in lieu of such notice;

(i) If he is, in Group A or Group B service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, he has attained the age of 50 years.

(ii) in any other case after he has attained the age of fifty-five years.

Under FR 56, the "Appropriate Authority" has been defined as the authority which has the power to make substantive appointments to the post or service."

25. It is not disputed that the appointing authority of the petitioner is the President and the order of compulsory retirement has been issued by the President. Hence, the claim of the petitioner that no approval was taken from the competent authority before passing the order of compulsory retirement, is misconceived, as the President, being the appointing authority of the petitioner, has passed the order dated 10.06.2019.

26. Thus, the contention of learned counsel for the petitioner that approval of the Appointments Committee of the Cabinet (ACC) was required before passing the order of compulsory retirement dated 10.06.2019 is misconceived, as there is no such requirement stipulated in the Office Memorandum dated 11.09.2015 regarding approval of the ACC.

27. The contention of the petitioner that the procedure prescribed under the Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015 has not been followed is also misconceived. The Office Memorandum dated 11.09.2015, annexed as Annexure No.16 to the writ petition, provides in paragraph 3 that during every review, the entire service record of the concerned officer is required to be considered and the review should not be confined merely to the ACRs/APARs.

28. Paragraph 7 of the Office Memorandum dated 11.09.2015 further provides that the Secretaries of the Cadre Controlling Authorities shall constitute Review Committees consisting of two members at the appropriate level. It also stipulates that in the case of officers holding Group A posts, the Review Committee may be headed by the Secretary of the concerned Ministry/Department, being the Cadre Controlling Authority, particularly in respect of ACC appointees. In the present case, the Review Committee which considered the petitioner s case for compulsory retirement was a two member committee headed by the Secretary (Revenue) and another member who was Chairman, Central Board of Direct Taxes in conformity with the requirements of paragraph 7 of the Office Memorandum dated 11.09.2015 governing the process of compulsory retirement. The Review Committee was assisted by Internal Committee members comprising of Pr. DGIT (HRD) as Chairperson, ADG (HRD-1 and ADG (Vig)-1 as member as required Paragraph 9 of Circular dated 11.09.2015. The Review Committee considered the entire service record of the petitioner including his ACRs/APARs, charge memos communicated as well as uncommunicated remarks, disciplinary cases etc. and recommended the compulsory retirement of petitioner which was accepted by the Appropriate Authority i.e. the President.

29. The contention of the petitioner that he has been targeted and victimized while passing the order of compulsory retirement dated 10.06.2019 is also misconceived. While undertaking the exercise of compulsory retirement, action was taken against 67 officers along with the petitioner by the Union of India. It is, therefore, not a case where the petitioner alone was singled out for such action. The due process was followed, the matter was initially examined by the Review Committee, whose recommendation was considered and accepted by the Appointing Authority and thereafter the decision to compulsorily retire the petitioner was taken. The matter was again examined by the Representation Committee constituted by the Cabinet Secretary comprising of officers of the level of Secretary to Government of India, an officer of the level of Addl. Secretary/Joint Secretary to the Government of India and one Officer nominated from the Cadre-Controlling Authority of the officer concerned, which affirmed the order of compulsory retirement and rejected the petitioner s representation. The O. M. No.25013/01/2013-Estt. A-IV dated 01.03.2016 provides for the composition of Representation Committee which was duly adhered to while constituting the Representation Committee in the case of the petitioner. In these circumstances, it cannot be said that any malice was harboured against the petitioner. The allegation of arbitrariness is also misconceived, as the order of compulsory retirement was passed after following the due procedure

prescribed under the Office Memorandum dated 11.09.2015 and in accordance with the statutory requirements contained in Fundamental Rule 56(j).

30. With regard to the satisfaction recorded by the Review Committee, we are of the opinion that as per the details contained in paragraph 7 of the written statement/counter affidavit filed before the learned Tribunal by the Union of India, which sets out the minutes of the decision-making process of the Review Committee, it cannot be said that the Review Committee arrived at its decision without any material basis. The Review Committee duly recorded its satisfaction before recommending the petitioner s compulsory retirement. The minutes of the Review Committee, as contained in paragraph 7 of the written counter affidavit, are reproduced herein below:

"Para-7 - At the outset it is submitted that the Review Committee had passed a reasoned order after examining the entire service records of the Applicant. The Committee took note of the following facts and passed its reasoned order:

(i) On perusal of File F. No. DGIT(V)/EZ/COM/62/03 it was seen that a complaint was processed against the Applicant and which resulted in issuance of a charge sheet (DGIT(V)/DP/483/2013) dated 15.07.2013 for major penalty under Rule 14 of CCS (CCA) Rules. The Applicant was charged with carrying out a shoddy investigation in Tax Evasion Petition (TEP) relating to Sahara Group, while functioning as DDIT (inv. II), Lucknow. The Applicant was charged with sending a report to Higher Authorities even when the Inquiries were not concluded) The said report dated 30.05.2002 could have resulted in undue benefit to Sahara Group as the applicant had given a clean chit to the group. The investigation conducted by the Dept. showed that the officer had handled TEP in a shoddy manner and had not completed the inquiries diligently. However, the charge sheet was later quashed by CAT, Lucknow bench on technical grounds such as delay in processing the case. The manner in which the TEPS were taken up on priority by the Applicant raises suspicions about the whole episode. Thus, the committee was of the view that integrity of Shri Alok Kumar Mitra is doubtful.

(ii) The perusal of file F. No.DGIT(V)/NZ/COM/64/03 shows that a complaint received on 24.02.2003 from Ms. Rajlakshmi Verma, MLA, U.P. against Shri Alok Kumar Mitra, the then DDIT (Inv.), Lucknow and another officer was processed. It was alleged in the complaint that the applicant, the then Dy. Director of Income-tax (Inv.), Lucknow and another officer Ms. Archana Chaudhary, the then Addl. Director of Income-tax (Inv.), Lucknow had misused their office and had been handling files in an improper manner. Allegations of lavish holidays abroad, possession of Benami properties in NOIDA/Delhi and illegal withdrawals from secret funds of Search Wing had been made in the complaint. It was alleged that the applicant and Ms. Chaudhary had managed their posting at Lucknow for more than nine years continuously. Hon'ble MLA also forwarded a report of the Director of Income Tax (Inv.), Kanpur dated 10/11/12.2002, addressed to DGIT(Inv.), North, Lucknow, wherein findings of both these officers of having misused their office were recorded.

(iii) The Review Committee had further noted that Six Tax Evasion Petition (TEP) cases, which were handled by these officers, were examined by the Department. In its report dated 10/11.12.2002, DIT (Inv.), Kanpur had stated that the TEPs in these six cases were not even

entered in the Register and nor were forwarded to the Director of Income-tax (Inv.), Kanpur for categorisation as was required at that time. The TEPs in these six cases were taken up for enquiry out of turn while a large number of TEPs were pending unattended in the office of the Addl. DIT (Inv.), Lucknow for a long time at that moment. The report categorically pointed out the possibility of creating of these TEPS in the office of the Addl. DIT (Inv.), Lucknow with some ulterior motives. The manner in which the TEPs were dealt with clearly show malafide intention on the part of these two officers. Since both these officers were Group-A officers, DIT (Inv.) recommended to make a reference to the DIT (Vig.) for taking necessary action at its end.

(iv) The DIT(Vig.), North & Dy. CVO, New Delhi, furnished a report to DGIT (Vig.) vide letter dated 23.09.2002 forwarded by Shri Ravi Gautam, the then Minister U.P. and complaint dated Nil by Mrs. Rajlakshmi Verma the then MLA UP. The allegations in the first complaint were found general in nature and found to be based on hearsay. Regarding the second complaint, the records of the TEPs were requisitioned and an inspection thereof indicated serious irregularities in handling of the said TEPS, which are listed as under :

(a) Failed to enter these TEPs in the TEP Register in complete defiance of the prescribed procedure/guidelines and also did not report these TEPS in the Prescribed format in the monthly report. Thus sought to hide the existence of these TEPs from higher authorities/CBDT;

(b) Issuance of inquiry letter/notice u/s 133(6), 135 and 136 of the Income Tax Act, 1961 without seeking approval of the competent authority in blatant contravention of the Income Tax Act, 1961.

(c) Directing the Assessee for personal appearance which was not required;

(d) Not processing the complaints of alleged undisclosed black money under the appropriate section of the IT Act or seeking the direction or guidance of the superior authority;

(e) Instead of conducting enquiry in secretive manner to unearth black money deliberately made the assessee aware of the inquiry with a malafide intention;

(f) Not taking any action for a considerable time after having received all the requisite information.

(v) Accordingly, the case was referred to CVC for its first stage advice on 13.07.2004 with a recommendation for initiation of major penalty proceedings against both these officers. The CVC, vide OM dated 28.07.2004, advised initiation of major penalty proceedings against the applicant and Ms. Chaudhary and also nominated Inquiry Officer in the case.

(vi) During that time, CBDT vide order dated 06.05.2004 transferred the jurisdiction of the cases pertaining to CCIT, Lucknow Charge to DIT(Vig.), East. Therefore, DIT(Vig), North recommended to delink both the complaints and open a new file for further investigation of the complaint of Mrs. Rajlakshmi Varma, the then MLA UP by DIT(Vig.), East who then held Jurisdiction over the case. In light of the fresh facts gathered in the subsequent investigation, the

Minister of State for Finance (Revenue) gave approval to refer the case for reconsideration to the CVC with the recommendation for closure of the case against the applicant and for taking administrative action against the other officer. The complaint against the officer was closed on 09.05.2008 as per CVC'S OM No.004/ITX/086-65406 dated 17.08.2007.

(vii) Though the complaint was closed the committee noted that as per DOPT OM No.25013/01/2013-Estt. A-IV dated 11.09.2015 while considering the integrity of an employee, the action or decision taken by the employee which do not appear to be above board, complaints made against him, or suspicious property transactions, for which there may be sufficient evidence to initiate departmental proceedings, may be taken into account. The committee noted that though the complaint was closed on the grounds that though the complaint did not specifically mention demand for illegal gratification and the applicant was transferred out before the finalisation of the TEP cases, the manner in which the TEPS were taken up on priority raises suspicions about the whole episode

(viii) The committee also examined the file F. No.DGIT (V)/NZ/VCR/01/18 wherein a complaint dated 24.01.2011 made by Shri Zubair, Partner M/s Metro Cargo Carriers, Lucknow, against the applicant, Addl. CIT, Lucknow and Ms. Ranu Biswas, DCIT, Lucknow was processed. It was alleged that the assessment was getting barred on 31.12.2010 but Ms. Ranu Biswas obtained signatures of his Advocate Shri K.S. Rastogi on a bank acknowledgement slip on 21.12.2010. It was alleged that Ms. Ranu Biswas demanded Rs.50 lacs to complete the case of without any tax demand. The complainants advocate was shown a copy of the unsigned assessment order mentioning an addition of Rs.38.06 crores. It was also alleged that Ms. Ranu Biswas conveyed the same to the complainant by using the mobile phone of the advocate Shri K.S. Rastogi. It was alleged that when the complainant expressed his inability to pay Rs.50 lacs Ms. Ranu Biswas offered that this amount could be split in two Installments. When the assessee expressed his inability to pay even in two installments. Ms. Ranu Biswas advised the advocate to file a rectification application, which she will accept in case the complainant is able to pay.

(ix) An inspection of the file was done by Addl. CIT, Range 5, who commented adversely about the quality of the order. It was noted that the addition made were legally untenable, poorly investigated and did not deal with the assessee's submissions. It was found that the additions made by Ms. Ranu Biswas were based on incomplete investigation. It was also noted that during appellate proceedings, the case was remanded to the AO for verification and the AO conducted necessary enquiries and verified the claims of the assessee and found the same in order as per the evidences and books of account. Thus the allegation regarding high pitched assessments in this case, without any valid reasons, was found to be true. Both the above noted additions have been deleted by CIT(A) and ITAT as the additions were found to be not sustainable as per law.

(x) It was also noted that the matter was brought to the notice of the Addl. CIT being the applicant, who failed to supervise the AO in ensuring proper investigation and appreciation of facts and evidences filed by the assessee. It was held that the Applicant failed in his supervisory duty. The matter was referred to CVC and no action has been recommended by the CVC in their advice tendered vide CVC OM No.018/ITX/041-415794 dated 09.04.2019.

(xi) The committee was of the view that when an irregularity of his subordinate was brought to the notice of the applicant, it was his responsibility to ensure that the assessment order was passed as per the provisions of IT Act.

(xii) The Committee also noted that the applicant failed to act on a complaint of bribery against his subordinate Ms. Ranu Biswas which resulted in a high-pitched assessment order being passed and caused undue harassment to the taxpayer. Thus, the applicant proved to be an ineffective supervisory officer and the complaint raises serious doubts about his integrity. The committee observed that even though the disciplinary proceedings and the complaints against the applicant have been closed, the facts on record raise serious doubts about his integrity. Further he has also proved to be ineffective as brought out by his inaction in the complaint of bribery against Ms. Ranu Biswas,"

31. In the case of **Baikuntha Nath Das vs. District Medical Office**r reported in **(1992) 2 SCC 299**, Hon ble Supreme Court summarized the principles governing compulsory retirement. The same are recorded in Paragraph 34 of the judgment, which is reproduced herein below :

34. The following principles emerge from the above discussion:

(1) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

32. The contention of learned counsel for the petitioner that the charge sheet could not have been taken into consideration by the Review Committee as it had been quashed by the learned Central Administrative Tribunal, Lucknow vide judgment and order dated 09.04.2018 passed in Original Application No.332/00353/2013, is also misconceived. The learned Central Administrative Tribunal, Lucknow quashed the charge sheet primarily on the ground of delay of issuance of charge sheet after 11 years and on merits, it has been observed by learned Central Administrative Tribunal, Lucknow that to maintain any charge sheet against a quasi judicial authority, something more has to be alleged than a mere mistake of law and an inquiry would be a farcical exercise. This Court is of the view that the Review Committee is required to scrutinize the entire service record and can not be precluded from looking into the allegations which may from the basis of the charge sheet, even though the charge sheet has been quashed in relation to disciplinary proceedings. It is open for the Review Committee to consider such allegations while scrutinizing the service record of the petitioner for the purpose of compulsory retirement. The Paragraphs 5 and 6 of Office Memorandum dated 11.09.2015 are relevant in these circumstances and are reproduced herein below :

5. As far as integrity is considered, the following observations of the Hon'ble Supreme may, while upholding compulsory retirement in a case, may be kept in view :

The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest.

S. Ramachandra Raju vs. State of Orissa

[(1994) 3 SCC 424]

*Thus while considering integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may be taken into account. Judgment of the Apex Court in the case of Shri K. Kandaswamy I.P.S. (TN: 1966) in K Kandaswamy vs Union Of India & Anr. 1996 AIR 277, 1995 SCC (6) 162 is relevant here. There were persistent reports of Shri Kandaswamy acquiring large assets and of his getting money from his subordinates. He also indulged in property transactions which gave rise to suspicion about his bonafides. The Hon'ble Supre*me Co*urt upheld his compulsory retirement under provisions of the relevant Rules.*

6. Similarly, reports of conduct unbecoming of a Government servant may also form basis for compulsory retirement. As per the Hon'ble Supreme Court in State Of U.P. And Others vs Vijay Kumar Jain, Appeal (civil) 2083 of 2002:

If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest.

33. Upon going through the minutes of the Review Committee as recorded hereinabove, we are satisfied that the decision taken by the Review Committee is based upon the subjective satisfaction of the Review Committee and it cannot be said that the same is based on no evidence. The Review Committee scrutinized the entire service record of the petitioner, as required under the Office Memorandum dated 11.09.2015. The earlier service record of the petitioner outweighed the later part of his service record, favouring him.

34. The reliance placed by the petitioner on the judgment rendered by Hon'ble Supreme Court in the case of **Captain Pramod Kumar Bajaj vs. Union of India and another,** decided on 03.03.2023 in Civil Appeal No.6161 of 2022, is also of no avail. In the said case, the Hon ble Supreme Court took into consideration the fact that Captain Pramod Kumar Bajaj (Supra) was due to retire within one year at the time the order of compulsory retirement was passed. The said decision, therefore, turned on its own facts and is distinguishable from the present case.

35. The facts of the present case are distinguishable as the petitioner has been compulsorily retired after following due process and well before attaining the age of superannuation. Therefore, the judgment in **Captain Pramod Kumar Bajaj (Supra)** cannot be of any assistance to the petitioner.

36. The judgment rendered by Hon ble Supreme Court in the case of **Suryakant Chunilal Shah (Supra)** is also of no help to the petitioner, as the minutes of the Review Committee, recorded hereinabove, reflect that there was sufficient material before the Review Committee for its subjective satisfaction to reach the conclusion recommending the compulsory retirement of the petitioner.

37. Learned counsel for the petitioner relied upon the judgment of Hon ble Supreme Court in **Suryakant Chunilal Shah** (Supra) to contend that there was no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries. Reliance was also placed on paragraph 11 of the judgment of Hon ble Supreme Court in **Umedbhai M. Patel (**Supra), wherein the law relating to compulsory retirement has been summarized, to contend that adverse entries prior to promotion cannot be taken into consideration for compulsory retirement.

38. The aforesaid contention of the petitioner is misconceived, as Hon ble Supreme Court in the case of **Umedbhai M. Patel** (Supra) has held that such a factor operates in favour of the officer, meaning thereby that it is not absolute principle of law that adverse material prior to promotion cannot be taken into consideration by the Review Committee.

39. A three judge Bench of Hon ble Supreme Court in the case of **State of Punjab vs. Gurdas Singh** reported in **(1998) 4 SCC 92** considered the argument that the order of compulsory retirement was based on material which was non-existent inasmuch as there were no adverse

remarks against him and if there were any such remarks, it should have been communicated to him. Hon ble Supreme Court has held as under :

" 11 .....Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well."

40. Hon ble Supreme Court in the case of **Rajasthan State Road Transport Corporation and others vs. Babu Lal Jangir** reported in **(2013) 10 SCC 551** has observed that :

"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [(2000) 8 SCC 395: 2001 SCC (L&S) 13: (2000) 6 Scale 618] is not correct and the observations of this Court in Gurdas Singh ((1998) 4 SCC 92: 1998 SCC (L&S) 1004: AIR 1998 SC 1661) 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 [(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."

(Emphasis supplied by us)

41. Hon ble Supreme Court in the case of **Ram Murti Yadav vs. State of Uttar Pradesh and another** reported in **(2020) 1 SCC 801** has held that 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 the Court, in judicial review, cannot sit in judgment over the same as an appellate authority. Paragraph 6 of the said judgment is quoted herein below :

" 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."

42. Thus, we are of the opinion that the judgment and order dated 20.02.2023 passed by the learned Central Administrative Tribunal, Lucknow in Original Application No.332/00450/2019 "Alok Kumar Mitra vs. Union of India" as well as the order dated 10.06.2019 whereby the petitioner was compulsorily retired from the Indian Revenue Service by invoking Fundamental Rule 56(j) from the post of Commissioner of Income Tax and the order dated 16.08.2019 rejecting the petitioner s representation against the order of compulsory retirement, do not suffer from any illegality or infirmity. The petitioner has been compulsorily retired after following the due process of law and in accordance with the recommendation of the Review Committee.

43. This Court is of the view that there was sufficient material before the Screening/Review Committee to record its subjective satisfaction, which cannot be substituted by this Court while exercising the power of judicial review under writ jurisdiction, as held by the Hon ble Supreme Court in a catena of judgments. Accordingly, the writ petition is liable to be dismissed.

44. The writ petition is **dismissed.**

45. No order as to costs.

(2026) 2 ILRA 1437
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 4877 of 2021

Rekha Singh **...Petitioner**
Versus
U.O.I. & Ors. **...Respondents**

Issue(s) for consideration

Whether petitioner is entitled to post retiral benefits?

Headnotes

A. Service Law – University of Allahabad Act, 2005: Section 5(d) - Status of Institute – (i) The Court takes note of order dated 13.04.2018 whereby it was specifically held that **concerned Institute is a Self Financed Institute of the University. Therefore, burden of post retiral benefits to petitioner or similarly situated other employees cannot be made on public exchequer or Government and**

said benefits, if permissible, would be paid only by University concerned and at that stage also even the petitioner was already retired, the Court has only directed for payment of salary for the period of November, 2014 till 2017. Petitioner has not raised at that stage any claim about post retiral dues and aforesaid findings were upheld by Supreme Court also. (Para 15)

(ii) The Court also takes note of earlier Statute that Institute to be an integral part of University and staff of said Institute will be borne on the strength of respective Departments. However, Court is of opinion that aforesaid declaration or status of Institute would not itself mean that petitioner is entitled for post retiral benefits as a regular employee, except if the petitioner is able to show the rules governs their service, provides such post retiral benefits. (Para 16)

(iii) The Court also takes note that when University became the Central University in 2005, services of the petitioner and others remained same and in case petitioner and similarly situated other employees are entitled for post retiral benefits before Act, 2005 came into force, said entitlement shall be continued otherwise not. However, none of provisions referred above has specifically indicated that petitioner and similarly situated persons were entitled for post retiral benefits. No service rule is brought on record in support of their submissions. (Para 17)

The post retiral benefits could only be granted if rule permits.

In present case, petitioner is not able to show that any rule or statute provides that petitioner is entitled for post retiral benefits. Only on basis that Institute is an integral part of University or petitioner was granted other benefits, it cannot be held that she is entitled for post retiral benefits. (Para 18, 19)

B. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.

It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. If a wrong is committed in an earlier case, it cannot be perpetuated.

Once petitioner is not able to show any provision in support of her claim of post retiral benefits, there would be no negative parity. (Para 20 to 22)

Writ petition dismissed.

Case Law Cited

1. U.P. Roadways Retired Officials & Officers Assn. Vs. State of U.P., (2024) 9 SCC 331 (Para 18)
2. R. Muthukumar and others Vs. Chairman and Managing Director, TANGEDCO and others, 2022 SCC OnLine SC 151 (Para 21)

List of Acts

University of Allahabad Act, 2005.

List of Keywords

Arrears of salary, service, status of institute, post retiral benefits.

Appearances for Parties

For Petitioner(s): Anurag Khanna (Senior Adv.), Mohd. Atif, Pradeep Kumar Upadhyay, Rahul Sahai, Sanjay Singh
For Respondent(s): A.S.G.I., Chandan Sharma, Rijwan Ali Akhtar

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

1. Petitioner has worked as Assistant Director/ Director in Institute of Correspondence Courses and Continuing Education, University of Allahabad and she has

2. Earlier she has approached this Court by filing Writ-A No. 31696 of 2016 when she was in service and sought a direction commanding University to pay arrears of salary to her from November, 2014. The said writ petition was allowed vide order dated 13.04.2018 that petitioner be paid salary from November, 2014 till her retirement in 2017 and taking note that meanwhile, she has attained age of superannuation. Relevant part of the order is mentioned hereinafter:

"In view of the aforesaid facts and circumstances, we are of the opinion that in exercise of powers under Section 28(3) of the Act, 2005 the Visitor has no authority of law to deny or refuse grant of assent to the proposed amendment to the Statues as resolved by the Executive Council and that the power of withholding the assent is not unfettered so as to permit him to keep it pending or withheld for years together as withholding of the assent is permissible only for a limited period which may be fair and reasonable in the given facts and circumstances of the case.

Accordingly, the Ministry of Human Resource Development, Department of Higher Education, Shastri Bhawan, New Delhi is directed to place the matter once again before the Visitor and to have his final opinion for the grant of assent or for remittance of the matter to the Executive Council of the University for reconsideration, if necessary.

Since the ICC&CE is a Self-Financing Institute of the university, we do not certainly like to burden the public exchequer or the Government with the liability to pay salary and the emoluments admissible to the petitioner as Assistant Director of the ICC&CE but are of the clear opinion that as the petitioner had continuously worked there from November, 2014 till her retirement in 2017, there is no justification not to pay her salary/remuneration admissible to her otherwise it would amount to Begar which is not only prohibited under Article 23 of the Constitution of India but is also punishable.

Accordingly, we direct the University to make immediate arrangement for payment of salary and emoluments to the petitioner for the period November, 2014 till 2017 and to make the entire payment within a period of two months of the receipt of the copy of this order failing which criminal action for punishing the erring officers shall be taken in accordance with law.

The Writ Petition is allowed as above."

3. Aforesaid order was challenged at behest of University of Allahabad before Supreme Court by way of filing a Special Leave to Appeal (C) No. 25675 of 2018, which was dismissed vide an order dated 04.07.2019 and a Review Petition thereof was also dismissed by Supreme Court vide an order dated 19.09.2019.

4. After the petitioner got retired on 31.08.2017 she again approached this Court by way of filing Writ-A No. 23048 of 2018 being aggrieved for non payment of her post retiral dues. The said

writ petition was disposed of vide an order dated 27.10.2018 that her representation be considered in accordance with law. Relevant part of order is mentioned hereinafter:

"4. Since the aforesaid claim involves factual aspect, no useful purpose would be served in keeping this writ petition pending or calling for counter affidavit. Hence, the same is disposed of with the following observations and directions:

(i) since the petitioner has already filed a representation on 05.07.2018, he may also file a certified copy of this order before the respondent no.3 -Registrar, Allahabad University, Allahabad within a period of two weeks from today;

(ii) in the event the said respondent is of prima facie view that the representation deserves to be rejected, he may issue a prior show cause notice to the petitioner specifying the points on which the petitioner's representation is proposed to be rejected within two weeks therefrom;

(iii) the petitioner shall be at liberty to file his final reply to such notice, if issued, within two weeks and no more from the date of receipt of that notice;

(iv) the respondent no.3 may proceed to hear and decide the same strictly, in accordance with law and pass a reasoned and speaking order within a period of one month from the date of filing of last reply by the petitioner, if any;"

5. In aforesaid circumstances, claim of petitioner was considered, however, it was rejected by office order dated 30.05.2019 after giving her an opportunity of hearing and relevant part thereof is mentioned hereinafter:

"In compliance of the order dated 27.10.2018 passed in Writ-A No. 23048 of 2018 (Rekha Singh Vs Union of India & others) notice was issued to you to submit your response/reply to that notice.

You have submitted your reply dated 18.03.2019 to the served notice dated 12.03.2019 sent by the registrar, university of Allahabad. After going through the reply, the undersigned has proceeded to calculate the dues if any deducted from your then salary, as illustrated by you in your reply to the notice in paragraph no. 15, and will be payable to you only after the final disposal of the SLP pending in the Apex court.

As per the averments in the contempt petition, you retired from ICC&CE on 31.07.2018 and thereafter filed the aforesaid writ petition praying for direction to the University to pay retiral benefits i.e. contributory provident fund, gratuity, encashment, general insurance and pension etc. alongwith arrears with interest.

Under Statute 30(2) of the Statutes of the University, the ICC&CE is a temporary self-financed institution and all matters relating to the Institute is provided under Ordinance XXXII of the Ordinance of the University. Clause 5(a) of the Ordinance XXXII provides that the staff of the

ICC&CE other than the Director shall consist of persons engaged by the Advisory Board (i) temporarily, on such remuneration, as may be approved by the Executive Council on contractual basis, on such rates and remuneration and through the agency or agencies empanelled for the purpose in accordance with such rule as may be approved by the Executive Council.

Since the Institute is running under the self finance mode, the payment of salary and other emoluments are dependent upon the income of the Institute which is in the form of fees collected by the Institute from the students. Further, except the Director, all engagement of staff of the Institute is made at the level of the Institute itself by the Director and the same is purely temporary in nature. The University is not receiving any grant from the UGC for ICC&CE. None of the employees of the Institute is receiving the post retiral benefits as there is no provision under the Ordinance for payment of post- retiral dues.

You are also aware of the fact, that the issue regarding the payment of salary to you is engaging attention of the Hon'ble Apex Court in the SLP preferred by the University of Allahabad and therefore the university will be giving all your deductions if any as illustrated by you in your reply to the notice dated 12.03.2019, specifically in paragraph no. 15 where it is stated by you that the deductions were done from your salary and are kept in Punjab National Bank only after the final disposal of the SLP by the apex court."

6. Aforesaid order is now challenged by filing present writ petition in the year 2021. Pleadings are exchanged, therefore, the matter has been heard finally.

7. According to impugned order, claim of petitioner for post retiral benefits such as pension etc. was rejected mainly on a ground that Institute concerned is running under Self Finance Mode and payment of salary and other emoluments were depended upon the income of Institute, i.e., from collection of fee from students. Further the Staff of Institute was made the level of Institute itself and was always temporary in nature. It was also declared that none of the employees of Institute have received post retiral benefits. A reference was made that a Special Leave Petition filed by University is pending, though as referred above, it was subsequently dismissed vide an order dated 04.07.2019.

8. Sri G.K. Singh, learned Senior Advocate assisted by Sri Pradeep Kumar Upadhyay, learned counsel for petitioner, submitted that there is no dispute that concerned Institute is a Self Financed Institute. However, it"s status was always considered as an integral part of University as well as that Staff of said Institute was borne on the strength of respective University Department and for that learned Senior Advocate referred the Ordinances applicable when University was a State University, i.e., Clauses 2 and 8(b) of Correspondence Courses (Ordinances), which are reproduced hereinafter:

"2. The Correspondence Courses will be administered by an Institute of Correspondence Courses and Continuing Education which will be an integral part of the University"

"8(b) The staff of Correspondence Courses will be borne on the strength of the respective University departments."

9. Learned Senior Advocate further submitted that when in the year 2005 University become a Central University, then also the nature of service of petitioner was protected in terms of Section 5(d) of University of Allahabad Act, 2005 (hereinafter referred to as "Act, 2005") and the same is reproduced hereinafter:

"5(d)- Every person employed by the University of Allahabad immediately before the appointed day shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matter as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the statutes."

10. Learned Senior Advocate also referred that according to Section 37 of Act, 2005 petitioner is entitled for pension. He submitted that aforesaid statute and protection of service under Act, 2005 were not considered by concerned respondent, therefore, an illegality was committed.

11. Per contra, Sri Manish Goyal, learned Senior Advocate assisted by Sri Chandan Sharma, learned counsel for Respondent-University, submitted that nature of concerned Institute was always temporary and under Act, 2005 also its temporary status was continued and for that he referred Section 30(2) of Act, 2005. Learned Senior Advocate also referred Clause 1(b) and 1(d) as well as Clause 5(a) of Ordinance XXXII. For reference Section 30(2) of Act, 2005 and Clause 1(b), 1(d) and 5(a) of Ordinance XXXII, are reproduced hereinafter:

"30(2) The Institute of Correspondence Courses and Continuing education shall continue as a temporary self-financing University Institute, and all matters relating thereto shall be provided for by the Ordinances."

"1(b) The Institute shall have a Director, an Advisory Board and an Academic Committee (hereafter in this Ordinance referred to as "the Director", "the Advisory Board" and "the Academic Committee", respectively)"

"1(d) The funds of the Institute shall consist of income from assets, endowments and investments, receipts from fees and other dues charged to the students and from publications, facilities, consultancy and other services, revenues from such other activities as are consistent with the provisions of the Ordinances and Regulations, and grants or contributions, for various purposes, received, with the concurrence of the Executive Council, from other sources;

Provided that no such grant or contribution shall be utilized, except in accordance with the terms and conditions governing the same"

"5(a) The staff of the Institute other than the Director (hereafter in this Ordinance referred to as the staff") shall consist of persons engaged by the Advisory Board-

(i) temporarily, on such remuneration, as may be approved by the Executive Council; or

(ii) on contractual basis, on such rates of remuneration, and through the agency or agencies empanelled for the purpose in accordance with such rules, as may be approved by the Executive Council:"

12. In rejoinder, learned Senior Advocate for petitioner referred a judgment passed by a Coordinate Bench of this Court in the case of Harendra Pratap Singh and others vs. Union of India and others (Writ-A No. 19384 of 2017), decided on 14.05.2018, which was arising out of same Institute and wherein it was held that services of employees of said Institute would continue even after the University become a Central University as it stood prior to 14th July, 2005, by virtue of Section 5(d) of Act, 2005.

13. Learned Senior Advocate for petitioner also referred some documents annexed alongwith second supplementary affidavit filed on 20.03.2025 that some of employees of said Institute were granted post retiral benefits such as, pension, gratuity etc. therefore, the decision of respondents is arbitrary also.

14. I have heard learned counsel for parties and perused the material available on record.

15. The first issue before this Court is to consider the status of Institute and for that the Court takes note of earlier judgment passed by this Court with regard to said Institute. The Court takes note of order dated 13.04.2018 whereby it was specifically held that concerned Institute is a Self Financed Institute of the University. Therefore, burden of post retiral benefits to petitioner or similarly situated other employees cannot be made on public exchequer or Government and said benefits, if permissible, would be paid only by University concerned and at that stage also even the petitioner was already retired, the Court has only directed for payment of salary for the period of November, 2014 till 2017. Petitioner has not raised at that stage any claim about post retiral dues and aforesaid findings were upheld by Supreme Court also.

16. In above background, the Court also takes note of earlier Statute that Institute to be an integral part of University and staff of said Institute will be borne on the strength of respective Departments. However, Court is of opinion that aforesaid declaration or status of Institute would not itself mean that petitioner is entitled for post retiral benefits as a regular employee, except if the petitioner is able to show the rules governs their service, provides such post retiral benefits.

17. The Court also takes note that when University became the Central University in 2005, services of the petitioner and others remained same and in case petitioner and similarly situated other employees are entitled for post retiral benefits before Act, 2005 came into force, said entitlement shall be continued otherwise not. However, as referred above none of provisions referred above has specifically indicated that petitioner and similarly situated persons were entitled for post retiral benefits. No service rule is brought on record in support of their submissions.

18. In above background, the Court takes note of a judgment passed by Supreme Court in the case of **U.P. Roadways Retired Officials & Officers Assn. v. State of U.P., (2024) 9 SCC 331** and relevant paras 30, 31, 32, 33 and 34 thereof are reproduced hereinafter:

"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.

32. In somewhat similar situation concerning employees of Oil Natural Gas Commission which was earlier run as a department of the Government of India prior to the enactment of Oil and Natural Gas Commission Act, 1959, this Court in The Committee for Protection of Rights of ONGC Employees & Ors. Vs. Oil and Natural Gas Commission, through its Chairman & Anr., (1990) 2 SCC 472 held thus in para 13:

"13. This indicates that the scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits. Section 12 of the Provident Fund Act seeks to protect the wages of an employee to whom the scheme framed under the said Act applies as well as the total quantum of certain specified benefits to which he is entitled under the terms of his employment. With that end in view, Section 12 prohibits an employer from reducing, whether directly or indirectly, the wages of an employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment express or implied. The said section proceeds on the basis that if an employee is entitled to any benefit in the nature of old age pension under the terms of his employment the said benefit would not be denied to him on the application of the Scheme. It is not the case of the petitioners that on June 30, 1961, when the Provident Fund Scheme was made applicable to the Commission, the petitioners had become permanent and were entitled to pension. It cannot, therefore, be said that on the date of the application of the Provident Fund Scheme to the Commission, the petitioners were entitled to pension under the terms of their employment. They cannot, therefore, invoke the provisions of Section 12 of the Provident Fund Act."

33. In the matter of Prabhu Narain vs. State of U.P., (2004) 13 SCC 662, this Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme. The following has been held in para 5:

"5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be."

34. In yet another judgment rendered in Rajasthan Road Transport Corporation & Anr. Vs. Mohini Devi, (2013) 11 SCC 603 it is held thus in para nos. 7, 8 & 9:

"7. The Division Bench has considered the Regulations but failed to notice that there is apparent error in the order passed by the learned Single Judge. Indisputably, the employees concerned retired from service in 1991 and 1992 and after retirement they were paid CPF including the share of employer's contribution. Hence, as per Regulation 3 of the Regulations, no right accrued to the appellants/employees to claim pensionary benefits without first depositing the amount and complying with the Regulations.

8. The matter was examined by this Court in Pepsu RTC v. Mangal Singh [(2011) 11 SCC 702 : (2011) 2 SCC (L&S) 322] wherein it was held as under: (SCC p. 722, paras 51-52)

"51. The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as the respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of CPF and gratuity without any protest.

52. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non- service of individual notices. In other appeals, although the respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature."

9. We are, therefore, of the opinion that, in the facts and circumstances of the case and in view of the law laid down by this Court in the judgment referred to hereinabove, the impugned orders passed by the learned Single Judge [Madugiri v. Rajasthan SRTC, WP (C) No. 5425 of 1993 (Civil Writ 5425/1993), order dated 5-1-2006 (Raj)] and the Division Bench [Rajasthan SRTC v. Madugiri, Civil Special Appeal (Writ) No. 212 of 2006, decided on 11-10-2006 (Raj)] of the High Court cannot be sustained in law."

19. As referred above, the post retiral benefits could only be granted if rule permits. However, in present case, petitioner is not able to show that any rule or statute provides that petitioner is entitled for post retiral benefits. Only on basis that Institute is an integral part of University or petitioner was granted other benefits, it cannot be held that she is entitled for post retiral benefits. Therefore, on the strength of above arguments the claim of petitioner is not sustainable.

20. The last argument is about the fact that some employees of Institute were granted post retiral benefits and a reference was made on documents annexed alongwith this writ petition.

21. In this regard, the Court is of the view that once petitioner is not able to show any provision in support of her claim of post retiral benefits, there would be no negative parity and, therefore, such argument cannot be accepted. In this regard, the Court takes note of a judgment passed by Supreme Court in the case of **R. Muthukumar and others vs. Chairman and Managing Director, TANGEDCO and others, 2022 SCC OnLine SC 151** and for reference it"s relevant part is reproduced hereinafter:

"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj v. Special Land Acquisition Officer14, this court ruled that:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

29. Other decisions have enunciated or applied this principle (Ref : Chandigarh Admn. v. Jagjit Singh15, Anand Buttons Ltd. v. State of Haryana16, K.K. Bhalla v. State of M.P.17; Fuljit Kaur v. State of Punjab18, and Chaman Lal v. State of Punjab19). Recently, in The State of Odisha v. Anup Kumar Senapati20 this court observed as follows:

"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."

22. In aforesaid circumstances, since petitioner is not able to show that there is any legal provision to support her claim for post retiral benefits and she cannot get any benefit of negative parity also, therefore, there is no ground to interfere with impugned order.

23. The writ petition is accordingly dismissed.

(2026) 2 ILRA 1447
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 7539 of 2025
alongwith connected cases

Rajkumar Singh & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether the requisition sent under the earlier Act of 1982, creates any right on persons who were included in the panel, if it has not moved even a step forward?
(b) Whether Section 31 of Act of 2023 and Section 6 of U.P. General Clauses Act would give any protection to petitioners so far as earlier requisition is concerned?

Headnotes

A. Service Law – Uttar Pradesh Education Service Selection Commission Act, 2023: Section 31; Uttar Pradesh Intermediate Education Act, 1921: Chapter II; U.P. General Clauses Act of 1904: Section 6.

The requisition sent earlier does not create a right on persons who were included in the panel and since it has not moved a step forward, therefore, only by sending requisitions would not mean that it has created any right or a substantive process was initiated under the earlier Act of 1982, therefore, Repeal and Savings' will not help the case of petitioners. (Para 20)

None of the petitioners have come up with a case that before new Act came into force in the year 2023, they have approached concerned respondents or this Court to expedite the recruitment process on basis of earlier requisitions. Apparently, a number of requisitions were sent for appointment of Principals and Headmasters in the requisition year 2019-20 and 2021-22. Despite after 3 years, no further process was undertaken in pursuance of said requisitions and resultantly senior most teachers who were working as Officiating Principal continued to work i.e. it was an advantage to them. (Para 15, 16)

Section 31(2) of the Act of 2023 states that anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times, therefore, it would mean that procedure undertaken in terms of the Act of 1982, would be considered as it was taken under the new Act of 2023 and since now recruitment process is entirely different and earlier requisition has not forwarded even a step ahead, therefore, a new requisition was sought. (Para 19)

B. Since Act of 2023 has a different intention and it can be gathered by necessary implication, therefore, none of the earlier requisitions which were only in the preliminary stage and the Board has not taken any step on them, therefore it would not create any liability or right in favour of petitioners as such S.31 of Act of 2023 and S.6 of U.P. General Clauses Act would not

give any protection to petitioners so far as earlier requisition is concerned, as intention of Act of 2023 is contrary, therefore no case is made out to grant relief to the petitioners. S. 11 of Act of 2023 provides manner of selection that it could be conducted by way of an examination or interview both, therefore, Court is of the view that Act of 2023 has a new mechanism or procedure for selection. (Para 24)

Section 31(3), which has a reference of S.6 of Uttar Pradesh General Clauses Act 1904, states that repeal of Act of 1982 will not have an adverse effect on general application of said section. (Para 21)

The savings of S.6 do not apply to some extent or in entirety when the legislative intent is different. The contrary intent can be expressed or gathered by necessary implication. Further, the ambit of repeal cannot be wider than the boundary envisaged by the repealing enactment. Therefore, a comprehensive repeal may be limited if the repealing enactment directly or by necessary implication clamours that it will not apply to certain matters. (Para 22)

Court applies aforesaid law to present case and also takes note of S.10 of Act of 2023, though it does not start with a non-obstante clause, but if the words used in that section are read carefully, there will be no doubt that it provides that Commission would have right to decide eligibility for the purpose of appointment as well as to decide the procedure of selection of a candidate for direct recruitment. (Para 23)

This Court previously directed Chairperson U.P. Education Service Selection Commission, Prayagraj to take all endeavour to conclude process for appointment of Head Masters and Principals in an order passed in Nov., 2025, therefore a direction is now passed that it shall be concluded within a period of 6 months from today. (Para 25)

Writ petitions disposed of. (E-4)

Case Law Cited

1. The Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation Vs. Mahesh and Ors., Special Leave Petition (Civil) No.13093-13094 of 2018 (Para 22)
2. Abhishek Mishra & Anr. Vs. State of U.P.& 2 Ors, 2025:AHC:192985 (Para 25)

List of Acts

Uttar Pradesh Education Service Selection Commission Act, 2023; Uttar Pradesh Intermediate Education Act, 1921; U.P. General Clauses Act of 1904.

List of Keywords

requisitions, appointment, education, selection, recruitment process, protection.

Appearances for Parties

For Petitioner(s): Siddharth Khare, Sr. Advocate
For Respondent(s): C.S.C., Kushmondeya Shahi

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

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Mohd. Yaseen, Sri Prashant Shukla and Ms.Diksha Upadhyay on behalf of petitioners, Sri Kushmondeya Shahi on behalf of respondent no.3, Sri D.P.Singh and Sri Saurabh, learned Standing Counsel.

2. Petitioners before this Court have claimed that they were eligible for appointment on the post of Principal and for that procedure was initiated to fill up 884 posts of Principal and 729 posts of Headmaster in the recruitment year 2019-2020 and 2021-2022, in terms of relevant provisions of regulation under the UP Intermediate Education Act, 1921 and Uttar Pradesh Secondary Education Service Selection Board of 1982 however, Board does not commence further process and it remained pending for almost 2 to 3 years and meanwhile, Uttar Pradesh Education Service Selection Commission Act, 2023 was enacted and it came into force with effect from 21.8.2023 and subsequently rules thereunder i.e. Uttar Pradesh Education Service Selection Commission Rules, 2023 were also framed.

3. By the enforcement of aforesaid Act, Uttar Pradesh Secondary Education Service Selection Board of 1982 was repealed.

4. In the aforesaid circumstances, Secretary, Uttar Pradesh Education Service Selection Commission took a decision on 9.12.2024, whereby earlier requisition for selection of Principals and Headmasters which was not commenced except receiving requisitions and accordingly not concluded under the Repeal Act of 2019 therefore was withdrawn and all earlier requisitions were declared void-ab-initio and fresh process was directed to commence in terms of the Act of 2023 and rules framed thereunder.

5. It is not under dispute that on basis of earlier requisition even an Advertisement was not issued, therefore, no progress was made under the Act of 2019 or rules framed thereunder.

6. Petitioners have challenged the decision dated 9.12.2014, mainly on a ground that once a procedure was initiated under the Act of 2019, it ought to have been continued even after it was repealed by way of enforcement of new Act of 2023.

7. Admittedly, procedure prescribed under the Act of 2023 is different and it prescribed a open selection and petitioners have now to go through rigours of open competition, whereas earlier when panel was to sent, from a particular College, name of two seniormost teachers was also required to be sent for consideration for post of Principals and Headmasters as the case may be and according to petitioner , their names were included in the respective panel.

8. Learning Senior Counsel appearing on behalf of the petitioners has vehemently referred Section 31 of the Act of 2023 i.e. 'Repeals and Savings'. For reference, same is reproduced hereinafter:

*"31. **Repeal and Savings**.-(1) The Uttar Pradesh Higher Education Services Commission Act, 1980, the Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and the Uttar Pradesh Education Service Selection Commission Act, 2019 are hereby repealed.*

(2) Notwithstanding such repeal, anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times.

(3) Save as otherwise provided in this Act, the repeal of the Acts referred to in sub-section (1) shall not have an adverse effect on the general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904) in relation to the enforcement of provisions."

9. Relevant Regulation under Chapter II of Uttar Pradesh Intermediate Education Act, 1921 are reproduced hereinafter:

"10. The procedure for filing up the vacancy of the head of institution ant teachers by direct recruitment in any recognised institution shall be as follows:

Xxx

(2) Notes (1) All vacancies in the post of teachers and the head of the institution existing at the time of advertisement shall be advertised.

(2) No new post shall be advertised unless sanction of the appropriate authority for the creation thereof has been received by the management.

(b) The form of application shall be such as may be approved by the Director.

(c) An application by a person employed in an institution and applying for a post elsewhere or in the same institution shall not be withheld by his employer but shall be forwarded to the District Inspector of Schools or Regional Inspectress of Girls Schools concerned immediately and in case of a post in an institution referred to in Section 16-FF to the Manager thereof.

(d) Applications received shall be serially numbered and entered in a register in the form approved by the Director in the Office of the Inspector and particulars of the candidates noted under appropriate columns along with quality-point-marks obtained by each candidate. The quality-point-marks will be awarded to each candidate according to the criteria laid down in Appendix 'D' preferably by the local retired Gazetted Officers or retired Principals or teachers of Degree College or University or retired heads of Institutions engaged for the purpose by the Inspector and checked by the Inspector or an officer of the Department authorised by him in this behalf. These application forms will be collected by the Committee of Management through the Manager of the institution from the Office of the Inspector within three days after the expiry of five days from the last date of receipt of applications notified in the advertisement failing which the Inspector shall cause the applications to be sent to the Manager of the institution concerned. The management shall maintain a register likewise. The candidates to be called for interview shall be selected in the order of quality-pointmarks obtained by them. The number called for interview shall be seven for each post (the number of applicants permitting) provided that this number may be increased to accommodate candidates who get equal number of quality-paint-marks in the first seven places. The Inspector shall send intimation of the date, time and place for holding selection as may be fixed by him to the Committee of Management through its Manager at least two weeks before such date. Immediately on receipt of this information, the Manager shall send intimation to the members of the Selection Committee other than the Experts and issue interview cards to all the

candidates selected for interview by registered post specifying therein the date, time and place of holding selection, at least ten days before such selection. The Selection Committee will hold its sitting for making the selection accordingly. The Inspector shall intimate to the Experts nominated under Clause (iii) of sub-section (1) or (2) of Section 16-F, as the case may be, the date, time and place fixed for holding of selection along with the name of the institution, sufficiently in advance of such date. If on account of any unavoidable reasons, any expert is unable to attend the selection on the date fixed, the Inspector shall at once arrange for the expert on the waiting list. In the absence of two experts, the meeting of the Selection Committee shall be postponed and another date shall be fixed for the same.

(dd) Where the post advertised under Clause (a) is that of Principal of an institution the two seniormost teachers of such institution in the Lecturer's grade and where the post advertised is that of Headmasterfor an institution the two seniormost teachers of such institution in the L.T. Grade who possess the prescribed minimum qualification for such post and have to their credit a minimum of ten years continuous service in the respective grade, including the period, if any, during which they have worked temporarily as principal/Headmaster shall also be entitled to be called for interview for that post even if they do not come within the first seven places under Clause (d).

10. Relevant sections of Act of 2023 is reproduced hereinafter :

"2(n) 'Teacher' means a person employed for imparting instruction in an institution and includes a Principal or Vice-Principal or a Headmaster;

10.Determination of Vacancies, Requisition, and Selection Procedure

(1) For the purpose of making an appointment of a teacher or instructor by direct recruitment, the Appointing Authority or Management or Authorized Officer shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of a post other than the post of head of the institution, also determine the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes,

Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act no. 4 of 1994), and persons belonging to economically weaker sections in accordance with the Uttar Pradesh

Public Services (Reservation for Economically Weaker Sections) Act, 2020 (U.P. Act no. 10 of 2020) and other directions issued by the Government from time to time, and notify the vacancies to the Commission in such manner and through such officer or authority as may be prescribed. The Commission shall decide the eligibility and accordingly advertise the vacancies received in the manner as may be prescribed.

(2) The procedure of selection of candidates for direct recruitment to the posts of teachers or instructors shall be such as may be prescribed.

(3)Regarding appointment in religious and linguistic minority educational institutions for maintaining quality of education, process of selection shall be completed by compulsorily inviting educationist of that particular religion and language (having knowledge of theology and culture) as experts.

11. Panel/List of Candidates- (1) The Commission shall, as soon as may be, after a vacancy is notified under sub-section (1) of section 10, conduct, wherever necessary, examinations or interviews or conduct the examination and interview of the candidates and prepare a panel/list of those found most suitable for appointment.

(2) The panel referred to in sub-section (1) shall be forwarded to the prescribed officer or Authorized Officer referred to in sub-section (1) of section 10 in such manner as may be prescribed.

(3) After the receipt of the panel under sub-section (2), the prescribed officer or Authorized Officer shall, in the prescribed manner, intimate the Appointing Authority of the names of the selected candidates in respect of the vacancies notified under sub-section (1) of section 10.

(4) The Appointing Authority shall, within a period of thirty days from the date of receipt of such information, issue appointment letters to such selected candidates and facilitate the selected candidate to join the duties in the prescribed manner.

(5) Where such selected candidate fails to join the post of a teacher or instructor in such institution within the time allowed in the appointment letter or within such extended time as the Appointing Authority may allow in this behalf, or where such candidate is otherwise not available for appointment, the Authorized Officer shall, on the request of Management, intimate in the prescribed manner, fresh name or names from the panel/list forwarded by the Commission under sub-section (2). Such time limit shall be up to a maximum of one year after the date of issuing of the appointment letter.

(6) If the Management/ Appointing Authority fails to issue appointment letter to a selected candidate on reasonable grounds (the Management /Appointing Authority is to mention the appropriate reason) then a panel of remaining candidates from the list/panel of candidates under sub-section (1) will be made available to the Institute only once. Still, if the Management/Appointing Authority fails to issue appointment letter then the concerned post will be abolished as per the prescribed method.

12. Appointments to be made only on the Recommendations of the Commission - Every appointment of a teacher or instructor shall be made by the Appointing Authority only on the recommendation of the Commission, and any appointment made in contravention of the provisions of this Act shall be void: -

Provided that the appointment of a teacher or instructor by transfer from one institution to another or by promotion in any institution or the appointment of a teacher or instructor as a

dependent of an employee dying in harness cases may be made as per the provisions given in the relevant Acts or rules or regulations."

11. Learned Senior Counsel appearing on behalf of petitioners submits that requisition sent under provisions of Act of 1982 are protected by virtue of Section 31 of the Act of 2023 and further proceedings will be required to be undertaken under provisions of Act of 1982 only and not in terms of Act of 2023, otherwise petitioners who are senior most Assistant Teachers in their respective schools and their names were sent in the panel in the requisition will now have to face either written examination and subsequent interviews as decided by the Commission under the Act of 2023. He also refers Section 6 of U.P. General Clauses Act of 1904 that it also protects earlier requisition.

12. Per Contra, learned counsel for the respondents submits that by way of Act of 2023, a different process is required to be adopted for selection of Principals and Head Masters.

13. Earlier requisition was not proceeded further effectively, except requisition sought by the Board under the Act of 1982, and since it has not proceeded even a step forward, therefore, it is not required that said requisition be carry forwarded in terms of Repealed Act of 1982.

14. Heard learned counsel for the parties and perused the records.

15. It is not under dispute that number of requisitions were sent for appointment of Principals and Headmasters in the requisition year 2019-20 and 2021-22. Further it is also not disputed that despite after 3 years, no further process was undertaken in pursuance of said requisitions and resultantly senior most teachers who were working as Officiating Principal continued to work i.e. it was an advantage to them.

16. None of the petitioners have come up with a case that before new Act came into force in the year 2023, they have approached concerned respondents or this Court to expedite the recruitment process on basis of earlier requisitions.

17. Learned Senior Counsel has not disputed that now under the provisions of Act of 2023, a new regime has taken place that Assistant Teachers who were either working as Officiating Principal or not, have to participate in the open examination either by way of a written examination or subsequent interview for appointment of Principal or Headmaster as the case may be.

18. Section 31 of the Act of 2023 provides for Repeal and Savings according to which Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and the Uttar Pradesh Education Service Selection Commission Act, 2019 was repealed.

19. Sub-section 2 of Section 31 of the Act of 2023 states that anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times, therefore, it would mean that procedure undertaken in terms of the Act of 1982, would be considered as it was taken

under the new Act of 2023 and since now recruitment process is entirely different and earlier requisition has not forwarded even a step ahead, therefore, a new requisition was sought.

20. The requisition sent earlier does not create a right on persons who were included in the panel and since it has not moved a step forward, therefore, only by sending requisitions would not mean that it has created any right or a substantive process was initiated under the earlier Act of 1982, therefore, Repeal and Savings' will not help the case of petitioners.

21. Court also takes note of sub-section 3 of Section 31 which has a reference of Section 6 of Uttar Pradesh General Clauses Act 1904 that repeal of Act of 1982 will not have an adverse effect on general application of said section.

22. In this regard Court takes note of few paragraphs of a judgment passed by Supreme Court in **Special Leave Petition (Civil) No.13093-13094 of 2018, The Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation Vs. Mahesh and Ors,** and its relevant paragraph being 7 is reproduced hereinafter:

'7. Before we interpret the above provisions, it would be appropriate to refer to Section 6 of the General Clauses Act, 1897 which deals with the effect of repeal of any statute or regulation and reads:

'6. Effect of repeal"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not'

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.'

Section 6 of the General Clauses Act interdicts the common law principle that an enactment after repeal is ineffective as if it had never existed, except as to matters past and closed. Section 6 is a general transitory provision that resurrects operation of the repealed law in terms of

comprehensive and broadly worded clauses (a) to (e). Clauses (b), (c) and (e) of Section 6, in particular, state that the repeal does not affect anything duly done or suffered under the repealed enactment; any right, privilege, obligation or liability acquired or accrued under any repealed enactment; or any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, etc. Legal proceedings, investigation or remedy may be instituted, continued or enforced, and any penalty, punishment or forfeiture may be enforced as if the repealed Act or regulation were still in existence notwithstanding its repeal. However, the savings of Section 6 do not apply to some extent or in entirety when the legislative intent is different. The contrary intent can be expressed or gathered by necessary implication. Further, the ambit of repeal cannot be wider than the boundary envisaged by the repealing enactment. Therefore, a comprehensive repeal may be limited if the repealing enactment directly or by necessary implication clamours that it will not apply to certain matters.'

23. Court applies aforesaid law in the facts and circumstances of present case and also takes note of Section 10 of Act of 2023, though it does not starts with a non-obstante clause, but if the words used in that section are read carefully, there will be no doubt that it provides that Commission would have right to decide eligibility for the purpose of appointment as well as to decide the procedure of selection of a candidate for direct recruitment.

24. Similarly, Section 11 of Act of 2023 also provides manner of selection that it could be conducted by way of an examination or interview both, therefore, Court is of the view that Act of 2023 has a new mechanism or procedure for selection and since earlier requisition has not forwarded substantially, therefore, it would not be considered that it has created any right, privilege or obligation for the State to continue procedure in terms of earlier requisition when the Act of 2023, provides absolutely new regime, therefore, Court is of opinion that since Act of 2023 has a different intention and it can be gathered by necessary implication, therefore, Court is of firm opinion that none of the earlier requisitions which were only in the preliminary stage and the Board has not taken any step on the requisition, therefore it would not create any liability or right in favour of petitioners as such Section 31 of Act of 2023 and Section 6 of U.P. General Clauses Act would not give any protection to petitioners so far as earlier requisition is concerned, as intention of Act of 2023 is contrary, therefore no case is made out to grant relief to the petitioners.

25. Court also takes note that this Court has passed a direction in **Abhishek Mishra & Anr. Vs. State of U.P.& 2 Ors, 2025:AHC:192985**, wherein Chairperson U.P. Education Service Selection Commission, Prayagraj was directed to take all endeavour to conclude process for appointment of Head Masters and Principals and since that order was passed in November, 2025, therefore a direction is now passed that it shall be concluded within a period of 6 months from today.

26. All the writ petitions are accordingly disposed of.

27. Registrar (Compliance) to take steps.

(2026) 2 ILRA 1456
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.02.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 14985 of 2025
Alongwith
Writ A No. 9584 of 2025

Dr. Aparajita Chaudhary ...Petitioner
Versus
State of U.P.& Ors. ...Respondents

Issue for Consideration

(1) Legality of the order not appointing the senior most Professor on the post of the Director-cum-Professor.

Headnotes

(A) Service law – Appointment – Post of Director-cum-Professor in Dept. of Ophthalmology at Motilal Nehru Medical College – Entitlement of senior most Professor – Government Order dated 26.07.1976 was issued creating the nomenclature of Director-cum-Professor for the Head of Department – Government Order dated 24.03.2021 was also came into effect whereby the post of Head of Department was directed to be filed on rotational basis from amongst the senior Professors – Effect : (E-1)

Held : From the Government Order dated 26.7.1976, it becomes categorical clear that in the nomination/designation of a person as Director-cum-Professor, the person must be Professor/Senior professor of the Institute and he is also required to be the Head of Department as there is no separate post of Director created in the Institute. Only the nomenclature of the Head of Department and Professor was created as Director-cum-Professor. The appointment Dr. Santosh Kumar to the post of Head of Department of the institute in consonance with the Government Order dated 24.03.2021 with regard to which there is no dispute between the parties. Therefore, Dr. Santosh Kumar being the Head of Department was entitled to be nominated/designated as Director-cum-Professor of the Institute, which has rightly been done initially vide order dated 24.4.2025 and subsequently vide order dated 29.8.2025 **–** Therefore, this Court does not find any illegality on the designation of Dr. Santosh Kumar, Professor and Head of Department of the Ophthalmology Department of the Motilal Nehru Medical College, which is known as Manohar Das Regional Eye Institute, Allahabad as the Director-cum-Professor of the said Institute. [Para 23 and 24]

List of Acts

Government Order dated 26.07.1976, Government Order dated 05.04.2006, and Government Order dated 24.03.2021.

List of Keywords

Designation, Merger, Nomenclature, Appointment, Head of Department, Independent representation, Senior most Professor, Recognition as a separate institution, Upgrade, Retirement, Special pay scale and allowances.

Case Arising From

Order dated 04.04.2025 passed by the Principal of the Motilal Nehru Medical College, Prayagraj, and Order dated 29.08.2025 passed by the Special Secretary, Government of U.P.

Appearances for Parties

Advs. for the Petitioner : Narendra Kumar Pandey, Manish Kumar Kesarwani.

Advs. for the Respondents : Rahul Agrawal, AAG; Gaurav Singh, S.C.; G.K. Singh, Sr. Adv.; G.K. Malviya, Sankalp Narain.

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

1. Since the controversy involved in both the petitions is similar in nature therefore both the petitions are being heard together.

2. Heard Sri Narendra Kumar Pandey, assisted by Sri Manish Kumar Kesarwani, learned counsel for the petitioner in Writ A No. 14985 of 2025 and Sri Rahul Agrawal, assisted by Sri Gaurav Singh, learned Standing Counsel for the State respondents in both the petitions and Sri G.K. Singh, learned Senior Counsel assisted by Sri G.K. Malviya and Sri Sankalp Narain, Advocates for the respondent no.6 in the Writ A No. 14985 of 2025 and for the petitioner in Writ A No. 9584 of 2025. Sri Narendra Kumar Pandey, has also argued for respondent no. 5 in Writ A No. 9584 of 2025.

3. The controversy involved in both the aforesaid petitions is with regard to the post / nomenclature of the Director to be given to whom in the Regional Institutes of Ophthalmology, Manohar Das Eye Hospital which is the Ophthalmology Department of Motilal Nehru Medical College, Prayagraj. Both the petitioners are claiming that they should be given the nomenclature as well as the power of Director-cum-Professor in the aforesaid institute. In view thereof, both the petitions are heard together and are being decided together.

4. It is undisputed in the instant case that Dr. Aparajita Chaudhary was working on the post of Professor from 04.08.2017 and Dr. Santosh Kumar was working as Professor from 07.08.2020. Dr. Aparajita Chaudhary had worked as Head of Department of Ophthalmology at Motilal Nehru Medical College, Prayagraj w.e.f. 24.03.2023 to 23.03.2025 and subsequent thereto Dr. Santosh Kumar is working as Professor and Head of Department of Ophthalmology of Motilal Nehru Medical College, Prayagraj from 24.3.2025. Previously, Manohar Das Eye Hospital was a separate hospital affiliated to Motilal Nehru Medical College, Allahabad and Motilal Nehru Medical College had its own Ophthalmology Department.

5. On 20.01.1976, the State Government had merged the Ophthalmology Department of Motilal Nehru Medical College, Allahabad as well as the Manohar Das Eye Hospital at Allahabad and a new nomenclature was given to it as Institute of Ophthalmology, Allahabad. However, the same continued to be a Department of Ophthalmology of Motilal Nehru Medical College for all practical purposes. Subsequently on 26.07.1976, the State Government notified that the Head of Department and Professor of the Ophthalmology Department of Motilal Nehru Medical College, Allahabad and affiliated eye hospital shall be designated as Director-cum-Professor of the Institute of Ophthalmology, Allahabad with the condition that no special pay or allowances shall be payable to him. By virtue of the aforesaid Government Order dated 26.07.1976, the Head of Department and Professor of the Ophthalmology Department continued to be nominated as Director-cum-Professor of the Institute of Ophthalmology, Allahabad. Subsequent thereto vide Government Order dated 05.04.2006, the status of Manohar Das Eye Hospital, Allahabad was upgraded and it

was recognized as Regional Eye Institute. However, it was clarified that no additional grant shall be payable to the Regional Eye Institute, Manohar Das Eye Hospital, Allahabad. In the said Government Order dated 05.04.2006, it was further provided that the Senior Professor of the said Regional Eye Institute shall be given nomenclature of Professor-cum-Director of the Institute, however no additional pay or allowances shall be payable to him.

6. Subsequently, pursuant to the directions issued in Writ-A No. 2926 of 2020 (Dr. Pradeep Kumar Maheshwari vs. State of U.P. and 3 others) vide order dated 05.03.2020 that any decision taken by the State of U.P. regarding Head of Department of the medical colleges shall be binding in all the medical colleges of the State of Uttar Pradesh. The government has passed the Government Order dated 24.03.2021 with regard to the appointment of Head of Departments in the government medical colleges. Clause-4 of the aforesaid Government Order provides that in each of the department the Medical Professor who was selected / appointed through the Public Service Commission and was having the qualification of post graduation in the same specialization shall be appointed as the Head of Department. It further provides that due to non-availability of the senior most Professor, the Associate Professor shall be appointed as Head of Department and in case of non-availability of the Associate Professor, the Assistant Professor shall be appointed as Head of Department. It further provided that the charge of Head of Department shall be given on the rotation of two years to the senior most Professor and, if in any department, if only one Professor is there, then he shall continue on the post of Head of Department till other Professors are available in the department. Thus, by the aforesaid Government Order, the post of head of various departments of medical colleges was to be fulfilled on rotation basis from amongst the senior most Professors. Thus, on completion of two years period as Head of Department by Dr. Aparajita Chaudhary on 24.03.2025, the Principal of Motilal Nehru Medical College has directed Dr. Aparajita Chaudhary to hand over the charge of Head of Department to Dr. Santosh Kumar. Thereafter, on 04.04.2025, the Principal of Motilal Nehru Medical College has given the charge of Director-cum-Professor to Dr. Santosh Kumar as he was the Head of Department of the Institute appointed on the rotation basis. Being aggrieved by the appointment of Dr. Santosh Kumar, who was the Professor and Head of Department of the Institute as Director-cum-Professor of the Institute vide order dated 04.04.2025, Dr. Aparajita Chaudhary has filed Writ-A No. 6352 of 2025. However, no interim orders were passed in the said writ petition.

7. Simultaneously, being aggrieved by the aforementioned order dated 04.04.2025, Dr. Aparajita Chaudhary had made a representation dated 09.04.2025 to the Principal, Motilal Nehru Medical College claiming that only the senior most professor of the institute can be given the nomenclature of the Director-cum-Professor of the Institute. Therefore, she claimed that she, being the senior most Professor of the Institute, be given the nomenclature of Director-cum-Professor of the Institute. In her representation, she has also claimed that though she was appointed as the Head of Department on 03.03.2023, however, since Dr. S.P. Singh was the senior most Professor of the Institute, had continued as Director-cum-Professor of the Institute till he retired on 31.03.2024 and only thereafter she was handed over the charge of Director-cum-Professor of the Institute on 01.04.2024. The similar representation has also been made by Dr. Aparajita Chaudhary to Chief Secretary Medical Education and Health Department, U.P. On receipt of the representation made by Dr. Aparajita Chaudhary, the Principal, Motilal Nehru Medical College sought a clarification in this regard from the Director General of Medical Education and Training, Uttar Pradesh vide its

letter dated 28.04.2025. Vide letter dated 07.05.2025, the Director General, Medical Education and Training, Uttar Pradesh has clarified that only the senior Professor of the Institute should be given the nomenclature of the Director-cum-Professor. Pursuant to the aforementioned directions issued by the Director General of Medical Education and Training, on 09.05.2025, the Principal, Motilal Nehru Medical College, Prayagraj has appointed Dr. Aparajita Chaudhary as the Director-cum-Professor of Manohar Das Eye Hospital, Prayagraj without any special pay or allowances. In view of the order dated 09.05.2025 passed in favour of Dr. Aparajita Chaudhary, she withdrew her Writ Petition No. 6352 of 2025 on 12.05.2025. Thereafter, Dr. Santosh Kumar has filed writ-A No. 9584 of 2025 challenging the order dated 09.05.2025 whereby Dr. Aparajita Chaudhary was appointed as Director-cum-Professor of the Institute.

8. Vide order dated 18.07.2025, the Coordinate Bench of this Court has framed the legal issues to be decided by the government and directed Dr. Santosh Kumar, the petitioner No.1 as well as Dr. Aparajita Chaudhary to appear before the Secretary of the State Government along with their independent representations and the State Government was directed to decide the issues framed in the said order by passing a reasoned and speaking order considering all the material before it. The aforementioned order dated 18.07.2025 was challenged by Dr. Aparajita Chaudhary by filing the Special Appeal No. 720 of 2025. The Division Bench of this Court noted that vide impugned order dated 18.07.2025, only the clarifications had been asked from the government, therefore, the hearing of the special appeal was adjourned and it was clarified that the proceedings of the writ petition shall continue as the same has not been stayed in the special appeal. The relevant portion of the order dated 18.07.2025 passed by this Court in Writ-A No. 9584 of 2025 is reproduced herein below:

"16. In the circumstances therefore, for resolving this contentious issue, whether two independent posts of Head of the Department and Director co exist in the Institute or Head of the Department would be ex officio Director of the Institute, the final stand of the State Government by means of a well informed decision over and above the decision taken by the respondent no.2 impugned herein this petition, becomes a must. Accordingly, while keeping this petition pending I direct the State Government to take a final decision as to the status of the post of Director in the Institute.

17. The issues are framed as under:

(i) Whether the post of Director for the Manohar Das Regional Institute of Ophthalmology has been created and special pay scale and allowances have been made admissible to the post, under the relevant rules and regulations?

(ii) Whether the Head of the Department of the Manohar Das Regional Institute of Ophthalmology is part and parcel of the Motilal Nehru Medical College and hence Head of the Department of Ophthalmology of the College will hold position of Director of Institute ex officio with no additional pay and allowances?

18. Both the petitioner no.1 as well as the respondent no.5 are also directed to appear before the concerned Secretary of the State Government on or before 31st July 2025 alongwith

their independent representations defending their respective claims. The State Government shall thereafter proceed to decide the matter qua the issues framed above by passing reasoned and speaking order considering all the relevant material before it and strictly in accordance with law positively within a further period of 30 days.

19. Needless to add, the State Government shall be taking its independent decision without being influenced by observations made above while considering the arguments of respective parties.

20. In the meanwhile, in the given facts and circumstances when the Court has not been apprised of any Circular Letter or Government Order giving independent status in terms of assignment of duties whether, administrative or financial to the Director of Institute, I hereby provide that all the administrative and financial powers that respondent no.5 may have been exercising pursuant to the order impugned shall now be exercised by the Principal of the Moti Lal Nehru Medical College, Prayagraj whereas the Head of the Department namely, petitioner no.1 shall be looking after only academic activity and supervision of the Eye Hospital, until further orders of this Court. The impugned order dated 07.05.2025 passed by respondent no.2 is put in abeyance.

21. List this case on 03.09.2025.

22. Decision to be taken by the State Government shall be placed in a sealed cover before this Court on the next date fixed failing which the concerned Secretary shall be appearing in person before this Court. "

9. Thereafter, both the parties have represented to the Secretary, Medical Education Department and subsequently vide order dated 29.08.2025, the Special Secretary of Medical Education Department has nominated Dr. Santosh Kumar as Professor-cum-Director of the aforementioned hospital, who was working as Professor and Head of Department of the aforementioned institute.

10. Vide separate order dated 31.08.2025, the Chief Secretary, relying upon the Government Order dated 05.04.2006 held that the said order permits the senior Professor to be appointed as Director-cum-Professor and not the senior most Professor, and in the said order it has also been observed in answer to the issues raised by this Court that in terms of the Government Order dated 20.04.2010, the pay scale of Rs. 18,400 - 22,400, equivalent pay band of Rs. 37,400 and 67,000, and grade pay of Rs.10,000 has been approved for the post of Director-cum-Professor of the Manohar Das Regional Eye Institute, Prayagraj. It is further observed that the Head of Department of the Eye Department is a part of Motilal Nehru Medical College. Vide order dated 03.09.2025, the Coordinate Bench of this Court has taken note of the aforementioned observation in the following manner:

"Upon perusal of the order dated 31st August, 2025 I find that in reply to the three issues framed by way of reference in the order of Court dated 18th July, 2025, they have been answered like this:

(I). Under the Government order dated 28th April, 2010, against the post of Director-Professor of Manohar Das Regional Eye Institute, Prayagraj, pay scale of Rs.18400-22400 has been sanctioned as against the pay band of Rs. 37400 ? 67000 with grade pay of Rs.10,000/-;

(II). The institute is a part and parcel of department of Ophthalmology of Motilal Nehru Medical College, Prayagraj with its head of department; and

(III). Under the Government order dated 5th April, 2006, the Director is only a name given in the institute to a senior professor and therefore, any senior professor can be made Director.

Looking to the discussions and observations made by this Court in its order dated 18th July, 2025 with reference to the Government orders dated 28th April, 2010 and 5th April, 2006, point Nos. (I) and (III) seem to be quite contradictory to each other as no pay scale or salary can be assigned to a post that has not been created and still further, I find that respondent concerned does not say anywhere that a head of department who enjoys the post of Director by nomination, is also given conditional pay, nor this would be with a Professor who may be nominated as Director as per the order passed."

11. The parties have exchanged their affidavits in the matter. Learned counsel for the petitioner i.e. Dr. Aparajita Chaudhary, has vehemently submitted that the Manohar Das Eye Hospital has always been a separate institute from the Medical College, though it was affiliated with the medical college and vide Government Order dated 20.01.1976, it was well recognized as Institute of Ophthalmology. He further submits that recognizing as a separate Institute, the post of Director-cum-Professor was created and recognizing the services of the Institute vide Government Order dated 05.04.2006, Manohar Das Eye Hospital was upgraded and was recognized as Regional Eye Hospital. It is further submitted by learned counsel for the petitioner that vide Government Order dated 05.04.2006, only the senior Professor can be designated as Director-cum-Professor of the Regional Eye Institute. Therefore, the petitioner, being the senior most Professor, she is entitled for designation to the post of Director-cum-Professor of the aforementioned Institute. Prior to 24.03.2021, there was no confusion as Head of Department used to be the senior most Professor and he was also used to be nominated as the Director-cum-Professor of the Institute.

12. Vide Government Order dated 24.03.2021, which is applicable to all the departments of the government medical colleges, it is settled position that the post of Head of Department shall be filled up from amongst the senior most professors of the department concerned. The tenure of such Head of Department shall be two years on the rotational basis and if in any department only one professor is there, he may continue as Head of Department. He further submits that in terms of the aforementioned Government Order dated 24.03.2021, the petitioner herein was appointed as Head of Department from 23.03.2023 and she has worked till 23.03.2025, and since Dr. S.P. Singh, who was previous Head of Department till 2015 and thereafter since 2005 to 2015, he also continued as the Director-cum-Professor of the Institute. Even subsequent thereto, despite the change of Head of Departments in 2015, Dr. S.P.Singh continued as Director of the Institute till the date of his retirement i.e. 31.03.2024 being the senior most Professor of the Institute and it is only after his retirement, Dr. Aparajita Chadhary was nominated as the Director-cum-Professor from 01.04.2024

of the aforesaid Institute despite she was previously designated as Head of Department of the Institute.

13. Thus, learned counsel for the petitioner submits that the designation of the Director and the Head of Department are two different posts. He has further relied upon the Government Order dated 20.04.2010, whereby the separate pay scale has been fixed for the post of Director-cum-Professor of the Manohar Das Regional Eye Institute, Allahabad. Learned counsel for the petitioner has further relied upon the Government Order dated 05.04.2006 and submits that though the aforesaid Government Order is in continuation of the previous Government Order dated 26.07.1976, the requirement of being the Head of Department was dispensed with for designation of the Director-cum-Professor of the Institute by the aforesaid Government Order. The senior Professor has been designated as Director-cum-Professor of the Institute, which has been apparent from settled practice in the previous appointments of Dr. S.P.Singh as Director-cum-Professor of the Institute despite he not being the Head of Department since 2015, still he continued on the post of Director-cum-Professor till the date of his retirement i.e. 31.03.2024 despite Dr. Kamaljeet Singh was appointed as Head of Department from 2015 till 30.03.2023. Therefore, the contention of learned counsel for the petitioner is that the two posts are entirely separate and only the senior most Professor can be appointed as the Director-cum-Professor of the Institute. Therefore, the appointment of respondent no.6, Dr. Santosh Kumar as Director-cum-Professor of the Institute vide impugned order dated 24.08.2025 is not sustainable and is liable to be quashed and accordingly, the petitioner has also prayed for quashing of the impugned office memo dated 31.08.2025 whereby the State has tried to distinguish that senior Professor does not mean the senior most Professor as described in the Government Order dated 05.04.2006.

14. Per contra, Sri Rahul Agarwal, learned Additional Advocate General appearing for the State respondents submits that previously the Ophthalmology Department of Motilal Nehru Medical College, Prayagraj was a separate department and the Manohar Das Eye Hospital was a separate hospital, though it was affiliated to the aforesaid medical college. Vide Government Order dated 20.01.1976, the Ophthalmology Department of Motilal Nehru Medical College, Allahabad and Manohar Das Eye Hospital, Allahabad, which was affiliated to the Medical Colelge was clubbed together and renamed as Institute of Ophthalmology. Since thereafter the Institute of Ophthalmology continued to be the Ophthalmology Department of Motilal Nehru Medical College, Allahabad, though the nomenclature was Institute of Ophthalmology. He further submits that vide Government Order dated 26.07.1976, no separate post of Director-cum-Professor was created but the nomenclature of the Head of Department-cum-Professor of Institute of Ophthalmology, Allahabad was directed to be renamed as Director-cum-Professor of the Institute. While providing such nomenclature, it was also provided that the Director-cum-Professor would not be entitled for any special pay and allowances. Thus, for designating a person as Director-cum-Professor, he is required to be the Head of Department as well as the Professor of the Institute. It does not require that only the senior most Professor can be designated as Director-cum-Professor.

15. He further submits that vide Government Order dated 05.04.2006, though the Institute of Ophthalmology, Allahabad was upgraded to the Regional Eye Institute but that upgradation was granted without any additional grant to the Institute. Thus, the aforesaid Institute continued to be the Department of Motlal Nehru Medical College, Allahabad and the aforesaid order is in

continuation of the previous Government Order dated 26.07.1976, which provided that for the nomination of Director-cum-Professor, the Professor must be the Head of Department and in that sense, it has been observed in the Government Order dated 05.04.2006 that the senior Professor shall be nominated as Director-cum-Professor. In this Government Order also, it is further provided that no special pay or allowances are available to such Director -cum-Professor. Since vide Government Order dated 24.03.2021, it is first time the post of Head of Department was to be filled on the rotational basis for two years from amongst the senior most Professors and in the absence of the Professors, the Associate Professors as well as the Assistant Professors. At the time of the aforesaid Government Order, since Dr. S.P. Singh was the Head of Department as well as the senior Professor of the Institute, he continued to be nominated as Director-cum-Professor of the Institute. Thus, as per 1976 Government Order, the post of Head of Department and Professor is to be nominated as Director-cum-Professor and there is no separate post of Director-cum-Professor, which has never been created in the Manohar Das Regional Eye Hospital, Allahabad. So far as the Government Order dated 20.04.2010 is concerned, which though provides a separate pay scale to the Director of the Institute including two other Institutes namely Cardiology Institute, Kanpur as well as the Cancer Institute, Kanpur, which are under the Kanpur Medical College.

16. The learned Additional Advocate General submits that so far as those Institutes of Cardiology and cancer are concerned, vide Government Order dated 22.03.2013, the separate post of Directors was created in the Cardiology Institute affiliated to the Kanpur Medical College. So far as the Manohar Das Regional Institute of Ophthalmology affiliated to the Motilal Nehru Medical College, Allahabad/Prayagraj is concerned, no post of Director-cum-Professor was ever created and none of the Directors-cum-Professors who were previously nominated in the Institute, have ever been given benefit of the aforesaid Government Order dated 20.04.2010 giving them any special pay scale and allowances or grade pay. They have continued to get the pay scale of the Head of Department and senior Professor. Since there is no separate post of Director-cum-Professor in the Manohar Das Regional Eye Institute and vide Government Order dated 26.07.1976, the nomenclature of Director-cum-Professor was granted to the Head of Department-cum-Professor. Thus the Head of Department as well as the Director-cum- Professor continued to be one and the same person. The basic requirement for nomination of Director is that the person must be the Head of Department. Since in terms of the Government Order dated 24.03.2021, the post of Head of Department is to be rotated amongst the Professors of the Institute, therefore, whosoever is the Head of Department is required to be designated as Director of the Institute as well. Therefore, the learned Additional Advocate General submits that there is no illegality in the impugned order dated 29.08.2025 whereby Dr. Santosh Kumar being the Head of Head of Department of the Institute has been nominated as the Director-cum-Professor of the Institute as well without any special pay scale or allowances. Thus, the claim of the petitioner Dr. Aparajita Chaudhary that since she is the senior most Professor be given the nomination and other powers of the Director-cum-Professor of the Institute, is not sustainable.

17. Thus, learned Additional Advocate General for the State has prayed for dismissal of the Writ-A No. 14985 of 2025 and supports the claim of Dr. Santosh Kumar, the petitioner in Writ-A No. 9584 of 2025 whereby the challenge was made to the order dated 09.05.2025 whereby Dr. Aparajita Chaudhary was designated as Director-cum-Professor without any special pay and allowances which has otherwise been superseded vide order dated 29.08.2025 passed by the Special Secretary, Government of U.P.

18. Sri G.K. Singh, learned counsel appearing for Dr. Santosh Kumar, who is respondent no.6 in Writ-A No. 14985 of 2025 and petitioner in Writ-A No. 9584 of 2025 supports the submissions advanced by Sri Rahul Agarwal, learned Additional Advocate General and submits that in the same Institute, there cannot be two heads. None of the Government Orders provide that there will be two heads, one Head of Department and the other the Director-cum-Professor. But the Government Order dated 26.07.1976 specifically provides that the designation of the Head of Department shall be done as the Director-cum-Professor and none else. Thus, the primary requirement for designation to the post of Director is that the person must be the Head of Department. He further submits that none of the Director-cum-Professor previously appointed Director-cum-Professor have been given any separate pay scale or allowances in terms of the Government Order dated 20.04.2010. So far as it concerned to the Manohar Das Regional Institute of Ophthalmology nor Dr. Aparajita Chaudhary who previously held the designation of Director-cum-Professor and was erroneously appointed vide impugned order dated 09.05.2025 as Director-cum-Professor nor the respondent no.6, Dr. Santosh Kumar, who was appointed previously on 04.04.2025 and subsequently on 29.08.2025 as Director-cum-Professor of the Institute in capacity of being the Head of Department of the Institute, have ever been granted the benefit of the Government Order dated 20.04.2010. Simply, therefore, there is no separate post of Director-cum-Professor in the Institute. All the orders of nomination specifically mention that they will not be entitled for any special pay scale or allowances only because they were designated as Director-cum-Professor of the Institute. Thus, it is apparent that the Government Order dated 24.3.2010 has never been given effect to in the Institute because there is no creation of separate post of Director in the Institute till date.

19. Sri G.K. Singh, learned Senior Advocate submits that the nomination/designation of Dr. Santosh Kumar as Director-cum-Professor was done only because he was appointed as the Head of Department on rotational basis in terms of the Government Order dated 24.3.2021. Therefore, there is no illegality in the nomination / designation of Dr. Santosh Kumar as Director-cum-Professor being the Head of Department and the claim of Dr. Aparajita Chaudhary is not sustainable in law for designation as Director-cum-Professor of the Institute only because she is the senior most Professor of the institute, as she had ceased to be the Head of Department.

20. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully perused the record of the case. The facts of the case have already been noted hereinabove. It is undisputed that prior to the Government Order dated 20.01.1976, the Ophthalmology Department of the Moti Lal Nehru Medical College and the Manohar Das Eye Hospital were separate to each other, though, the Manohar Das Eye Hospital was affiliated to Moti Lal Nehru Medical College. By the aforesaid order dated 20.01.1976, the Ophthalmology Department of the Medical College as well as Manohar Das Eye Hospital were clubbed together and directed to be nominated as Institute of Ophthalmology, which continued as the Ophthalmology Department of the Medical College. Thus, for all practical purposes, though the nomenclature of the Institute has been changed, it continued as Ophthalmology Department of Moti Lal Nehru Medical College, Allahabad for all practical purposes.

21. Vide Government Order dated 26.07.1976, it has been provided that the Head of Department and Professor of the Institute of Ophthalmology to be designated as Director-cum-

Professor. Thus, vide order dated 26.07.1976, only the nomenclature of the Head of Department was changed as Director-cum-Professor and no separate post was created by the aforesaid Government Order dated 26.07.1976. Vide Government Order dated 05.04.2006, the nomenclature of the Institute of Ophthalmology has been changed as Regional Institute of Ophthalmology by upgrading the said institute. However, the aforesaid Government Order does not say that the aforesaid Institute would, in any case, be an independent Institute. Thus, for all practical purposes, it continued to be the Ophthalmology Department of the Medical College. The Government Order dated 05.04.2006 refers the senior Professor, who earlier used to be the Head of Department and in that context it was observed that the senior Professor shall be designated as the Director-cum-Professor of the aforesaid Regional Eye Institute. However, it has not dilated the situation i.e. the Director-cum-Professor and the Head of Department would remain the same person governing the affairs of the Institute.

22. The problem has arisen only after the Government Order dated 24.03.2021 came into effect whereby the post of Head of Department was directed to be filled on rotational basis from amongst the senior Professors. It talks about the senior most Professors to be appointed as Head of Department, but simultaneously, it also provides that in the absence of senior most Professors, the Associate Professor as well as the Assistant Professor can be appointed. Since at present, Dr. Aparajita Choudhary is undisputedly is the senior most Professor, she was given first preference while appointing her the Head of Department with effect from 23.03.2023 till 23.03.2025 and she also held the post of Director-cum-Professor of the Institute from 01.04.2024 being the Head of Department of the Institute and with effect from 24.03.2025, Dr. Santosh Kumar has been appointed as Head of Department of the Institute and there is no dispute in his appointment on rotational basis being the second senior most Professor of the Institute as Head of Department of the Institute.

23. Since the Government Order dated 26.07.1976, which first time created the nomenclature of Director-cum-Professor for the Head of Department and Professor of the Institute, therefore, in the considered opinion of this Court, it is only the Head of Department of the Institute who could be nominated as the Director-cum-Professor of the Institute and none else. By the subsequent Government Order dated 5.4.2006, when the aforesaid Institute was declared as Regional Eye Institute, which is in continuation of the earlier Government Order, does not provide that only senior most Professor to be appointed as the Director-cum-Professor rather, it provides that senior Professor of the Institute can be nominated as the Director-cum-Professor. From the Government Order dated 26.7.1976, it becomes categorical clear that in the nomination/designation of a person as Director-cum-Professor, the person must be Professor/Senior professor of the Institute and he is also required to be the Head of Department as there is no separate post of Director created in the Institute. Only the nomenclature of the Head of Department and Professor was created as Director-cum-Professor. The appointment Dr. Santosh Kumar to the post of Head of Department of the institute in consonance with the Government Order dated 24.03.2021 with regard to which there is no dispute between the parties. Therefore, Dr. Santosh Kumar being the Head of Department was entitled to be nominated/designated as Director-cum-Professor of the Institute, which has rightly been done initially vide order dated 24.4.2025 and subsequently vide order dated 29.8.2025.

24. Therefore, this Court does not find any illegality on the designation of Dr. Santosh Kumar, Professor and Head of Department of the Ophthalmology Department of the Motilal Nehru Medical College, which is known as Manohar Das Regional Eye Institute, Allahabad as the Director-cum-Professor of the said Institute. Thus, Dr. Santosh Kumar being the Head of Department was entitled to be nominated/ designated as the Director-cum-Professor of the Institute. It has rightly been done vide order dated 04.04.2025 passed by the Principal of the Motilal Nehru Medical College, Prayagraj, as well as by the Special Secretary, Government of U.P. vide order dated 29.08.2025.

25. In view of the aforesaid finding, this Court finds that the appointment of Dr. Aparajita Chaudhary vide order dated 09.05.2025 to the post of Director-cum-Professor is not sustainable in law. Accordingly, the same is hereby set aside.

26. With the aforesaid observations, both the petitions are **disposed of**.

27. It is further held, till a separate post of Director-cum-Professor, is specifically created in the Manohar Das Regional Institute of Ophthalmology, Prayagraj, it is the Head of Department-cum-Professor of the said Institute, who can be designated as Director-cum-professor of the aforesaid Institute and none else.

(2026) 2 ILRA 1466
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.02.2026

BEFORE

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

Writ A No. 19530 of 2024

Rajeev Kumar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

Whether a mandamus can be issued, ordering the Nagar Panchayat and its President, to extend benefits of the promotion post, including all remuneration w.e.f. the date of promotion order as well as to pay the petitioner a Clerk's salary from the date of his promotion together with interest?

Headnotes

A. Service Law – U.P. Municipalities Act, 1916: Section 70 – Petitioner did not challenge order dated 16.05.2018, cancelling his promotion proceedings. Instead, he has applied for a writ of mandamus to pay him salary according to the apparent tenor of the promotion order passed in his favour.

Order dated 16.05.2018 was made without hearing the petitioner but was communicated to him. (Para 26)

In the service book relating to the petitioner, a promotion order dated 01.05.2018 finds mention and there is no cancellation of that order recorded by any competent authority, but the fact remains that the entire

proceedings for the petitioner's promotion were cancelled by the Executive Officer vide order dated 16.05.2018 as *non est*, since no post was available. The order cancelling the petitioner's promotion proceedings is recorded in the original records as an order dated 16.05.2018 passed by the Executive Officer, which reads: "*Pronnati ki prakriya pad na hone ke karan nirast ki jati hai*". (Para 25)

B. It is true that a writ of mandamus is one of the widest import and can be issued to undo wrongs in the absence of the formality of challenge. But, where the rights are not clear and orders stand in way, which have to be quashed, and those orders have not been substantially questioned, it is difficult to quash such orders and grant relief. It is also noteworthy that the order dated 16.05.2018 passed by the Executive Officer, read together with the circumstance that the petitioner was never paid his emoluments attached to a Class-III post, would show that the petitioner's promotion, that he claims to have been made by the President, was never a concluded transaction, in terms of which, his rights crystallized. It was inchoate. Therefore, **it was undone by the Executive Officer by a cancellation of proceedings for promotion and not a revocation of the promotion order. The endorsement of the promotion order in the petitioner's service book, which carries no endorsement of its revocation, would, therefore, be not of much consequence.** (Para 27)

C. The inaction for a period of four years is telltale of the fact that the petitioner knew all along that he had no claim founded on the promotion order. Else, he would have swung into action to claim higher emoluments, when he was deprived of his higher salary or emoluments within a month or two. Ever since the petitioner's promotion order was made, though he says that he performed duties attached to the post of a Clerk, he never claimed emoluments admissible for the promotion post right from 01.05.2018 until 03.09.2022. He admittedly filed the first of his representations on 03.09.2022, claiming higher emoluments, addressed jointly to the President and the Executive Officer of the Nagar Panchayat. It is surprising and very unnatural for a promotee to discharge duties on the promotion post and not claim emoluments attached to it for as long a period as four years and more. This is a case where the petitioner did not move at all and continued to receive his Class-IV salary. (Para 28)

Writ petition dismissed. (E-4)

List of Acts

U.P. Municipalities Act, 1916.

List of Keywords

promotion, remuneration, employee, vacancy, emoluments, cancel.

Appearances for Parties

For Petitioner(s): Mr. Harsh Vardhan Gupta
For Respondent(s): Mr. Sharad Chandra Upadhyay, Standing Counsel Mr. Bhanu Bhushan Jauhari

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

1. The petitioner claims to have been promoted as a Clerk in the employ of the Nagar Panchayat Khutar, District Shahjahanpur (for short, 'the Nagar Panchayat') from the lower post of a Class-IV employee. The petitioner says that though promoted by the President of the Nagar Panchayat vide order dated 01.05.2018, he has not been paid his emoluments for the promotion post. Instead, he is being remunerated as a Class-IV employee. It is asserted that pursuant to the promotion order dated 01.05.2018, the petitioner has joined the promotion post and is discharging duties attached to the post. The petitioner, therefore, prays that a mandamus be issued, ordering the Nagar Panchayat and its President, to extend benefits of the promotion post, including all

remuneration w.e.f. 01.05.2018. He has also prayed for the issue of a mandamus to the respondents to pay him a Clerk's salary from the date of his promotion together with interest.

2. Since a dispute was raised during the hearing of the petition about the genuineness of the promotion order dated 01.05.2018, signed by the then President of the Nagar Panchayat, Anupam Shukla, he was impleaded eo nomine under our orders. He was put to notice vide order dated 06.05.2025 and summoned to appear before the Court on 14.05.2025. Anupam Shukla, the former President of the Nagar Panchayat, appeared in person on 14.05.2025 and verified the contents of the promotion order as well as his signatures thereon in Court. By an earlier order, original records, including the petitioner's service book, were summoned. The parties having exchanged affidavits, the petition was admitted to hearing.

3. Heard Mr. Harsh Vardhan Gupta, learned Counsel for the petitioner, Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of State-respondent Nos. 1 and 2 and Mr. Bhanu Bhushan Jauhari, learned Counsel appearing for the Nagar Panchayat, respondent Nos. 3 and 4. The records produced in original have been perused.

4. It is not disputed that the petitioner was appointed as a Safai Karamchari, a Class-IV employee, with the Nagar Panchayat, after being selected in accordance with rules and appointed by the Executive Officer against a supernumerary post. The petitioner was appointed on probation for a period of one year. He was appointed as aforesaid by the Executive Officer vide order dated 20.06.2008. He joined duties as a Class-IV employee. Later on, upon the death of a regular Class-IV employee, one Ramchandra, in harness on 14.04.2013, the petitioner was placed against Ramchandra's vacant post, bringing to end his functioning against a supernumerary post. The petitioner's case is that there were two Class-III employees working in the Nagar Panchayat, one Anil Singh and the other Rajpal. Rajpal had been promoted as a Clerk on 30.05.1997, after approval by the Nagar Panchayat Board and following the due process. Rajpal was remunerated as a Class-III employee, consequent upon his promotion. Rajpal died in harness while serving as a Clerk on 18.04.2004. A direction was issued on 16.01.2014 by the Director, Local Bodies, requiring all the Nagar Nigam and Nagar Palika Parishad/ Nagar Panchayat in the State to ensure promotion of educated Safai Karamchari in accordance with the resolution of a Committee dated 08.11.2013, presided over by the Secretary, Urban Development.

5. The petitioner emphasizes that the Government Order endorsed by the Director, Local Bodies vide order dated 16.01.2014 was applicable to Safai Karamchari alone, employed in the Nagar Nigam, Nagar Panchayat and Nagar Palika Parishad, who were educated and not the other Class-IV employees. The petitioner has come up with a case that the Government Order, that was endorsed by the Director for compliance in accordance with the resolution of the Committee presided over by the Secretary, Urban Development, is one dated 04.12.2001. The aforesaid Government Order provides for promotion of Class-IV employees to Class-III positions, who have passed the High School or an equivalent examination and served for five years continuously on a Class-IV post. The Government Order aforesaid provides for promotion to the extent of 15% of the available vacancies. There is a further provision of 5% vacancies for promotion in the Class-III cadre out of the Class-IV employees, who have passed their Intermediate examination or any equivalent, and at the same time, completed five years' continuous service in the Class-IV cadre.

There is, thus, a total of 20% earmarking for promotion amongst Class-III employees from the Class-IV establishment of a Local Body, like the Nagar Panchayat.

6. The petitioner says that he moved an application on 07.02.2018 to the President of the Nagar Panchayat, seeking promotion to the post of Clerk, as he was a graduate and had experience in computer operation. The President of the Nagar Panchayat addressed a memo dated 24.02.2018 to the Director, Local Bodies, seeking the latter's permission to promote the petitioner, pointing out that a vacancy in the Class-III cadre had occurred due to death in harness of Rajpal, and the petitioner had a B.A. Degree, besides a computer operator certificate, called a Course on Computer Concepts (CCC) Certificate. It was pointed out by the President that there was a single incumbent in the cadre of Class-III post, leading to the Nagar Panchayat's work being affected.

7. In response, the Director, Local Bodies, addressed a memo dated 23.03.2018 to the President as well as the Executive Officer of the Nagar Panchayat, saying that for employees of non-centralized services, a Local Body was competent to take decisions in service matters. It was further remarked that since the matter related to an employee of non-centralized service of the Nagar Panchayat, in regard to whom, the Appointing/ Disciplinary Authority was the President himself, necessary steps had to be taken by the President. The President was directed to proceed in accordance with rules in the matter and inform the Directorate. The President caused a proposal to be placed in the Board Meeting of the Nagar Panchayat held on 27.03.2018, where a unanimous decision was taken by all the members to promote the petitioner.

8. Following this resolution dated 27.03.2018 passed by the Nagar Panchayat Board, a Departmental Promotion Committee (for short, 'the DPC') was constituted, as the petitioner avers in paragraph No.24 of the writ petition, "to initiate the promotion process of Class-IV employees of Nagar Panchayat Khutar and a seniority list was prepared in which the petitioner was placed at Serial No. 7." The DPC met on 18.04.2018 and recommended the petitioner's name for promotion against the vacant Class-III post in the Nagar Panchayat. The recommendations of the DPC dated 18.04.2018 are on record. The candidates, who were senior to the petitioner, were not found eligible, as they lacked the minimum qualifications prescribed. The petitioner's candidature was considered and not only found eligible, but also fit. Acting on the recommendations of the DPC, the President of the Nagar Panchayat, vide promotion order dated 01.05.2018, promoted the petitioner to the post of a Clerk in the Nagar Panchayat and a copy of the order was forwarded to the Director, Local Bodies.

9. The petitioner submitted a joining report, in compliance with the promotion order passed by the President, also on 01.05.2018, which was accepted. The petitioner says that he has been regularly discharging his duties in the clerical cadre ever-since his promotion on 01.05.2018, but has not been remunerated as a Class-III employee till date. He is still being paid the salary of a Class-IV employee. Though, the petitioner asserts in paragraph No.33 of the writ petition that he has been regularly representing in the matter to the President, Nagar Panchayat as well as the Executive Officer, claiming his remuneration, attached to a Class-III post and designation of the said post, the first of the representations that the petitioner has annexed is one dated 03.09.2022. It is also asserted that non-payment of salary to the petitioner attached to a Class-III post is discriminatory and arbitrary. There is no reason to deny him the higher salary.

10. Two counter affidavits have been filed on behalf of the Nagar Panchayat - one on behalf of the Executive Officer, and the other, on behalf of the President of the Nagar Panchayat, that is to say, respondent Nos.3 and 4. Another counter affidavit has been filed on behalf of the Director, Local Bodies, Government of U.P., Lucknow, respondent No.2. Besides these, an affidavit dated 14.12.2024 has been filed on behalf of the then Executive Officer, Satyendra Prakash. The foremost objection that has been taken in this affidavit is that the State Government had sanctioned one post of Clerk, one post of Watchman-cum-Peon and five posts of Sweeper vide letter dated 20.04.1987, and thereafter, no post of Clerk/ Class-III employee has been sanctioned by the Government. It is conceded that in case of emergency, employees of this rank can be appointed by the President under Section 70 of the U.P. Municipalities Act, 1916 (for short, 'the Act of 1916'), but it is averred that there is one sanctioned post of a Class-III employee with the Nagar Panchayat, against which, Anil Kumar Singh is appointed and discharging his duties. The stand in brief, therefore, in this affidavit is that against the solitary post of Clerk in the establishment of the Nagar Panchayat, Anil Kumar Singh is already working and there was no scope for the President to promote the petitioner to a Class-III post.

11. In the counter affidavit dated 05.01.2025, that has been filed by the Executive Officer, the stand is essentially the same, and it is averred that since there is one post of a Class-III employee, against which Anil Kumar Singh is functioning, the petitioner, who is a Class-IV employee, is being paid his salary as such. It is averred in paragraph No.16 of this affidavit that against the recommendations of the DPC dated 18.04.2018 and the promotion order dated 01.05.2018, passed by the President of the Nagar Panchayat, promoting the petitioner to a Class-III post, several complaints were lodged on the Integrated Grievance Redressal System of the State Government. An office report was invited from Anil Kumar Singh, a Clerk in the establishment of the Nagar Panchayat, who mentioned in his report that there is no sanctioned post for promoting the petitioner to a Class-III position. On the basis of the said report, the Executive Officer submitted a report to the Additional District Magistrate (Finance and Revenue), Shahjahanpur dated 23.12.2018 saying that though proceedings were taken to promote the petitioner by the then President and the then Executive Officer, but, in the absence of a vacant post in the Class-III cadre to place the petitioner against, no promotion was granted to him. It is averred in paragraph No.17 of the counter affidavit that the petitioner was never paid the benefits attached to the post of a Class-III employee and proceedings for his promotion were cancelled by the Executive Officer vide order dated 18.05.2018, of which the petitioner is well aware.

12. It is also asserted that the petitioner did not take any step against the order dated 18.05.2018, declining his promotion and cancelling proceedings thereof. It is acknowledged that the Executive Officer had certified in Form-I the cadre strength of Class-III employees in the Nagar Panchayat as two, but there is only one sanctioned post of a Class-III employee. There is a reference to the details of the affairs of the Nagar Panchayat for the financial years 2019-20, 2020-21 and 2021-22 submitted by the Executive Officer, where only one sanctioned post of a Class-III employee in the Nagar Panchayat establishment finds place. A copy of the relevant information in Form-I is annexed to the counter affidavit dated 05.01.2025.

13. There is another counter affidavit, also dated 05.01.2025, which has been filed by the President of the Nagar Panchayat, where the stand taken is the same that there is a single post of a

Class-III employee, against which, Anil Kumar Singh is functioning. There was no scope for the former President to have promoted the petitioner and those proceedings taken in favour of the petitioner are of no consequence.

14. The last of the counter affidavits is the one filed by the Director, Local Bodies, Lucknow. Here too, the stand taken is clearly encapsuled in paragraph No.8 of this counter affidavit, which reads:

"8. That it is respectfully submitted that as per the Government Order No. 1509/9-1-87-45-NaVi-ANU-1 dated 20.04.1987, there is only one sanctioned post of Clerk in Nagar Panchayat, Khutar, Shahjahanpur. This sanctioned post is currently occupied by a regularly appointed employee, Shri Anil Singh, who continues to discharge his duties on the said post. Presently, there is no vacancy in the Clerk cadre in the Nagar Panchayat, Khutar. True photocopy of the Government Order dated 20.04.1987 is being annexed herewith and marked as **ANNEXURE NO. C.A.-1** to this counter affidavit."

15. Rebutting the counter affidavit filed on behalf of the Director, Local Bodies, a rejoinder has been filed on behalf of the petitioner, where, it is emphasized that there were two working clerks in the establishment of the Nagar Panchayat prior to the petitioner's promotion. It is pointed out that one Deenanath was employed as a Clerk with the Nagar Panchayat and that after his death, one post of clerk fell vacant. On the basis of a proposal by the Board dated 06.12.1996, Rajpal, a Peon in the establishment, was promoted against Deenanath's post. It is emphasized that Rajpal was paid all benefits of clerk after promotion and upon his death, his wife was appointed as a Class-IV employee. It is averred in paragraph No.22 of this rejoinder affidavit that the Government Order dated 20.04.1987 relates to sanctioned posts in Town Area Khutar, District Shahjahanpur. The said G.O. does not say anything about the sanctioned posts available with the Nagar Panchayat Khutar. The Government Order dated 20.04.1987 relied upon by the respondents in order to determine the sanctioned strength of clerks with the Nagar Panchayat is misplaced; misplaced because it relates to the former Town Area and not the successor Nagar Panchayat.

16. In the rejoinder affidavit filed in reply to the counter affidavit dated 14.12.2024 filed on behalf of the Nagar Panchayat by their Executive Officer, the same stand is taken, whereby two posts of Clerk in the Nagar Panchayat establishment are mooted. It is pointed out that Rajpal was promoted in the vacancy caused by Deenanath's death in harness. After promotion, Rajpal was given all benefits attached to a clerk's post and his wife received leave encashment calculated on that basis. She was also granted compassionate appointment. Upon Rajpal's death, the post of Clerk fell vacant in the Nagar Panchayat establishment. The affairs of the Nagar Panchayat for the financial year 2016-17 reported to the Department of Urban Development by the then Executive Officer have been emphasized to show that the posts of clerks are not one, but two. The return, which has been submitted in Form-I, shows that in Class-III or Group-C, two posts are sanctioned, against which, one incumbent was working.

17. Mr. Harsh Vardhan Gupta, learned Counsel for the petitioner, has argued that the petitioner is still receiving the salary of a Class-IV employee *(Safai Karamchari)*, even after his promotion to a Class-III post vide order dated 01.05.2018. He has represented to the President and

the Executive Officer for grant of his due remuneration attached to the promotion post, but to no avail. It is next argued that the order of promotion passed in favour of the petitioner is still subsisting and the petitioner is working as a Clerk in the establishment of the Nagar Panchayat. The promotion order dated 01.05.2018 has never been cancelled by the President of the Nagar Panchayat. It is particularly urged by the learned Counsel for the petitioner that a perusal of the petitioner's service book shows that no cancellation of promotion has been recorded there, though the promotion order dated 01.05.2018 is eloquently mentioned.

18. Learned Counsel next submits that there were always two clerks working in the establishment of the Nagar Panchayat, a fact evident from details of affairs of the Nagar Panchayat for the year 2016-17 submitted to the Department of Urban Development. About the Government Order dated 20.04.1987 relied upon by the respondents, it is said by the learned Counsel for the petitioner that the Government Order of 1987 relates to sanctioned post for Town Area Khutar, but not the upgraded Nagar Panchayat.

19. The Director, Local Bodies, in his affidavit, does not say anything about the applicability of the Government Order dated 20.04.1987 to the Nagar Panchayat. On the other hand, it is pointed out by the learned Counsel for the petitioner that details of affairs of the Nagar Panchayat for the year 2015-16 published by the Department of Urban Development confirmed that there are two posts of Clerk in the Nagar Panchayat. Out of these, one is occupied and the other, vacant. In this connection, our attention has been drawn by the learned Counsel for the petitioner to Annexure No.5, page No.51 of the affidavit dated 18.12.2024 filed on behalf of the petitioner.

20. It is also urged that the clerk, who is said to be functional on one of the two posts and claimed to be validly appointed as such in the Nagar Panchayat establishment, was actually a daily-wager, who was illegally appointed as a Clerk by the Nagar Panchayat in their establishment on temporary basis, without any regularization. In this connection, learned Counsel for the petitioner has drawn the Court's attention to Anil Singh's appointment letter, annexed as Annexure No. RA-4 to the rejoinder affidavit dated 10.01.2025, filed by the petitioner, in reply to the counter affidavit filed by the Director, Local Bodies.

21. Mr. Bhanu Bhushan Jauhari, learned Counsel for the Nagar Panchayat, on the other hand, sticks to the Nagar Panchayat's stand that there is no other post of a Clerk in their establishment sanctioned by the Government except one, and for the purpose, places reliance on the Government Order dated 20.04.1987, sanctioning a solitary post in the clerical cadre for the then Town Area Khutar, District Shahjahanpur. He has drawn our attention to Annexure No. CA-2 to the counter affidavit dated 05.01.2025. He has submitted that the President of the Nagar Panchayat was directed by the Director, Local Bodies, to promote Class-III employees in accordance with rules, but that does not mean that against a non-existing vacancy, promotion could be granted to the petitioner. He says that after the resolution had been passed by the Board to grant promotion to the petitioner on 27.03.2018, the DPC was a mere formality at the hands of the then President to ignore the claims of seniors in the Class-IV cadre.

22. It is emphasized that the petitioner, after his promotion, under orders of the then President, did not claim emoluments attached to the post from the month of May, 2018 till 30.09. 2022, which

is the first time that he moved the Nagar Panchayat Authorities, claiming higher emoluments. It is urged that the said fact makes it clear that non-raising of grievance by the petitioner was the result of his awareness of the fact that he had no case to claim promotion. The petitioner's promotion was withheld, because Rakesh Kumar Bhargav, another eligible employee, had complained against the DPC's recommendations on the Integrated Grievance Redressal System, and in reply to queries by the State Government, the Executive Officer had conceded that there is only one post in the Class-III cadre, to which the petitioner Rajeev Kumar has not been promoted. The information regarding the vacancy position in Class-III submitted in Form-I for the financial year 2016-17 is submitted by the learned Counsel for the Nagar Panchayat to be based on the information submitted by the then Executive Officer for the year 2015-16. The said information is incorrect. It is for this reason that in the subsequent years 2019-20, 2020-21 and 2021-22, the cadre position has been rectified and a solitary post of Class-III shown in the establishment of the Nagar Panchayat. It is asserted that the solitary post of Class-III is the one against which Anil Kumar Singh is functioning.

23. Upon hearing learned Counsel for the parties, what we find is that irrespective of the question whether the sanctioned post in the Class-III cadre are one in number or two, it is difficult to accept the petitioner's contention that his promotion could be considered against a promotion quota of 20%, where the number of posts at best is only two. The quota of 20% would work out to a figure of less than 0.5 or half, where the quota would remain largely ineffective unless the strength of the cadre increases, assuming that some reservation under the promotion quota is admissible. The record shows that there is statement for two years given by the Nagar Panchayat and approved by the State Government, where the number of posts in the clerical cadre are shown as two. This is for the years 2015-16 and 2016-17. The fact that this was a mistaken mention in Form-I submitted by the Nagar Panchayat is evident from the fact that for the subsequent financial years 2019-20, 2020-21 and 2021-22, the Executive Officer has clearly mentioned one sanctioned post of Class-III in the Nagar Panchayat establishment.

24. Our attention has been drawn to Annexure No. CA-4 of the counter affidavit dated 05.01.2025 filed by the Executive Officer, where in Form-I, the number of posts sanctioned in Class-III or Group-C is mentioned one, which is shown as occupied. The said form relates to the financial year 2020-21. This position of the cadre strength has been repeated in Form-I submitted by the Nagar Panchayat for the financial year 2021-22. It is, thus, evident that the mention earlier made in the financial years 2015-16 and 2016-17, showing the cadre strength of Class-III as two posts, is a mistaken reference. It was revised by the Nagar Panchayat in subsequent financial years, without objection from the State Government or the Director, Local Bodies. Apparently, therefore, there is a solitary post in the Class-III cadre, against which, Anil Kumar Singh is working. The challenge to Anil Kumar Singh's appointment to Class-III cannot be examined in this petition, because neither originally nor through an amendment, the appointment letter in favour of Anil Kumar Singh, also issued by the President of the Nagar Panchayat, has been challenged. It has been brought on record along with a rejoinder affidavit filed by the petitioner on 10.01.2025, and if the petitioner so desired, he could have challenged the said promotion letter/ order passed in favour of Anil Kumar Singh. The petitioner has never done that.

25. So far as the petitioner's own promotion to the post of a Clerk is concerned, no doubt, in the service book relating to the petitioner, a promotion order dated 01.05.2018 finds mention and

there is no cancellation of that order recorded by any competent authority, but the fact remains that the entire proceedings for the petitioner's promotion were cancelled by the Executive Officer vide order dated 16.05.2018 as non est, since no post was available. The order cancelling the petitioner's promotion proceedings is recorded in the original records as an order dated 16.05.2018 passed by the Executive Officer, which reads: *"Pronnati ki prakriya pad na hone ke karan nirast ki jati hai"*.

26. True, it is again, that this order dated 16.05.2018 was communicated to the petitioner, as the records would show, when it was made and apparently, it was made without hearing him, but a copy of this order has been annexed as Annexure No. CA-3, along with the detailed office note, also dated 16.05.2018, on the foot of which, the Executive Officer has passed the order dated 16.05.2018. This order figures as Annexure No. CA-3 to the counter affidavit dated 05.01.2025 filed by the Executive Officer. If the petitioner wanted to challenge this order, he could have challenged it, but, has not done that. He has applied for a writ of mandamus to pay him salary according to the apparent tenor of the promotion order passed in his favour.

27. It is true, no doubt, that a writ of mandamus is one of the widest import and can be issued to undo wrongs in the absence of the formality of challenge. But, where the rights are not clear and orders stand in way, which have to be quashed, and those orders have not been substantially questioned, it is difficult to quash such orders and grant relief. It is also noteworthy that the order dated 16.05.2018 passed by the Executive Officer, read together with the circumstance that the petitioner was never paid his emoluments attached to a Class-III post, would show that the petitioner's promotion, that he claims to have been made by the President, was never a concluded transaction, in terms of which, his rights crystallized. It was inchoate. Therefore, it was undone by the Executive Officer by a cancellation of proceedings for promotion and not a revocation of the promotion order. The endorsement of the promotion order in the petitioner's service book, which carries no endorsement of its revocation, would, therefore, be not of much consequence.

28. There is another and the most substantial feature of the matter, which stares the petitioner in the face, when he seeks relief based on the promotion order dated 01.05.2018. The fact is that eversince the petitioner's promotion order was made, though he says that he performed duties attached to the post of a Clerk, he never claimed emoluments admissible for the promotion post right from 01.05.2018 until 03.09.2022. He admittedly filed the first of his representations on 03.09.2022, claiming higher emoluments, addressed jointly to the President and the Executive Officer of the Nagar Panchayat. It is, indeed, surprising and very unnatural for a promotee to discharge duties on the promotion post and not claim emoluments attached to it for as long a period as four years and more. Rather, the petitioner continued to receive salary attached to the Class-IV post and it is not that, that he asserted his rights to higher emoluments based on the promotion allegedly granted to him during all this while. This is a case where the petitioner did not move at all and continued to receive his Class-IV salary. This inaction for a period of four years is telltale of the fact that the petitioner knew all along that he had no claim founded on the promotion order. Else, he would have swung into action to claim higher emoluments, when he was deprived of his higher salary or emoluments within a month or two.

29. In the totality of circumstances, we are of clear opinion that the petitioner is not entitled to any relief.

30. In the result, this writ petition **fails** and stands **dismissed**.

31. There shall be no order as to costs.

32. Let the original records produced by Mr. Bhanu Bhushan Jauhari, Advocate be returned forthwith for their onward transmission to the Executive Officer, Nagar Panchayat Khutar, District Shahjahanpur.

(2026) 2 ILRA 1475
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ A No. 32433 of 2015

Rajiv Mishra ...Petitioner
Versus
Managing Director Central Bank of India & Ors. ...Respondents

Issue for Consideration

(1) Legality of the order passed by the Bank-authority rejecting the application for Ex-gratia payment on the ground of its being filed beyond period of six months as provided under the Circular dated 09.04.2008.

Headnotes

(A) Service law – Ex-gratia payment in lieu of compassionate appointment – Entitlement – Period of limitation – Under the Circular dated 09.04.2008, the limitation of filing the application for Ex-gratia payment is six months from the date of death of employee, however application was filed beyond it – Authority rejected the application on the ground of delay – Validity challenged – Bank issued a letter dated 23.2.2013 that instead of compassionate appointment, Ex-gratia payment can be made on submission of the required papers – Lack of knowledge of Circular – Relevance – Bank failed to show that the internal document regarding limitation period was communicated to the legal heirs of deceased employee – Effect : (E-1)

Held : The internal circular of Bank are normally not within the knowledge of any person, who is not connected with the Bank unless the same is published and is widely circulated. It is not the case of the Bank that petitioner was having knowledge of the circular dated 9.4.2008 at the time of death of employee **–** Coupled with the facts that Bank itself by letter dated 23.2.2013 has invited the application from the petitioner for submitting application for Ex-gratia payment then the date of knowledge of aforesaid circular, at best, can be taken from the date of letter dated 23.2.2013 **–** In view of the letter dated 23.2.2013 of the respondent-Bank and coupled with the fact that internal circular cannot by itself cause a limitation on applying unless the internal document is communicated to legal heirs of deceased employee, which in the present case, Bank has not shown, the impugned letter/orders dated 19.9.2013 and 8.11.2013 passed by respondent no. 2 is hereby set aside. [Para 6, 7 and 8]

List of Acts

Circular dated 09.04.2008.

List of Keywords

Compassionate appointment, Ex-gratia payment, Limitation, Internal Circular of Bank.

Case Arising From

Order dated 08.11.2014 of the Bank-authority rejecting the application for Ex-gratia lump sum in lieu of compassionate appointment.

Appearances for Parties

Advs. for the Petitioner : B. P. Verma.
Advs. for the Respondents : Gyan Prakash Shrivastava, V. K. Srivastava.

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

1. Heard learned counsel for the petitioner, learned counsel for respondent-Bank and learned Standing Counsel for the State.

2. The writ petition is filed with the following prayer:

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned letter\orders dated 19.9.2013 and 8.11.2013 passed by respondent no.2 contained in Annexure no 8 and 12 respectively to the writ petition.

(ii) Issue a writ, order or direction in the nature of Mandamus directing the respondent Bank to consider the application of the petitioner for appointment under dying in harness rules.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding and directing the respondent Bank to provide Ex-gratia payment to the petitioner in lieu of the appointment."

3. It is submitted by learned counsel for petitioner that mother of petitioner was employee of the respondent-Bank, who died on 7.10.2011. Petitioner had applied for compassionate appointment on 8.2.2013. In response thereof, respondent-Bank has issued a letter dated 23.2.2013 that compassionate appointment cannot be awarded, however, Ex-gratia payment can be made, if the papers are submitted as required by the Bank. In pursuance thereof, brother of petitioner Sanjeev Mishra have applied on 7.7.2013. The aforesaid application for Ex-gratia payment in lieu of compassionate appointment was rejected by Bank on 8.11.2014 on the ground that application for Ex-gratia lump sum in lieu of compassionate appointment has to be submitted within six month from the date of death of employee. Learned counsel for petitioner submits that it is only when the Bank has invited the aforesaid application from the petitioner by letter dated 23.2.2013 for Ex-gratia payment, the brother of petitioner had applied, who in the year 2017 has died. Therefore, the present writ petition was filed by petitioner as Ex-gratia payment is for the benefit of whole family and as such, petitioner is also entitled to claim Ex-gratia payment. Learned counsel for petitioner submits that limitation as has been stated of six month has arisen out of circular of the respondent-Bank, which is filed at page 12 of the counter affidavit. The circular is of 9.4.2008. Learned counsel for petitioner submits that circular is internal document of respondent-Bank and it was not within the knowledge of legal heirs of deceased employee and as such, application for Ex-gratia

payment could not be made. Even otherwise, it is the Bank, who has communicated by letter dated 23.2.2013 to apply for Ex-gratia payment, then the application has been filed within six months.

4. Learned counsel for respondent-Bank submits that as per circular of the Bank Ex-gratia payment is required to be applied within six month from the date of death of employee. Learned counsel for respondent-Bank has relied upon circular dated 9.4.2008 of the Bank, which is filed as Annexure No.CA-1 to the counter affidavit. Learned counsel for respondent-Bank submits that in view of the fact that application was filed beyond limitation prescribed in the aforesaid circular, the claim for Ex-gratia payment has been rejected.

5. On a query being made to learned counsel for respondent-Bank as to why Bank has issued a letter dated 23.2.2013 filed along with writ petition as Annexure No.3 for inviting application for Ex-gratia payment when the Bank was very well aware that the application is required to be filed as per circular within six months from the date of death of employee, learned counsel for respondent-Bank could not give any satisfactory reply in this respect.

6. It is to be seen that Ex-gratia payment is in lieu of compassionate appointment. The mother of petitioner was employee of Bank, which fact is admitted to the Bank. The internal circular of Bank are normally not within the knowledge of any person, who is not connected with the Bank unless the same is published and is widely circulated. It is not the case of the Bank that petitioner was having knowledge of the circular dated 9.4.2008 at the time of death of employee. It is not shown by learned counsel for respondent-Bank that the legal heirs of deceased employee was communicated with the circular of the Bank dated 9.4.2008. Coupled with the facts that Bank itself by letter dated 23.2.2013 has invited the application from the petitioner for submitting application for Ex-gratia payment then the date of knowledge of aforesaid circular, at best, can be taken from the date of letter dated 23.2.2013. As per impugned order, application for Ex-gratia payment has been made on 7.7.2013 by the brother of petitioner, namely, Sanjeev Mishra. Although, learned counsel for respondent-Bank tries to impress upon the Court that brother of petitioner had applied for Ex-gratia payment and his application was rejected by means of impugned order. It is not in dispute that brother of petitioner Sanjeev Mishra has expired in the year 2017. It is further to be noted that Ex-gratia payment is for the benefit of family members of the deceased employee and as such, each member of the family would be entitled to claim the same.

7. In view of the letter dated 23.2.2013 of the respondent-Bank and coupled with the fact that internal circular cannot by itself cause a limitation on applying unless the internal document is communicated to legal heirs of deceased employee, which in the present case, Bank has not shown.

8. In view of aforesaid, the impugned letter/orders dated 19.9.2013 and 8.11.2013 passed by respondent no.2 is hereby set aside and the matter is remanded bank to respondent no.2 to consider the application of petitioner for Ex-gratia payment in lieu of compassionate appointment without going into the question of limitation, within a period of three months from the date of production of a certified copy of the order. If the Bank requires any document or formality is to be completed, the same may be communicated to the petitioner in writing within 15 days from the date of production of a certified copy of the order and the petitioner would oblige to complete the aforesaid formality within one month thereafter.

9. Accordingly, the writ petition is **allowed.**

(2026) 2 ILRA 1478
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 34343 of 2013

Santosh Kumar Sharma ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether the Court in the present case can interfere with the outcome of the disciplinary proceedings?
(b) Whether on the basis of subsequent acquittal in criminal trial, impugned order (dated 15.05.2013 which held the correctness of the inquiry report, wherein all charges against petitioner were found proved) can be set aside?

Headnotes

A. Service Law – Mere suspicion should not be allowed to take the place of proof even in domestic enquiries. The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally (sic, legally) the impugned conclusion follows or not. (Para 14)

In present case, petitioner was granted ample opportunity to appear and place his case before Inquiry Officer. Inquiry Officer has submitted a very detailed inquiry report wherein statement of victim girls were recorded and despite granting various opportunities, he has not availed the same and as such Court is of considered opinion that, **inquiry was conducted after complying principles of natural justice.** (Para 11)

After second show cause notice was issued, again petitioner was granted ample opportunities to present his case, however, he has opted not to appear, therefore, Committee of Management adopted a very detailed proposal, wherein all materials were mentioned specifically, after detailed consideration. (Para 12)

On basis of directions of this Court, matter was referred to Commission, which has passed impugned order that outcome of inquiry was against petitioner and punishment was correctly awarded considering nature of allegations. **There is no ground for this Court to disbelieve the statement of victim girls recorded during inquiry wherein they have supported their respective complaints** that petitioner was indulged in explicit sexual conversation and unwarranted touch with victims. (Para 13)

Therefore, **this Court does not find that within very limited scope of interference, outcome of disciplinary proceedings can be interfered.** (Para 14)

B. As per the cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives. (Para 17)

The first thing is whether acquittal is an honourable acquittal or not? In present case, despite victims have made categorical statement before trial Court and supported the prosecution case, still only on a ground that there was an enmity between petitioner and Manager of concerned Committee of Management, the cogent statement of victim was disbelieved and order of acquittal was granted. (Para 16)

Acquittal in criminal trial would have no bearing on the outcome of disciplinary proceedings and Court also finds that nature of allegations against petitioner are very serious and which have been proved on basis of statement of victims which also remained consistent even during criminal trial. **The acquittal was not an honourable acquittal.** (Para 18)

Writ petition dismissed. (E-4)

Case Law Cited

1. Bhupinderpal Singh Gill Vs. State of Punjab and others, 2025 SCC Online SC 113 (Para 14)
2. Deputy Inspector General of Police and another Vs. S.Samuthiram, 2013 (1) SCC 598 (Para 16)
3. State of Rajasthan and Ors. Vs. Love Kush Meena, 2021 SCC Online SC 252 (Para 16)
4. Maharana Pratap Singh Vs. The State of Bihar and others, 2025 INSC 554 (Para 17)
5. Ram Lal Vs. State of Rajasthan, (2024) 1 SCC 175 (Para 17)
6. Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay, (2022) 2 SCC 696 (Para 17)

List of Keywords

disciplinary proceedings, suspension, charge sheet, inquiry report, management, service.

Appearances for Parties

For Petitioner(s): Santosh Kumar Sharma
For Respondent(s): A.K.S. Parihar, C.S.C., Rajesh Kumar Singh, Vibhanshu Vaibhav

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

1. In the present case, petitioner was appointed a Subject Expert in Jagatpur Inter College, Jagatpur, Varanasi in the year 2002 and has faced a disciplinary proceedings on basis of a written complaint made by four girl students about use of sexual explicit language by him and an allegation of unwarranted physical touch was also made.

2. A show cause notice dated 28.09.2010 was issued to petitioner. Subsequently, he was put under suspension vide order dated 30.09.2010 which was disapproved vide an order dated 17.06.2011 passed by D.I.O.S., Varanasi. Subsequently, the petitioner was served with a charge sheet dated 03.12.2011 on following four charges :-

"सेवा में,

संतोष कुमार शर्मा निलम्बित स०अ०, जगतपुर इण्टर कालेज, जगतपुर, वाराणसी ग्राम-खुलासापुर, पोस्ट-लोहता, जिला-वाराणसी आपके विरुद्ध निम्नलिखित आरोप लगाये जाते हैं-

आप सहायक अध्यापक के पद पर जगतपुर इण्टर कालेज, जगतपुर, वाराणसी में कार्यरत रहे है/थे तथा आपके द्वारा, विद्यालय की छात्राओं के साथ अश्लील हरकत, छेड़खानी, गाल पकड़ना, गंदी-गंदी बातें करना, अध्यापक के गरिमा के विपरीत आचरण विगत काफी दिनों से की जाती रही। विद्यालय की छात्राओं रिंकू, पूजा, रेशमा एवं संजू आपके उक्त अमर्यादित व्यवहार से परेशान होकर विद्यालय के प्रधानाचार्य को मौखिक एवं लिखित रूप

से क्रमशः 24.09.10 एवं 28.09.2010 को शिकायत की थी इस सम्बन्ध में आपकों आवश्यक स्पष्टीकरण देने हेतु निर्देशित किया गया था जिसका अनुपालन आप द्वारा नहीं किया गया है। आपका उक्त आचरण अमर्यादित एवं गुरुकुल परम्परा के विपरीत तथा विद्यालय का पठन-पाठन कार्य को बाधित करना रहा है।

आपको एतदद्वारा निम्नानुसार आरोपित किया जाता है-

1. आपके ऊपर यह आरोप है कि आप द्वारा कालेज की छात्रा रिंकू चौरसिया की छात्रा रही और वर्तमान समय में कक्षा-12 की छात्रा है के साथ अश्लील हरकत छेड़खानी, दुपट्टा खीच लेना, गाल पकड़ना तथा उठवा ले जाने की धमकी देना जैसी अमर्यादित कार्य किया गया जिसके लिए आप दोषी है।

साक्ष्य जिन पर आरोप के समर्थन में विचार किया जाना प्रस्तावित है-

क- छात्रा रिंकू का पत्र दिनांक 12.10.11 की छायाप्रति। संलग्नक संख्या-1

2. आपके ऊपर यह आरोप है कि आप द्वारा कालेज की कक्षा-9 की छात्रा पूजा जो वर्तमान समय में कक्षा-10 की छात्रा है के साथ अश्लील हरकत, गंदी-गंदी बातें करना, गाल पकड़ना एवं अमर्यादित शब्दों का प्रयोग करने के आप दोषी है-

साक्ष्य जिन पर आरोप के समर्थन में विचार किया जाना प्रस्तावित है-

क- छात्रा पूजा का पत्र दिनांक 10-10-2011 की छायाप्रति। संलग्नक संख्या -2

3. आपके ऊपर यह आरोप है कि आप द्वारा कालेज की कक्षा-7 की छात्रा रेशमा जो वर्तमान में कक्षा-8 की छात्रा है के साथ अश्लील हरकत, गंदी-गंदी बातें करना, गाल पकड़ना एवं अमर्यादित शब्दों का प्रयोग करने के आप दोषी है-

साक्ष्य जिन पर आरोप के समर्थन में विचार किया जाना प्रस्तावित है-

क- छात्रा रेशमा का पत्र दिनांक 12.10.11 की छायाप्रति। संलग्नक संख्या -3

4. आपके ऊपर यह आरोप है कि आप से मांगे गये स्पष्टीकरण के सम्बन्ध में सत्य एवं सम्यक् तथ्य प्रस्तुत न करने के आप दोषी है।

साक्ष्य जिन पर आरोप के समर्थन में विचार किया जाना प्रस्तावित है-

क- आप द्वारा दिया गया स्पष्टीकरण। संलग्नक संख्या -4

ख- इन्द्रजीत प्रसाद, प्रवक्ता अंग्रेजी द्वारा दिया गया पत्र दिनांक 12-10-2011 की छायाप्रति संलग्नक संख्या -5

ग- जगदीश नारायण, प्रवक्ता, अर्थशास्त्र के पत्र दिनांक 13-10-2011 की छायाप्रति संलग्नक संख्या -6

घ- प्रेम नाथ वर्मा, सहायक अध्यापक के पत्र दिनांक 12-10-2011 की छायाप्रति संलग्नक संख्या -7

ङ- अतुल कुमार सिंह, सहायक अध्यापक के पत्र दिनांक 12-10-2011 की छायाप्रति संलग्नक संख्या -8

च- राजेन्द्र प्रसाद, परिचारक के पत्र दिनांक 08-10-2011 की छायाप्रति संलग्नक संख्या-9

एतद्द्वारा आपसे प्रत्येक आरोप के उत्तर में अपने बचाव का लिखित विवरण दिनांक 26-12-2011 को या इसके पूर्व प्रस्तुत करने की अपेक्षा की जाती है। आपको सचेत किया जाता है कि यदि अधोहस्ताक्षरी द्वारा निर्धारित समय में आपसे ऐसा कोई विवरण प्राप्त नहीं होता है तो, यह उपधारणा कि जायेगी कि आपको कुछ नहीं प्रस्तुत करना है और जिसकी जिम्मेदारी आपकी होगी। साथ ही साथ आपसे अधोहस्ताक्षरी को लिखित रूप में यह सूचित करने की अपेक्षा की जाती है कि क्या आप व्यक्तिगत सुनवाई के लिए इच्छुक हैं और यदि आप किसी साक्षी की परीक्षित करना या प्रतिपरीक्षा चाहते हैं तो अपने लिखित विवरण के साथ उनका नाम, पता एवं साक्ष्य को जिसे प्रत्येक ऐसे साक्षी से देने की प्रत्याशा की जायेगी, संक्षिप्त विवरण दिनांक 25-12-11 समय 4.00 बजे सायं तक अधोहस्ताक्षरी के कार्यालय (भौतिक विज्ञान प्रयोगशाला कक्ष) में प्रस्तुत करना सुनिश्चित करें।"

3. Subsequently, an inquiry was conducted and a detailed inquiry report dated 12.03.2012 was submitted wherein all four charges against petitioner were found proved. A copy of inquiry report was not enclosed along with present writ petition though it was annexed with counter affidavit. From perusal of inquiry report, it would be clearly evident that it was passed on basis of statement of victim girls before Inquiry Officer as well as evidence of other witnesses.

4. Subsequently, a show cause notice was issued along with copy of Inquiry Report to petitioner and he was asked to appear and to submit his reply. Finally, the petitioner submitted a reply to show cause notice on 07.05.2012 though it appears that despite various notices, he has not appeared in person and accordingly, the Committee of Management adopted the proposal dated 27.05.2012 wherein matter was considered at length and Inquiry Report was accepted. In the proposal, it was specifically noted that petitioner has intentionally not appeared to submit his stand on Inquiry Report.

5. Above referred adopted proposal was send to D.I.O.S. concerned for approval, however, by an order dated 08.08.2012, approval was disapproved. Aforesaid order was thereafter challenged at behest of Committee of Management by way of filing Writ A No. 42480/2012 which was allowed vide order dated 28.08.2012 and order dated 08.08.2012 was quashed and it was directed that D.I.O.S. will transmit entire papers to U.P. Secondary Education Services Board, Allahabad who will take a decision in accordance with law. For reference, relevant part of said order is quoted below:-

"After respective arguments have been advanced, factual situation, which has so emerged in the present case, is that the charges levelled against respondent No.4 were serious in nature, and this Court had passed a precise order that disciplinary proceedings be concluded within two months and it had been categorically mentioned that respondent No.4 would remain under suspension. The Committee of Management of the institution thereafter proceeded to undertake disciplinary proceedings and concluded the same, and thereafter resolution has been passed for dispensing with the services of respondent No.4 after the report of the Inquiry Officer had been received on 12.03.2012. Respondent No.4 had been given opportunity to show cause vide notice dated 13.04.2012 followed by reminder dated 28.04.2012. It is precise case of the Committee of Management that respondent No. 4 did not turn up and thereafter o 27.05.2012 resolution had been passed and entire papers had been forwarded to the District Inspector of Schools for the purposes of approval under Section 21 of U.P. Act No. 5 of 1982, as the termination order cannot be passed without there being prior approval of the U.P. Secondary Education Service Selection Board.

Requirement of forwarding papers to the U.P. Secondary Education Services Selection Board is governed by the provisions of U.P. Secondary Education Services Commission (Procedure for Approval or Punishment) Regulation, 1985. In spite of the fact that under the aforementioned U.P. Secondary Education Services Commission (Procedure for Approval or Punishment) Regulation, 1985, respondent No.4 had no role to play, even then purported appeal was filed by him before the District Inspector of Schools, the District Inspector of Schools entertained the said appeal and most surprisingly thereafter has proceeded to pass the impugned order dated 13.08.2012. The District Inspector of Schools had no authority to go into the validity of the resolution dated 27.05.2012, inasmuch as authority to examine the validity of the said resolution was within the domain of the U.P. Secondary Education Services Selection Board, and under clause 5 of the U.P. Secondary Education Services Commission (Procedure for Approval or Punishment) Regulation, 1985, the only option open to the District Inspector of Schools was to transmit the entire papers to the U.P. Secondary Education Services Selection Board and in case there was any shortcoming in the documents so submitted, the only course open to the District Inspector of Schools was that he could have made a note thereof and forwarded the same to the U.P. Secondary Education Services Selection Board. In the present case, the District Inspector of Schools deliberately deliberated upon the resolution passed by the Committee of Management and has given his own findings. This exercise undertaken by the District Inspector of Schools is totally beyond his competence and reflects his unawareness of statutory provisions, as in the garb of deciding appeal totally unwarranted order has been passed. While exercising the authority under Section 21 of U.P. Act No. 5 of 1982 even as per the provisions of U.P. Secondary Education Services Commission (Procedure for Approval or Punishment) Regulation, 1985, the U.P. Secondary Education Services Board is empowered to call for the records from the Management, as such the District Inspector of Schools has totally misused his authority in the present case while proceeding to pass the impugned order.

Sri R. K. Ojha's submission, that proceedings is bad, has to be examined by the U.P. Secondary Education Services Selection Board and not by this Court, and here the only question is qua the exercise of authority by District Inspector of Schools.

Consequently, present writ petition succeeds and the same is allowed. The impugned order dated 08.08.2012 passed by the District Inspector of Schools, Varanasi is hereby quashed and set aside. The District Inspector of Schools is directed to transmit the entire papers to the U.P. Secondary Education Services Board, Allahabad within one month from the date of receipt of a certified copy of this order, and the U.P. Secondary Education Services Board, Allahabad is directed to deal with the same and take appropriate decision on the same, in accordance with law, by means of reasoned and speaking order, within next two months, after taking view point of the Committee of Management of the institution as well as respondent No. 4."

6. In aforesaid circumstances, matter was heard by Secretary, U.P. Secondary Education Services Board and proposal of concerned Committee of Management was approved by impugned order dated 15.05.2013 that inquiry report has come to correct conclusion. Aforesaid order dated 15.05.2013 is impugned in present writ petition.

7. During disciplinary proceedings, one of victims has also lodged an FIR against petitioner which was ultimately culminated into criminal trial, however, trial was concluded vide judgment dated 24.01.2019 whereby petitioner was granted acquittal.

8. In said judgment, victim girl who appeared as PW-1 has in fact supported the prosecution case in entirety. The PW-4 another victim has also stated that petitioner has misbehaved sexually with her, however, trial Court has disbelieved statement of victims despite they remained consistent only on a ground that there was prior enmity between petitioner and Manager and victims were created and finally held that prosecution has failed to prove charge beyond reasonable doubt.

9. Sri Santosh Kumar Sharma, Petitioner-in-person has made an attempt to take advantage of order of acquittal that if statement of victims is disbelieved in criminal trial, petitioner cannot be punished in disciplinary proceedings on basis of same nature of statement given by victim girls, though he has also submitted that order impugned is not a reasoned order.

10. Per contra, Sri Rajesh Kumar Singh, learned counsel for respondent-5 has supported the impugned order.

11. As referred above, petitioner was granted ample opportunity to appear and place his case before Inquiry Officer. Inquiry Officer has submitted a very detailed inquiry report wherein statement of victim girls were recorded and despite granting various opportunities, he has not availed the same and as such Court is of considered opinion that in present case, inquiry was conducted after complying principles of natural justice. During inquiry, statement of victim girls were recorded who have supported their respective complaint. Victims have given answers to questions asked during inquiry. Petitioner was asked to appear during inquiry but he refused on one or other reason.

12. After second show cause notice was issued again, petitioner was granted ample opportunities to present his case, however, he has opted not to appear, therefore, Committee of Management has adopted a very detailed proposal wherein all materials were mentioned specifically and Members of Committee of Management being adopted it after detailed consideration.

13. On basis of directions passed by this Court, matter was referred to Commission and Secretary of it has passed impugned order that outcome of inquiry was against petitioner and punishment was correctly awarded considering nature of allegations. There is no ground for this Court to disbelieve the statement of victim girls recorded during inquiry wherein they have supported their respective complaints that petitioner was indulged in explicit sexual conversation and unwarranted touch with victims.

14. Therefore, this Court does not find that within very limited scope of interference, outcome of disciplinary proceedings can be interfered and for that Court takes note of few paragraphs of **Bhupinderpal Singh Gill Vs. State of Punjab and others, 2025 SCC Online SC 113** which are quoted below :-

"33."Certain generic principles governing interference with orders of punishment that are passed following inquiry proceedings have evolved over a period of time. Law is well settled that an administrative order punishing a delinquent employee is not ordinarily subject to correction in judicial review because the disciplinary authority is the sole judge of facts. If there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the high court in a writ petition filed under Article 226 of the Constitution. However, should on consideration of the materials on record, the court be satisfied that there has been a violation of the principles of natural justice,"or"that the inquiry proceedings have been conducted contrary to statutory regulations prescribing the mode of such inquiry,"or"that the ultimate decision of the disciplinary authority is vitiated by considerations extraneous to the evidence and merits of the case,"or"that the conclusion of the disciplinary authority is"ex facie"arbitrary or capricious, so much so that no reasonable person could have arrived at such conclusion,"or"there is any other ground very similar to the above, the high court may in the exercise of its discretion interfere to set things right. After all, public servants to whom Article 311 of the Constitution apply do enjoy certain procedural safeguards, enforcement of which by the high court can legitimately be urged by such servants depending upon the extent of breach that is manifestly demonstrated.

34.It would further be of immense profit, at this stage, to consider a specific principle which is tailored to the particular situation and could clinch the issue. The Constitution Bench of this Court, speaking through Hon'ble P.B. Gajendragadkar, J., in"Union of India"v."H.C. Goel8"laid down a specific test which could be applied if a contention were raised that the conclusion is based on no evidence. Relevant passages from the said decision evincing one of the two questions arising for decision and the answer thereto, read as follows:

"1. Two short questions of law arise for our decision in the present appeal. The first question is " ; and the other question is whether the High Court in dealing with a writ petition filed by a Government Officer who has been dismissed from Government service is entitled to hold that the conclusion reached by the Government in regard to his misconduct if (sic, is) not supported by any evidence at all. As our judgment will show, we are inclined to answer both the questions in the affirmative. Thus, the appellant, the Union of India, succeeds on the first point, but fails on the second. "

20. ...It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2),the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all.It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a

public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence...

23. .. In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question;but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally (sic, legally) the impugned conclusion follows or not.""

26. " Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose,mere suspicion should not be allowed to take the place of proof even in domestic enquiries.It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules."

(emphasis supplied)

35.It also needs to be emphasised that although the traditional concept of natural justice comprises of the two rules that prohibit anyone from being condemned unheard and anyone from being a judge of his own cause, jurisprudence on natural justice principles have seen a distinct shift ever since the decision in"Maneka Gandhi"v."India9"constitutionalised principles of natural justice, as held in"Madhayamam Broadcasting Ltd."v."Union of India10. Drawing inspiration from such authorities, it would be apt to observe that in relation to disciplinary proceedings, subject to just exceptions, natural justice would envisage observance of procedural fairness before holding a public servant guilty of misconduct and imposing a punishment on him for such misconduct. While it is true that principles of natural justice supplement, and not supplant, the law, such principles have been declared by this Court to be a constituent feature of Article 14. Validity of any disciplinary action, whenever questioned, has to be tested on the touchstone of Articles 14, 16 and 21 as well as Article 311(2), wherever applicable. To test whether interference is warranted, this Court has laid down that the scrutiny ought to be confined to finding out whether the disciplinary proceedings have been conducted fairly; if not, an inference can be drawn that this has caused prejudice to the charged employee. Be that as it may, there can be no gainsaying that the consequences of violation of a fair procedure, which principles of natural justice embody, in a given situation has to be considered on a case-by-case basis bearing in mind that judicial review is not intended to be an appeal in disguise."

15. Now, Court proceeds to consider whether on basis of subsequent acquittal in criminal trial, impugned order can be set aside.

16. The first thing is whether acquittal is an honourable acquittal or not. As mentioned in earlier paragraphs, despite victims have made categorical statement before trial Court and supported the prosecution case, still only on a ground that there was an enmity between petitioner and Manager of concerned Committee of Management, the cogent statement of victim was disbelieved and order of acquittal was granted, therefore, it is not a case of honourable acquittal and for reference, relevant part of judgments passed by Supreme Court in **Deputy Inspector General of Police and another Vs. S.Samuthiram, 2013 (1) SCC 598** as well as **State of Rajasthan and Ors. Vs. Love Kush Meena, 2021 SCC Online SC 252** are quoted below :-

DIGP vs. S. Samuthiram

"24. The meaning of the expression "honourable acquittal' came up for consideration before this Court in RBI Vs. Bhopal Singh Panchal, (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal', "acquitted of blame', "fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted." (Emphasis added)"

State of Rajasthan vs. Love Kush Meena

"15. It is pointed out that various nuances arising in this judgment has been considering even in the subsequent judgments. In Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr., (2018) 1 SCC 797, a two Judge Bench of this Court dealt with the expression "honourable acquittal". It was opined that acquittal in a criminal case was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents. Thus, unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. No doubt, it was mentioned by relying on the earlier judgment of this Court in Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598, that while it was difficult to define precisely what is meant by the expression "honourable acquittal", an accused who is acquitted after full consideration of the prosecution evidence and prosecution has miserably failed to prove the charges levelled against the accused...."

(emphasis added)"

17. In this background, Court takes note of a judgment passed by Supreme Court in **Maharana Pratap Singh vs. The State of Bihar and others, 2025 INSC 554, Ram Lal Vs. State of Rajasthan, (2024) 1 SCC 175 and Maharashtra State Road Transport Corporation vs Dilip Uttam Jayabhay, (2022) 2 SCC 696** wherein it has been held that :-

"As per the cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives"

18. In aforesaid circumstances, Court finds that in present case, acquittal in criminal trial would have no bearing on the outcome of disciplinary proceedings and Court also finds that nature of allegations against petitioner are very serious and which have been proved on basis of statement of victims which were also remained consistent even during criminal trial. The acquittal was not a honourable acquittal.

19. Therefore, on both grounds, this writ petition has no force, hence, it is **dismissed.**

(2026) 2 ILRA 1487
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.02.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 1119 of 2025

Ranjeet Singh & Anr. ...Petitioners
Versus
Settlement Officer of Consolidation, Barabanki & Ors. ...Respondents

Issue(s) for consideration

Whether only an assertion of the fact regarding abandonment or withdrawal of the proceedings by the plaintiff/appellants, can result in the transposition of the applicants as appellants, or whether these facts must be proved to the satisfaction of the court?

Headnotes

A. Civil Procedural Law – Code of Civil Procedure: Order 1 Rule 10, Order XXIII Rule 1; U.P. Consolidation of Holdings Act, 1953: Section 9-A(2), 11(1) - The basic requirement for exercise of powers u/Rule 1-A, would be to examine if the plaintiff is seeking to withdraw or to abandon his claim u/Rule 1 of Order XXIII, and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings. (Para 20)

In the present case, it is noticed that the only ground stated in the application dated 24/06/2025 filed by the petitioners before the appellate court was that the appellants for some unknown reasons have colluded with the defendant no.2 due to which they are not diligently prosecuting the said appeal, and therefore it is necessary for the applicants to be transposed as the appellants for protection of the rights. (Para 21)

B. Transposition can have serious consequences and therefore, the courts have to be circumspect before allowing any such application. Once the application for transposition is

allowed, then the defendant becomes the plaintiff, and they would have full rights as *dominus litus* to prosecute the case before the court in the manner they choose. (Para 24)

One essential fact that cannot be lost sight of is that the appeal against the order of the Consolidation Officer was not filed by Haripal or even by the petitioners who had purchased 1/3 share of the entire property from him. This defect and lacuna cannot be allowed to be cured by invoking provisions of order XXIII rule 1A. (Para 25)

Apart from the above, neither before the Appellate Court nor before this Court could any cogent evidence, material or even the order-sheet of proceedings have been produced, which may indicate that the appeal is not being prosecuted diligently by the appellants therein. The findings returned by the appellate court in this regard does not deserve any interference as **a mere assertion of abandonment of appellate proceedings is not sufficient and it has to be demonstrated to the satisfaction of the court that the plaintiff/appellants have abandoned their claim before invoking the provisions of Order XXIII Rule 1 A.** (Para 26)

Writ petition dismissed. (E-4)

Case Law Cited

Anil Kumar Singh v. Shivnath Mishra, (1995) 3 SCC 147 (Para 16)

List of Acts

U.P. Consolidation of Holdings Act, 1953; Code of Civil Procedure.

List of Keywords

Consolidation, holdings, settlement, abandonment, withdrawal, transposition.

Appearances for Parties:

For Petitioner(s): Somesh Tripathi
For Respondent(s): Sri Dev Prakash Mishra, Additional Chief Standing Counsel for respondent no. 1 and Sri Amar Deep Yadav on behalf of respondent no. 2

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

1. Heard Sri Somesh Tripathi, learned counsel for the petitioners as well as Sri Dev Prakash Mishra, learned Additional Chief Standing Counsel for respondent no. 1 and Sri Amar Deep Yadav on behalf of respondent no. 2.

2. The petitioners have approached this Court being aggrieved by the order dated 14/10/2025 passed by the Settlement of Consolidation whereby he has rejected the application of the petitioners, which is formed for being transposed as appellants before the Settlement Officer of Consolidation where the appeal preferred by some of the private respondents is under consideration in accordance with the remand order passed by this Court on 29/02/2024 in Writ Petition B No. 238 of 2024.

3. The facts in brief as submitted by the petitioners are that the dispute pertains to the land situated Gata No. 314 area 0 - 8 - 17, situated at Village Aseni, Paragana Dewa Tehsil, Nawabganj district, Barabanki, which was initially recorded in the name of Ghasite. Ghasite had 4 sons, namely Haripal, Bihari, Kailas and Mangal. Bihari died during the lifetime of Ghasitay. After the

death of Ghasitay, the 3 surviving sons got their names mutated in the revenue records, showing 1/3 share each.

4. During the Consolidation proceedings, Ragghu, the son of Bihari, filed objections under section 9(A)1 of the U.P Consolidation of Holding Act, 1953 claiming 1/4th share in the property, and accordingly, by means of an order dated 11/08/1999 his objection was allowed, and the shares of the co-sharers were decided as one-fourth each.

5. Haripal filed an application before the Consolidation Officer for recalling the order dated 11/08/1999 on 24/04/2001. During the proceedings, Haripal sold 1/3rd share of the property to the petitioners, and on 09/05/2003, the case was restored to its original number, and subsequently dismissed for non-presence of the parties on 04/11/2011.

6. Against the order dated 04/11/2011, only Kailash and Mangal filed an appeal under section 11 (1) of the Act of 1953, which was registered as case No. 524/2015 (Kailash and others vs Ragghu). According to Ragghu, the disputed land was his ancestral land where his father Bihari had a 1/4 share in the property, along with 3 uncles. Before the appellate authority petitioners were impleaded as opposite parties on the basis of a sale deed executed by Harpal pertaining to 1/ 3 share of the property in dispute.

7. The Settlement Officer of Consolidation (Appellate Authority) decided the appeal vide his order dated 30/08/2013 on the basis of a compromise dated 29/08/2013.

8. Ragghu being aggrieved by the order dated 30/08/2013, preferred a revision before the Deputy Director of Consolidation, challenging the compromise and stating that he was not a party to the same, and one of the parties to the compromise was a minor. The revisional authority, after due consideration of the arguments and on the basis of the material record, upheld the contention of Ragghu and set aside the order of Settlement Officer of Consolidation dated 20/08/2013 and restored the order of the Consolidation Officer dated 11/08/1999 by means of an order dated 03/02/2024.

9. Petitioners had approached this Court assailing the validity of the order dated 3.2.2024 by filing a writ petition, being Writ -B- No. 238 of 2024. This Court was of the view that the matter ought to have been remanded by the Director of Consolidation rather than affirming the order dated 11/08/1999, and consequently allowed the writ petition remanding the matter back to the appellate authority for deciding the appeal afresh on merits after affording opportunity of hearing to the parties concerned.

10. It is in the remand proceedings that the petitioners have moved an application for their transposition as appellants. In the application dated 24/06/2025 it was contended that the appellants have colluded with opposite party No.2 and therefore, they are not appearing for prosecuting the appeal and for the aforesaid reason, they prayed for being transposed as plaintiffs.

11. The Settlement Officer of Consolidation (Appellate Authority) rejected the prayer stating that there was no evidence adduced by the applicants in support of the contention that the

appellants have colluded with the opposite party and it is only on the basis of apprehension that the application for transposition has been moved. It was further submitted that the applicants had an opportunity to make the said application before the High Court, but no such application was moved by them and at this stage such an application would not be entertained.

12. Lastly, it was contended that the appeal was filed by Kailash and Mangal, and in case the applicants were aggrieved by the order of the Consolidation officer they could have themselves filed the appeal, but no such appeal was filed either by the petitioners by the predecessor in interest Haripal and therefore they cannot be permitted to be transposed as appellants in the present factual circumstances and accordingly rejected the prayer by means of order dated 14/10/2025.

13. The order dated 14/10/2025 has been assailed before this Court in the present writ petition.

14. The law of procedure relating to the parties to a civil suit is essentially contained in Order I of the Code of Civil Procedure, dealing with various aspects concerning joinder, non-joinder and mis-joinder of parties. Rule 10 of Order I specifically provides for addition, deletion and substitution of parties; and the proposition for transposition of a party from one status to another, by its very nature, inheres in sub-rule (2) of Rule 10 of Order I CPC that reads as under:-

"(2) Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appeared to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who or to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."

15. On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order XXIII of the Code of Civil Procedure. As per Rule 1 thereof, a plaintiff may seek permission for the withdrawal of the suit or abandonment of a part of the claim. Rule 1-A thereof 1 deals with an eventuality where the plaintiff withdraws his suit or abandons his claim, but a pro forma defendant has a substantial question to be decided against the co-defendant. This Rule 1-A of Order XXIII CPC reads as under:-

"*-R.1-A. When transposition of defendants as plaintiff may be permitted.- Where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court, shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.- "*

16. It remains trite that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. This Court explained the principles, albeit in a different context, in the case of Anil Kumar Singh v. Shivnath Mishra: (1995) 3 SCC 147 in the following:-

"7. -.. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject- matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience, and to avoid multiplicity of proceedings."

17. As per Rule 1-A ibid., in the eventuality of the plaintiff withdrawing the suit or abandoning his claim, a proforma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as inserted by the Amendment Act No. 104 of 1976. The aforesaid amendment seeks to enable a defendant, who has an identical interest, from being denied his interest if he rested on the success of the plaintiff's suit and the plaintiff wanted to withdraw the suit. Before the defendant could invoke this provision, it must be shown that the plaintiff is seeking to withdraw or abandon the scheme under Rule 1 of Order XXIII, CPC. It is a condition precedent to enable a defendant to get himself transposed.

18. The principle that follows this rule is that there must be identity of interest between the plaintiff and such a defendant who wants to transpose as a plaintiff. It must be a suit where the defendant is entitled to succeed automatically on the success of the plaintiff in the suit. Such a defendant is usually called a pro forma defendant. To put it in other words, both parties are projecting the same claim against other defendants, and therefore, the success of one is the success of the other. In such cases, the law comes to the rescue of such a defendant so that the plaintiff, who has a similar right, cannot defeat the right of the defendant by colluding with other contesting defendants.**plaintiff for the determination of such a question against the said co-defendant in the given suit itself.

19. The very nature of the provisions contained in Rule 1-A, ibid. leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit.

20. The basic requirement for exercise of powers under Rule 1-A, ibid. would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII, and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.

21. Upon consideration of the facts in the present case, it is noticed that the only ground stated in the application dated 24/06/2025 filed by the petitioners before the appellate court was that the appellants for some unknown reasons have colluded with the defendant no.2 due to which they are not diligently prosecuting the said appeal, and therefore it is necessary for the applicants to be transposed as the appellants for protection of the rights.

22. Apart from the aforesaid facts, no other fact or evidence was adduced by the petitioners in support of the contention for transposition as appellants.

23. As discussed above, certain necessary and basic facts have to be established before a person can invoke the provisions of Order XXIII Rule 1A CPC, namely, abandonment or withdrawal of the proceedings by the plaintiff/appellants. The only ground taken by them before the appellate court was with regard to collusion between the appellants and defendant no.1; the appeal is not being prosecuted diligently.

24. The question for determination is whether only an assertion of this fact can result in the transposition of the applicants as appellants, or whether these facts must be proved to the satisfaction of the court. Undoubtedly, transposition can have serious consequences and therefore, the courts have to be circumspect before allowing any such application. Once the application for transposition is allowed, then the defendant becomes the plaintiff, and they would have full rights as dominus litus to prosecute the case before the court in the manner they choose.

25. One essential fact that cannot be lost sight of is that the appeal against the order of the Consolidation Officer was not filed by Haripal or even by the petitioners who had purchased 1/3 share of the entire property from him. This defect and lacuna cannot be allowed to be cured by invoking provisions of order XXIII rule 1A.

26. Apart from the above, neither before the Appellate Court nor before this Court could any cogent evidence, material or even the order-sheet of proceedings have been produced, which may indicate that the appeal is not being prosecuted diligently by the appellants therein. The findings returned by the appellate court in this regard does not deserve any interference as a mere assertion of abandonment of appellate proceedings is not sufficient and it has to be demonstrated to the satisfaction of the court that the plaintiff/appellants have abandoned their claim before invoking the provisions of Order XXIII Rule 1 A.

27. In view of the above, the writ petition lacks merits and is accordingly **dismissed.**

(2026) 2 ILRA 1492
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.02.2026

BEFORE

THE HON'BLE AMITABH KUMAR RAI, J.

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Writ C No. 383 of 2026

Smt. Johra Begam @ Johra Khatoon ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

What would be the fate of appeal filed against a dead person who was the sole defendant and **what would have been the proper course to be followed by the petitioner in such a situation, when the petitioner came to know about the death of the sole defendant after filing the appeal.**

HEADNOTE

Code of Civil Procedure, 1908 – Or.XXII R.4, Or.I R.10, Or.XXIII R.1(3) – Appeal filed against dead person – Nullity – Formal defect – Substitution of legal heirs – Maintainability

Held: In the present case, the sole defendant died prior to the filing of the appeal and the appeal was filed against a dead person – District Judge rejected the application for substitution on the ground of delay, whereas the application itself was not maintainable – An application for substitution of legal heirs is maintainable only when the defendant has died during the pendency of the appeal and, therefore, the application filed under Order XXII Rule 4 C.P.C. was not maintainable at all – Since the appeal was filed against a dead person, the appeal from its inception was a nullity and, as such, an application under Order I Rule 10 C.P.C. for amendment would also not have been maintainable – Holding that the appeal stood abated was incorrect inasmuch as the appeal itself being a nullity, no question arises of its dismissal as abated – Suit/appeal against the sole defendant who died prior to filing suffers from the defect of misjoinder of necessary party and constitutes a "formal defect" – In such a scenario, the only permissible course was to move an application under Order XXIII Rule 1(3) C.P.C. for withdrawal of the appeal with liberty to file a fresh appeal impleading the legal heirs – Petitioner permitted to avail such remedy and the appellate court directed to consider the same on its own merits and pass an appropriate order in accordance with law – Procedure is meant only to facilitate the administration of justice and not to defeat it. (Paras 8, 9, 10, 16, 18, 19, 20) (E-5)

CASE LAW CITED

Indana International Ltd. v. Santana Miguel Fernandes, 2007 SCC OnLine Bom 381;
Naseem Hushain v. Mahender Kaur, 2015 SCC OnLine P&H 8414;
C. Muttu v. Bharath Match Works, Sivakasi, 1963 SCC OnLine Kar 88;
V. Rajendran v. Annasamy Pandian (2017) 5 SCC 63;

List of Acts

Code of Civil Procedure, 1908

List of Keyword

Appeal against dead person; Nullity; Substitution of legal heirs; Order XXII Rule 4 CPC; Order I Rule 10 CPC; Order XXIII Rule 1(3) CPC; Formal defect; Misjoinder of party; Abatement; Non est proceedings; Withdrawal of appeal; Fresh appeal.

CASE ARISING FROM

From the order dated 10.12.2025 passed by District Judge, Gonda in Civil Appeal No. 54 of 2024.

Appearances for Parties

Advs For Petitioner: Rakesh Kumar Saini.

Advs For Respondents: C.S.C.

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

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The instant writ petition has been filed challenging the order dated 10.12.2025 passed by District Judge, Gonda in Civil Appeal No.54 of 2024, Smt. Johra Begam @ Johra Khatoon vs. Ishhaq Ali, filed under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C."), whereby the substitution application filed by the petitioner under Order XXII Rule 4 of C.P.C. along with the application for condonation of delay was rejected and the appeal was also dismissed, holding it to be abated due to the death of the sole respondent.

3. The facts relevant for the purpose of disposal of the present petition are that the petitioner, on the death of her father, Late Jumai, on 08.04.2008, came into possession of the land in question being the successor and the relevant entries in the revenue records were entered, bringing on record the petitioner as tenure holder of the agricultural land and the other properties.

4. It has been submitted by the counsel for the petitioner that the mother of the petitioner also died on 08.03.2008, one month prior to the death of her father. However, one Ishhaq Ali, having no succession right over the property in question, on the basis of a fraudulent will deed, claimed titled right of the agricultural land mentioned in the will deed. The petitioner, on coming to know of the fraudulent will deed dated 20.01.2006, filed suit for cancellation of the will deed along with relief for permanent injunction before the Civil Judge (Junior Division), Gonda on 26.05.2008. The suit was decreed ex parte vide judgment and order dated 18.07.2011, and the will deed dated 26.05.2008 was cancelled. Against the order dated 18.07.2011, Ishhaq Ali filed an application for restoration on 23.08.2011, which was allowed vide order dated 13.03.2014, and the ex parte judgment and order dated 23.08.2011 was recalled. Ultimately, the suit filed by the petitioner was dismissed vide exparte judgment and order dated 22.11.2024. Feeling aggrieved, the petitioner filed Civil Appeal No.54 of 2024 on 18.12.2024, impleading Ishhaq Ali as the sole respondent in the appeal.

5. It is the case of the petitioner that she was not aware of the fact that Ishhaq Ali by that time had died on 10.07.2023, and in ignorance, she filed the appeal against the dead person. However, when she came to know about the death of Late Ishhaq Ali, she filed an application for substitution along with an application for condonation of delay under Order XXII Rule 4 C.P.C. for impleading the legal heirs of the deceased, Ishhaq Ali. It seems that notices were issued on the application for substitution and for condonation of delay and the legal heirs of the deceased Ishhaq Ali filed objections to both the applications. The Court, after taking into consideration the objections, rejected the application for condonation of delay, consequentially rejecting the substitution application vide impugned judgment and order dated 10.12.2025 and closed the proceedings of the appeal holding it to be abated.

6. Learned counsel for the petitioner has argued that the Court of District Judge, Gonda, has wrongly rejected the application for condonation of delay in filing the substitution application, in as much as the petitioner was not aware of the death of Late Ishhaq Ali at the time of filing of the appeal and as soon as the petitioner, coming to know of the death of Ishhaq Ali, immediately filed an application for substitution along with application for condonation of delay. The appellate Court, without appreciating reasons assigned in the application for condonation of delay and substitution application, rejected both applications, which is per se illegal.

7. Having heard learned counsel for the petitioner as well as learned counsel for the State, the issue that falls for consideration is what would be the fate of appeal filed against a dead person who was the sole defendant. The petitioner filed an application for substitution of legal heirs of the defendant under Order XXII Rule 4 C.P.C. which reads as under :-

4. Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant not withstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963) and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved.

8. A bare perusal of the aforesaid provision and its analysis indicates that an application for substitution of legal heirs is maintainable only when the defendant has died during the pendency of the appeal. In the present case, it is an admitted fact that the sole defendant died prior to the filing of the appeal, and the appeal was filed against a dead person. Thus, this Court is of the view that the application filed by the petitioner under Order XXII Rule 4 C.P.C. was not maintainable at all.

9. The other issue that falls for consideration is what would have been the proper course to be followed by the petitioner in such a situation, when the petitioner came to know about the death of the sole defendant after filing the appeal. The other option could have been to file an application under Order I Rule 10 C.P.C., read with Sections 151 and 153 C.P.C., for amendment of the appeal so as to bring on record the legal heirs of the deceased defendant. However, this Court is of the view that since the appeal was filed against a dead person, the appeal, from its inception, was a nullity; as such, an application under Order I Rule 10 C.P.C. for amendment would also not have been maintainable.

10. Neither an application under Order XXII Rule 4 nor under Order I Rule 10 C.P.C. could be permitted for substitution of the legal heirs of the sole defendant who had died prior to the filing of the appeal. The reason being that there was only one defendant and he had died before the appeal was instituted, therefore, such an appeal was itself a nullity and no application for amendment of the appeal under Order I Rule 10 C.P.C., or under Order XXII Rule 4 C.P.C., for deleting the name of the original defendant and substituting any person in his place, can be permitted. In such a scenario, the only permissible course is to move an application under Order XXIII Rule 1(3) C.P.C. for withdrawal of the appeal, with liberty to file a fresh appeal impleading the legal heirs of the sole defendant.

11. This issue came up for consideration before the Bombay High Court in the case of ***Indana International Ltd. v. Santana Miguel Fernandes, 2007 SCC OnLine Bom 381,*** wherein the Court held in paragraphs 6 and 7 as under:

6. The learned trial Court has made a correct observation that the legal heirs of a sole defendant who is dead, cannot be brought on record, since the suit against a dead person itself is a nullity. In fact, it appears that to prevent this, that the plaintiff sought to withdraw the suit itself, which has been denied on the ground that the suit is a nullity.

7. Undisputedly, such a suit must be held to be a nullity and therefore not instituted at all. However, it does not follow that the fact that a suit has been filed upon payment of Court fees must be ignored. In such a case, the withdrawal that is sought by the plaintiff must be viewed as a request for withdrawal of the filing of the suit which is the physical aspect of the suit. For this purpose therefore, filing of the suit against a dead person must be treated to be a formal defect within the meaning of Order 23, Rule 1(3) since the defect is in the nature of mis-joinder and non-joinder.

12. The Punjab and Haryana High Court, while dealing with a similar issue in **Naseem Hushain v. Mahender Kaur, 2015 SCC OnLine P&H 8414,** held in paragraph 4 as under:

4. In the present case, petitioners while filing the suit had impleaded Virsa Singh as defendant No. 1. However, defendant No. 1 had already died on 22.12.1999, whereas, the suit was filed in the year 2008. The said fact was highlighted by defendant No. 1 at the time of filing of the written statement. Thereafter, petitioner No. 1 moved an application for bringing on record the legal representatives of deceased-Virsa Singh. However, the said application was dismissed. Since the defendant No. 1 was already dead at the time of filing of the suit, the trial Court should have permitted the petitioners to withdraw the suit with permission to file a fresh one on the same cause of action as per law.

13. The Karnataka High Court in **C. Muttu v. Bharath Match Works, Sivakasi, 1963 SCC OnLine Kar 88,** held that such a suit is a nullity from its inception. The Court has also held that any proceedings taken in such a suit are non est. For ready reference paragraph no.9 is quoted hereinbelow :-

9. A careful review of the decisions of the several High Courts relating to substitution of a defendant in a suit in place of the original defendant makes it clear(1) that no such substitution can be permitted in a case where there was a sole defendant, (2) where there are more defendants than one and one of them was dead when the suit was filed, the Courts have held that the legal representatives of the deceased defendant can be brought on record subject to any question of limitation that may be raised by the legal representatives of the deceased person who were brought on record as the suit had been validly presented in so far as the living defendants are concerned, and (3) where an appeal is filed against a person who was dead on the date of the presentation of the memorandum of appeal, the Courts have held that the appellant can be permitted to bring the legal representatives of the dead person on record. In other words, the Courts have held that substitution is permissible. The principle on the basis of which the Courts have taken this view is that an appeal is a continuation of the original proceedings and as the suit had been validly instituted and the defendant died subsequently, an application to bring his legal representatives under Order XXII, Rule 4 is maintainable and the legal representatives can be brought on record. But in cases where there was a sole defendant and he was dead before the suit was instituted, all the High Courts have held that such a suit is a nullity and no application for amendment of the plaint by deleting the name of the original defendant and substituting another person in his place, can be permitted. In Municipal Corporation of Karachi v. Baradiojumoo Mughal, AIR 1946 Sind 20 Thadani, J. after reviewing the decisions of the several High Courts dealing with this question, held that Where a suit is filed against a dead person, a Court has no jurisdiction to grant an application under O.I.R. 10, or under O. 22, Rr. 4 and 9 or do any other act authorised by the Civil Procedure Code, as the suit filed against a dead person, is a nullity. His Lordship further held that bona fides or mala-fides of the plaintiff are immaterial. There is no direct decision of the Supreme Court on the point. But some observations of the learned Chief Justice in Hira Lal v. KalinathAIR 1962 SC 199 lend support to our view that a suit filed against a dead person is a nullity. This is what the learned Chief Justice says:

"The only ground on which the decision of the High Court is challenged is that the suit instituted on the original side of Bombay High Court was wholly incompetent for want of territorial jurisdiction and that therefore, the award that followed on the reference between the parties and the decree of the Court, under execution, were all null and void. Strong reliance was placed upon the decision of the Privy Council in the case of Ledgard v. Bull, 13 Ind App 134 (PC). In our opinion, there is no substance in this contention. There was no inherent lack of jurisdiction in the Bombay High Court where the suit was instituted by the plaintiff-decree-holder. The plaint had been filed after obtaining the necessary leave of the High Court under Clause 12 of the Letters Patent. Whether the leave obtained had been rightly obtained or wrongly obtained is not a matter which can be agitated at the execution stage. The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or "that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. But in the instant case there was no such inherent lack of jurisdiction.""

14. In the instant case, this Court finds that under ignorance, the petitioner filed the appeal against the dead person which is a "formal defect" as it is a case of misjoinder of party and in such a situation, the proper course would have been to file an application for withdrawal of appeal with permission to file fresh under Order XXIII Rule 1(3) C.P.C.

15. In **V. Rajendran v. Annasamy Pandian, (2017) 5 SCC 63**, the issue before the Hon"ble Supreme Court was that a suit for permanent injunction had been filed in respect of the suit property. After filing of the written statement, the plaintiff came to know that the respondents, while transferring the patta in respect of the suit property (Survey No. 192/9), had transferred it as Survey No. 192/14. This fact was not in the knowledge of the plaintiff at the time of filing the suit. The plaintiff filed an application for withdrawal of the suit under Order XXIII Rule 1(3) C.P.C., which was allowed by the trial court. However, in the revision before the High Court, the order of the trial court was set aside on the ground that the plaintiffs had failed to establish either a "formal defect" or sufficient grounds for withdrawal of the suit. For ready reference paragraph Nos.8 to 13 of **V. Rajendran (Supra)** are quoted hereinbelow :-

8. The High Court vide the impugned order held that the defect mentioned by the appellants in the application seeking withdrawal of suit, is not a "formal defect" and that the provision of withdrawal of the suit contemplated under Order 23 Rule 1(3) CPC cannot be allowed to be misused by the parties. The High Court took note of the fact that the appellants participated in the trial of the suit for about a decade and when the suit was listed for framing additional issues and for examining the additional witnesses, the appellants moved abruptly an application seeking withdrawal of the suit on an inapposite ground which could have been easily addressed by way of an application under Order 6 Rule 17 CPC for amendment of pleadings and that the appellants failed to establish either a "formal defect" or "sufficient grounds" for withdrawal of the suit.

9. Order 23 Rule 1(3) CPC lays down the following grounds on which a Court may allow withdrawal of suit. It reads as under:

*"1. Withdrawal of suit or abandonment of part of claim."(1)-(2) * * **

(3) Where the Court is satisfied"

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."

(emphasis supplied)

As per Order 23 Rule 1(3) CPC, suit may only be withdrawn with permission to bring a fresh suit when the Court is satisfied that the suit must fail for reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. The power to allow withdrawal of a suit is discretionary. In the application, the plaintiff must make out a case in terms of Order 23 Rules 1(3)(a) or (b) CPC and must ask for leave. The Court can allow the application filed under Order 23 Rule 1(3) CPC for withdrawal of the suit with liberty to bring a fresh suit only if the condition in either of the clauses (a) or (b), that is, existence of a "formal defect" or "sufficient grounds". The principle under Order 23 Rule 1(3) CPC is founded on public policy to prevent institution of suit again and again on the same cause of action.

10. In K.S. Bhoopathy v. Kokila [K.S. Bhoopathy v. Kokila, (2000) 5 SCC 458] , it has been held that it is the duty of the Court to be satisfied about the existence of "formal defect" or "sufficient grounds" before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the "formal defect" or "sufficient grounds", such right cannot be considered to be so absolute as to permit or encourage abuse of process of court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order 23 Rule 1(3) CPC, the Court must be satisfied about the "formal defect" or "sufficient grounds". "Formal defect" is a defect of form prescribed by the rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose a cause of action, etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

11. In terms of Order 23 Rule 1(3)(b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the words "sufficient grounds", there are two views : one view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a), that is, formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause (b)

should be read independent of the words a "formal defect" and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule 1 sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b), that is, "sufficient grounds".

12. In the present case, the appellants have filed the suit describing the suit property as Survey No. 192/9 but the respondents are said to have transferred the patta for the suit property settling as Survey No. 192/14. The defect in the survey number of the suit property goes to the very core of the subject-matter of the suit and the entire proceedings would be fruitless if the decree-holder is not able to get the decree executed successfully and thus, the said defect will constitute to be a "formal defect" within the meaning of Order 23 Rule 1(3)(a) CPC. That apart, the respondents are said to have executed an Inam settlement deed on 21-9-2012, in favour of their son Aranmanai Pandian, mentioning the suit property as Survey No. 192/14. We are convinced that the case of the appellants would fall under clause (a) of Rule 1(3) CPC.

13. In the facts and circumstances of the case, the trial court considered the allegation set out in the application as a ground for withdrawal. The view taken by the trial court that the suit suffered from a formal defect to allow the appellants to withdraw the suit with permission to institute a fresh suit, is correct. The High Court, in our view, was not right in interfering with the discretion exercised by the trial court, permitting the appellants to withdraw the suit with liberty to file a fresh suit. Based on the order passed by the trial court, the appellants have already filed suit before the District Munsif and the same is numbered as OS No. 11 of 2015. The High Court while passing the order on 9-3-2015 [Annasamy Pandian v. V. Rajendran, 2015 SCC OnLine Mad 261 : (2015) 2 LW 360] does not seem to have kept in view the said suit filed by the appellants. In the facts and circumstances of the case, the impugned order passed by the High Court cannot be sustained.

(Emphasis supplied)

16. From the above discussion it can be succinctly summaries that :

(a) The suit or appeal against the sole defendant, who died before filing of suit/appeal, is nullity since its inception and non est.

(b) Neither any application under Order XXII Rule 4 C.P.C. nor under Order I Rule 10 C.P.C. is maintainable in such suit/appeal.

(c) Since the suit/appeal is nullity since its inception, hence no question of dismissal of such suit/appeal arises as being abated.

(d) The suit/appeal against the sole defendant who died prior to filing of the suit/appeal suffers from the defect of misjoinder of necessary party and is a "formal defect" and in such situation proper course is to move application under Order XXIII Rule 1(3) C.P.C. for withdrawal of suit/appeal with permission to file fresh suit/appeal.

17. In view of the above discussion, this Court is of the view that since the Civil Appeal No.54 of 2024 filed by the petitioner against the dead person (sole defendant) was a nullity, the substitution application along with application for condonation of delay moved by the petitioner under Order XXII Rule 4 of the C.P.C. was not maintainable itself, and the proper course would have been to move an application under Order XXIII Rule 1(3) of C.P.C. by the appellant/petitioner for withdrawal of the appeal with permission to file a fresh appeal impleading the legal heirs of the deceased, Late Ishhaq Ali.

18. The District Judge, Gonda vide impugned order dated 10.12.2025 has rejected the application for substitution filed under Order XXII Rule 4 C.P.C. on the ground of delay, whereas the application itself was not maintainable as indicated hereinabove and as such the order dated 10.12.2025 to that extent calls for no interference. However, this Court finds that while passing of the order dated 10.12.2025, the District Judge, Gonda has also held that the appeal itself stands abated and has been consigned to record. In this regard, it is worthwhile to mention that the provisions of Order XXII Rule 4 of the C.P.C. are attracted in cases where a party dies during the pendency of the proceedings and not in a case where the suit or appeal is a nullity from its inception, as there is no pending proceeding in which an application for substitution can be made and hence no question arises of abatement of such suit or appeal. It has consistently held that a suit/appeal filed against the dead person at the time of institution is a nullity and this principle is rooted in the fundamental legal tenet that a dead person has no legal existence and, therefore, cannot be sued or be a party to any legal proceedings.

19. Thus, the order dated 10.12.2025 passed by District Judge, Gonda in Civil Appeal No.54 of 2024, Smt. Johra Begam @ Johra Khatoon vs. Ishhaq Ali to the extent that the appeal has been abated is incorrect inasmuch as the appeal itself was a nullity since its inception and therefore, no question arises of the appeal being dismissed as abated. In fact there was a "formal defect" in the institution of the appeal as a dead person was impleaded as sole defendant, who was died prior to filing of the appeal. The appropriate remedy in such a situation was filing of an application under Order XXIII Rule 1(3) C.P.C. for withdrawal of the appeal, with permission to file a fresh appeal impleading the legal heirs of the deceased, Late Ishhaq Ali.

20. Thus, in the peculiar facts and circumstances of the present case, it is provided that if the petitioner files an application under Order XXIII Rule 1(3) C.P.C. for withdrawal of the appeal, with permission to file a fresh appeal impleading the legal heirs of the deceased, Late Ishhaq Ali within a period of one month from today, the learned appellate court shall consider the same on its own merits and pass an appropriate order in accordance with law. After all, procedure is meant only to facilitate the administration of justice and not to defeat it.

21. The writ petition is **disposed of.** No order as to costs.

(2026) 2 ILRA 1502
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.02.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 579 of 2025

Prema Devi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether a case of custodial death has been made out; and if so, whether the Writ Court under Article 226 of the Constitution of India should direct payment of compensation to the family of the victim.

HEADNOTE

Constitution of India – Arts.21, 226 – Custodial death – Unnatural death in custody – Suicide in jail – Compensation – Public law remedy – Strict liability of State

Held: Petitioner's minor son, an undertrial prisoner, died in judicial custody and the post mortem report indicated the cause of death as asphyxia due to ante-mortem hanging – Inquest report submitted under Section 176 CrPC concluded that the deceased committed suicide and no material indicating harassment by jail authorities was found – However, the fact remains that the death occurred in custody and was an unnatural death, attracting strict liability of the State – National Human Rights Commission, upon consideration of the material on record, recommended payment of compensation of Rs.3,00,000/- to the next of kin and the State accepted the recommendation, yet the amount was not disbursed – It was undisputed that the deceased was in the custody of the State and had committed suicide, resulting in a patently unnatural death, and therefore the State was held to be absolutely liable for the unnatural death of the deceased, as an amplified duty is cast upon the State for the death of a prisoner in custody without any exception – The State cannot shirk its duties and responsibilities for providing better facilities to prisoners – The death having occurred while in custody and control of the State authorities unmistakably established a violation of the fundamental rights guaranteed under Article 21 of the Constitution of India, and failure to discharge this obligation attracted public law liability – The Court rejected the defence of the State by holding that the explanations offered were neither cogent nor sufficient to displace the presumption, and the onus which squarely lay upon the State to account for the circumstances leading to the death had not been satisfactorily discharged – Suicide would amount to an (internal) intentional injury and would be an unnatural death wherein the liability would squarely fall on the State – Persons who suffer an unnatural death in a prison are also victims and there is no reason to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal – The Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is

empowered to award monetary compensation as a remedy in public law for established violations of fundamental rights, independent of and in addition to remedies available in private law – Monetary compensation, while not a complete substitute for the loss of life, could provide some measure of solace for the bereaved family and act as a deterrent against future custodial violence – The writ petition was allowed and the respondents were directed to pay compensation of Rs.10,00,000/- to the legal heirs of the deceased.

Further directions were issued that in case of custodial death: (i) the family members of the deceased must be informed immediately by the jail authorities and a panchnama with independent panchas shall be prepared forthwith in accordance with Section 174 CrPC (corresponding Section 194 BNSS); (ii) post mortem examination must be conducted promptly indicating cause of death and video recording thereof shall be mandatorily carried out; (iii) an inquest report by the Judicial Magistrate shall be submitted in accordance with Section 176 CrPC (corresponding Section 196 BNSS) after considering all material; (iv) monetary compensation must be paid to provide solace to the next of kin as per the determination of the National Human Rights Commission; and the State Government was directed to frame guidelines fixing compensation by adopting relevant parameters akin to the multiplier method based on age, income and dependants as recognised under the Motor Vehicles Act, 1988. (Paras 13, 17, 18, 19, 20, 22) (E-5)

CASE LAW CITED

Nilabati Behera v. State of Orissa (1993) 2 SCC 746;
Re-Inhuman Conditions in 1382 Prisons (2017) 10 SCC 658;
Suo Motu Custodial Violence and Other Matters Relating to Prison Conditions v. State of Meghalaya (2023) 5 GLT 19 (Meghalaya High Court);
Rasheda Khatun v. State of Tripura, W.P.(C) No. 797 of 2021 (Tripura High Court);
Smt. Meena v. State of U.P. and others, Writ-C No. 7217 of 2019 (Allahabad High Court);
State of Andhra Pradesh v. Challa Ramakrishna Reddy (2000) 5 SCC 712;
D.K. Basu v. State of West Bengal (1997) 1 SCC 416;
Rudul Sah v. State of Bihar (1983) 4 SCC 141.

List of Acts

Constitution of India

List of Keyword

Custodial death; Unnatural death; Suicide in custody; Strict liability of State; Public law remedy; Article 21; Human dignity; Compensation; Fundamental rights violation; Writ jurisdiction; State liability.

CASE ARISING FROM

From custodial death in District Prison and non-payment of compensation recommended by the National Human Rights Commission.

Appearances for Parties

Advs For Petitioner: Rama Kant Dixit, Uday Kumar

Advs For Respondents: C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of mandamus commanding the respondents to pay just and adequate compensation to the petitioner on account of unnatural death of her minor son (Sukhvinder) on February 20, 2024 in District Prison Pilibhit. The petitioner in furtherance seeks direction in the nature of mandamus commanding the respondents to ensure action against the guilty persons, who are responsible for the unnatural death of the son of the petitioner.

FACTS

1. The factual matrix of the present writ petition is delineated below:

a. A criminal case bearing case no. 742/2016, under Sections 363, 366 and 376 of IPC and 3/4 of the POCSO Act, P.S. Puranpur, District Pilibhit was registered against the minor son of the petitioner, for which he had already undergone imprisonment for about three years and ten months and was enlarged on bail on February 12, 2022.

b. Petitioner's son was required to appear before the trial court, but due to unavoidable circumstances, he could not appear. Consequently, he was arrested by the police on February 7, 2024 in execution of a warrant and thereafter detained in jail.

c. On February 20, 2024, the petitioner was informed by the respondents that her son had died in custody. Before handing over the dead body to the family for cremation, a Panchnama and Post Mortem examination were conducted on the same day. The Panchnama indicated that the deceased had died on account of hanging by a muffler and the post mortem report disclosed the cause of death of the deceased as 'asphyxia due to antimortem hanging' with the presence of ligature mark on the neck.

d. The petitioner was informed by respondent authorities about the various financial beneficial schemes and was assured for the grant of the same vide letter dated February 22, 2024.

e. On October 5, 2024, an inquest report to inquire into the cause of death of the deceased was submitted by Judicial Magistrate in accordance with Section 176 CrPC (corresponding Section 196 BNSS), after taking into consideration the Panchnama and Post Mortem report. It was observed therein that the deceased had succumbed to suicide by hanging himself and it was further noted that no external injury of any kind was found on the body of the deceased. Additionally, it was observed that no information regarding harassment and instigation by jail authorities had been given by the jail inmates.

f. The National Human Rights Commission, after considering the panchnama, inquest report, and post mortem report furnished by the jail authorities, vide order dated October 10, 2024, directed payment of compensation of Rs. 3,00,000/- to the nearest family member of the deceased.

g. In pursuance thereof, the State issued a letter dated November 21, 2024 to the Director General of Police, Prison Administration, communicating the direction of NHRC to pay compensation to the next of kin of the deceased prisoner and submit an inquest report with regard to the same as soon as possible.

h. The petitioner moved an application dated December 6, 2024, seeking compensation on account of the unnatural death of her son.

i. Being aggrieved by the inaction on the part of the respondents in not granting compensation to the petitioner for the unnatural death of her son while in custody of District Jail, the writ petitioner has come before this Court by filing the present writ petition.

CONTENTIONS OF PETITIONER

2. Learned counsel appearing on behalf of petitioner has made the following submissions:-

a. The minor son of the petitioner was subjected to torture by the police personnel of prison due to non fulfilment of illegal money demands, including a monthly expenses of Rs. 4500/- for relief from such torture, which ultimately resulted in his unnatural death.

b. The petitioner was pressurized by the respondent authorities to perform the last ritual immediately.

c. Despite the petitioner having moved an application for compensation and notwithstanding the assurance given by the respondent authorities, no compensation has been provided to the petitioner so far.

d. By the inaction on the part of the respondents, the petitioner's fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India have been violated.

e. To buttress his aforesaid submissions, learned counsel appearing on behalf of the petitioner has relied on the following Supreme Court and High Courts judgments:-

i. **Nilabati Behera v. State of Orissa** reported in (1993) 2 SCC 746 [Supreme Court]

ii. **Re-Inhuman Conditions in 1382 Prisons** reported in (2017) 10 SCC 658 [Supreme Court]

iii. **In Suo Motu Custodial Violence and Other Matters Relating to Prison Conditions v. State of Meghalaya** reported in (2023) 5 GLT 19 [Meghalaya High Court]

iv. **Rasheda Khatun v. State of Tripura** in W.P.(c) no.797 of 2021 [Tripura High Court]

iv. **Smt. Meena v. State of U.P. and others** in Writ-C No.7217 of 2019 [Allahabad High Court]

CONTENTIONS OF RESPONDENTS

3. Learned counsel appearing on behalf of respondents has made the following submissions:-

a. It is submitted that the petitioner's son died by hanging himself from the ventilator of the toilet situated within the prison premises. The incident was an act of suicide and there is no material on record to suggest any negligence, misconduct or involvement on the part of the respondent-authorities in causing death of the deceased.

b. It is further submitted that the State Government, upon consideration of the recommendation made by the National Human Rights Commission, has accorded approval for payment of compensation amounting to ₹3,00,000/- to the nearest family member of the deceased.

c. It is submitted that the compensation could not be disbursed immediately as the process of verification and identification of the rightful next of kin of the deceased is presently underway. Upon completion of the said identification process and receipt of the requisite budgetary allocation from the Government, the approved compensation shall be released in accordance with law.

d. It is also submitted that after conducting an inquiry, an inquest report was submitted by the Judicial Magistrate, wherein the cause of death of the deceased was opined to be ante-mortem hanging, and no material was found to indicate any external injury or custodial violence.

ISSUE

Whether a case of custodial death has been made out? If yes, then whether the Writ Court under Article 226 of the Constitution of India should direct compensation to be paid to the family of the victim?

ANALYSIS

4. I have given my thoughtful consideration to the submissions canvassed by the learned counsel for the parties and have also perused the materials placed on record.

5. Custodial death depicts one of the most serious challenges to the protection of fundamental rights within the Indian Justice System. The right to life and human dignity guaranteed under Article 21 of the Constitution of India is an intrinsic, inviolable and omnipresent right which is extended even to an individual who is illegally arrested and detained by the State. The Constitution of India does not vouchsafe the suspension of fundamental rights merely because a person is in custody. On the contrary, the Constitutional jurisprudence casts the onus upon the State for the death of such nature, therefore raises presumption on the State and demands strict Constitutional scrutiny [see **State of Andhra Pradesh v. Challa Ramakrishna Reddy and others r**eported in (2000) 5 SCC 712].

6. The phenomena of custodial death exposes the dichotomic tussle between the coercive powers of the State and the Constitutional mandate to protect individual liberty. Law enforcement agencies being vested with the wide powers of arrest, detention and investigation to maintain public order and ensure effective administration of justice are attenuated by constitutional limitations designed to prevent abuse and arbitrariness. Custodial death can result from torture, coercion, neglect, abuse of power by law-enforcement authorities [see **D.K. Basu v. State of West Bengal** reported in (1997) 1 SCC 416].

7. It is flabbergasting to note that there is no express mandate in our Indian Constitution for the grant of compensation for unlawful detention or custodial death. India has ratified to the International Covenant in Civil and Political Rights, 1966 wherein Article 9(5) states that 'Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'. In consistence with the above ratification, India owes its obligation to the international community. Furthermore, the Law Commission of India, in its 273rd report on implementation of United Nations Convention Against Torture, has observed custodial violence marked by weak accountability, lack of transparency and institutional protection of errant officials.

8. If the death in custody occurs naturally then State can not be faulted with, but if the death is caused unnaturally then State is absolutely liable for its act/omission which resulted in death of an individual. The International Committee of Red Cross (ICRC) has also issued guidelines on investigating deaths in custody, wherein a clear distinction between natural and unnatural death has been carved. According to ICRC, death is the irreversible cessation of all vital functions including brain activity. It is natural when it is caused solely by disease and/or aging process. It is unnatural when the causes are external such as intentional injury, negligence or unintentional injury (death by accident).

9. The Tripura High Court in the decision of **Rasheda Khatun** (Supra), directed the State to pay compensation for custodial death, relying upon the judgment of the Hon'ble Supreme Court in **D.K. Basu** (Supra) wherein it was observed that the purpose of compensation is to ameliorate the wound of the kin of the deceased and not to act as a deterrent for the transgressor. The relevant paragraphs of the judgment are delineated below:-

" 17. For determination of the quantum of compensation we may profitably refer to the decision of the Apex Court in the case of D.K. Basu v. State of W.B: reported in (1997) 1 SCC 416 wherein the Apex Court has held that the objective of such monetary compensation is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence must be left to the criminal courts in which the offender is prosecuted. Observation made by the Hon'ble Apex Court in paragraph-54 of the judgment is as under:

"54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State,

which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. That award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

18. In view of the facts and circumstances of the case and the law laid down by the Apex Court in the Judgment cited to (supra) we direct the state respondents to pay a sum of Rs. 10,00,000/- (rupees ten lakhs) as compensation to the petitioners for the custodial death of Jamal Hossain by depositing the said amount with the Registry of this Court within a period of four weeks from today. The petitioners who are the widow, children and mother of the deceased shall be entitled to equal share of the said amount of compensation. On deposit of the compensation, Registry shall disburse the share of the mother and wife of the deceased by transferring the same to their individual bank account. The share of the children shall be invested in term deposits in their names in any nationalised bank until they attain majority and the monthly interest generated from those deposits shall be transferred to the account of their mother for their educational and other expenses.'

10. In **Suo Motu Custodial Violence and Other Matters Relating to Prison Conditions** (Supra), the High Court of Meghalaya at Shillong has held that there is no room to apply the strict liability theory when it comes to a death of a person in custody of the State. The State's liability in such regard is absolute unless it demonstrates to the satisfaction of the Court that the death was due to natural causes. The Court would reasonably infer otherwise and hold the State liable. Furthermore, it was inter alia observed to quantify compensation as per the age of deceased. The relevant paragraphs of which are quoted herein below:-

"24. A death in custody is a slur on a civilised State and completely unacceptable. Ideally, there should be no death, except due to natural causes, while in custody. Of course, the natural causes are beyond the control of the State and convicts serving long sentences may also have age-related problems which may lead to their death. But it is particularly distressing to note the number of deaths of under-trial prisoners as the investigating agency uses third-degree methods to get information from the arrested person rather than go out in the field and investigate the matter. Oftentimes, the excesses indulged in by the State through its police personnel result in admissions, which may be inaccurate, but which are made to stave off or delay the further torture. If police brutalities and inhuman treatment of persons in custody have to be arrested, the compensation for

custodial death has to be pegged at a level where the State will bleed to make the payment; not what the State is happy to pay off.

25. At any rate, there is no room to apply the strict liability theory when it comes to a death of a person in the custody of the State. The State's liability in such regard is absolute and unless it demonstrates to the satisfaction of the Court that the death was due to natural causes, the Court may reasonably infer otherwise and hold the State liable. The State ought also to be liable for the actions of its officers and employees. It is possible that in several cases exuberant officials would go beyond the call of duty or the SOP in place. In such cases, the State will remain liable for the acts and conduct of its officials, but the State will also be free to proceed against such officials and even extract the compensation that it has to pay from such officials in accordance with law. Though the classification indicated in the Haryana notification and as has been mindlessly adopted by the State appears to be abhorrent and obnoxious, there should be some other form of classification based on a precedent therefor in our jurisprudence. In respect of motor accident claims, there is a classification of the quantum of compensation payable based on the age of the victim. Accordingly, it is deemed fit and proper to classify the victims who have died in custody into three categories, namely, below 30; between 30 and 45; and, above 45.

26. Since the judgment of this Court in Smti. Meena S. Marak has already established the quantum, the sum of Rs. 15 lakh may be taken as the compensation payable for death in custody to the next of kin of a person age below 30. For victims in the age-group of 30 to 45, the quantum of compensation should be Rs. 12 lakh and for those above 45 years, it should be Rs. 10 lakh. There is an element of subjectivity in arriving at such ballpark figures; however, when it comes to assessment of damages or quantification of compensation, there is an element of guesstimation that is always indulged in.'

11. Dealing with the first issue, it is pertinent to examine the panchnama prepared in accordance with Section 174 CrPC (corresponding Section 194 BNSS), which was conducted in the presence of Sub-Divisional Magistrate, Circle Officer, Inspector and jail authorities on the date of death itself at prison. It was recorded in the panchnama that the deceased had committed suicide by hanging himself from the ventilator of toilet using a muffler.

12. Moreover, the post mortem report indicates the presence of ligature mark around the neck and a superficial abrasion on the anterior aspect of mid of left lower leg. Furthemore, the inquest report prepared in accordance with Section 176 CrPC (corresponding Section 196 BNSS) has also been submitted, wherein after considering the statements of all the witnesses, it was concluded that the deceased had committed suicide. As per the statements of doctor who conducted post mortem examination on the body of the deceased, the injuries found on the body were minor in nature which were not sufficient enough to have resulted in death of the deceased.

13. It is undisputed that the deceased was in the custody of the State and had committed suicide. There may have been circumstances surrounding him which drove him to take such an extreme step, resulting in a patently unnatural death. Ergo, the State is absolutely liable for the unnatural death of the deceased, as an amplified duty is cast upon the State for the death of a prisoner in custody of police without any exception. No State can shirk its duties and

responsibilities for providing better facilities to prisoners. Accordingly the case of custodial death is made out in the present case.

14. Now adverting to the issue with regard to grant of compensation by the Writ Court, we may refer to a judgment of the Supreme Court rendered in **Rudul Sah v. State of Bihar** reported in (1983) 4 SCC 141. While dealing with a case of illegal detention even after an acquittal in a trial, the Court has categorically held that the kin of the deceased was entitled to compensation for the illegal detention and rejected the stale and sterile objection of the State that the compensation can be recovered by filing a suit for damages. The relevant paragraphs of the judgment are delineated below:

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true

bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.'

15. Moreover, in **Nilabati Behera** (Supra), the Hon'ble Supreme has recognised compensation for custodial deaths as public law remedy and held that in cases of violation of fundamental right by state's instrumentalities or servants, Writ Court can direct the State to pay compensation to the victim or his/her legal heir(s) by way of monetary amends. The relevant paragraphs of the judgment are quoted herein below:-

"23.'The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs 1200 to Rs 1500. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) CrPC and Section 141(3) of the Motor Vehicles Act, 1988.

24. Accordingly, we direct the respondent State of Orissa to pay the sum of Rs 1,50,000 to the petitioner and a further sum of Rs 10,000 as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs 1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to the Registrar (Judicial) of this Court within three months.'

16. In **Re-Inhuman Conditions in 1382 Prisons** (Supra), the Hon'ble Supreme Court has extensively and in great detail dealt with the issue of custodial death and held as under:-

"9. On the issue of defining natural and unnatural deaths, the learned Amicus Curiae drew our attention to the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). According to ICRC, 'death' is the irreversible cessation of all vital functions, including brain activity. Death is 'natural' when it is caused solely by disease and/or the aging process. It is 'unnatural' when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident). We have perused the guidelines provided by ICRC and are of the view that these guidelines deserve consideration and circulation by the Central Government and all the State Governments.

NHRC and suicide prevention

10.It has been pointed out by the learned Amicus Curiae that a disproportionately large number of unnatural deaths are attributable to suicides. In this regard, it has been brought to our notice by the learned Amicus Curiae that in relation to suicides in prisons, the National Human

Rights Commission or NHRC has published a monograph sometime in December 2014 entitled 'Suicide in Prison ' Prevention Strategy and Implication from Human Rights and Legal Points of View'. This monograph records that during the period 2007-2011, deaths in prisons on account of suicide formed 71% of the total number of unnatural deaths. It was also pointed out that the average suicide rate among the general public for this period is 11 (per 100,000) whereas the average suicide rate in prison is 16.9 (per 100,000). In other words, the average suicide rate in prisons is over 50% more than in normal conditions. The monograph refers to certain communications issued by NHRC from time to time on the aspect of custodial deaths, but we will refer to them in somewhat greater detail a little later.

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12.'Detailing the characteristics of a prison environment that make suicides in prisons more likely, NHRC monograph mentions the following:

1. Authoritarian environment

2. No apparent control over the future

3. Isolation from family, friends and community

4. The shame of incarceration

5. Dehumanising aspects of incarceration

6. Fears

7. Staff insensitivity to the arrest and incarceration phenomenon

8. Hostility and bullying by other inmates

9. Lack of adequate medical and psychological counselling and treatment facility

10. Delay in deciding the parole.

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14.NHRC has suggested various protective factors or measures that could be employed to reduce the number of suicides in prisons. Among them are visits and contact that the prisoner could have with the family, constructive occupation in prison, instilling hopes and plans for the future and support from staff.

15.NHRC also conducted a National Seminar on Prison Reforms on 15-4-2011. The recommendations made in the National Seminar have also been indicated in the monograph as also some actionable points for suicide prevention programmes. In its conclusion, NHRC has recorded

that the success of efforts to prevent suicides in prisons depends on the ability and willingness to identify the vulnerability of each prisoner, provide necessary supervision and support and offer alternative ways of coping and reducing emotional distress. It is noted that any proposed piecemeal solution to the problem of suicides in prisons will not result in any long-term improvement.

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16.What we have mentioned above is only a brief indication of the extent to which NHRC has put in an effort to bring about a composite monograph and a detailed study on suicides in prisons. In our view, this would certainly be useful to prison officials and staff in reducing, if not eliminating suicides in prisons. The monograph prepared by NHRC, in our opinion, deserves to be freely distributed amongst the staff and prisons all over the country since it is a document of immense utility insofar as suicide prevention in prisons is concerned.

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38.The need for an inquiry into every death in custody was also emphasised by the learned Amicus Curiae, who submitted that there was discrepancy of data between deaths reported in prisons as per NCRB and deaths reported in prisons as derived from the data available with NHRC. It was submitted by the learned Amicus Curiae that this discrepancy needs to be reconciled and adequate reasons must be provided for every death that takes place in a prison.

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48.In addition to the above decisions and several others rendered by this Court, almost every High Court in the country has, at one time or another, also granted compensation for the unnatural death of a person in custody, whether an undertrial or a convict. A few such illustrations may be noted:

(a)'Nina Rajan Pillai'v.'Union of India'[Nina Rajan Pillai'v.'Union of India, 2011 SCC OnLine Del 2252 : (2011) 180 DLT 104]

48.1.'The husband of the petitioner died in judicial custody due to inadequate medical treatment given by the jail authorities. The Lt. Governor of Delhi even appointed a Commission of Inquiry headed by Justice Leila Seth, a former Chief Justice of the Himachal Pradesh High Court to inquire into the circumstances that led to the death of the petitioner's husband. The Delhi High Court awarded compensation for the unnatural death in custody.

(b)Kewalbai'v.'State of Maharashtra'[Kewalbai'v.'State of Maharashtra, 2013 SCC OnLine Bom 773 : (2013) 3 Bom CR (Cri) 601]

48.2.'The victim was shot dead by a constable while in custody. The Bombay High Court awarded compensation for the unnatural death in custody.

(c)Bheduki Buragohain'v.'State of Assam'[Bheduki Buragohain'v.'State of Assam, 2013 SCC OnLine Gau 429 : (2013) 6 Gau LR 517]

48.3.'The undertrial victim died in judicial custody under suspicious circumstances. The post-mortem report indicated that the cause of death was asphyxia as a result of strangulation and ante-mortem injuries by blunt weapons. The Gauhati High Court awarded compensation for the unnatural death in custody.

(d)Madhuben Adesara'v.'State of Gujarat'[Madhuben Adesara'v.'State of Gujarat, 2016 SCC OnLine Guj 1956]

48.4.'The deceased was brutally tortured by police officers while in custody and succumbed to his injuries during treatment. The post-mortem report revealed that the victim had multiple injury marks which were ante-mortem in nature. The Gujarat High Court awarded compensation for the unnatural death in custody.

(e)'Banalata Dash'v.'State of Orissa'[Banalata Dash'v.'State of Orissa, AIR 2012 Ori 97]

48.5.'The deceased was found hanging from a tree with his hands behind his back, tied at the wrist with a towel. Since the victim was in the custody of the prison authorities, compensation was awarded by the Orissa High Court for the unnatural death in custody.

(f)'Amandeep'v.'State of Punjab'[Amandeep'v.'State of Punjab, 2012 SCC OnLine P&H 19844 : (2013) 169 PLR 191]

48.6.'The deceased was assaulted by a co-prisoner and succumbed to injuries in the hospital. Due to the unnatural death in custody, the Punjab and Haryana High Court awarded compensation to the next of kin of the deceased.

(g)'Tmt. Rohini Lingam'v.'State'[Tmt. Rohini Lingam'v.'State, 2008 SCC OnLine Mad 1249 : (2008) 5 MLJ 822]

48.7.'The victim was murdered by his enemies while in prison. Due to the unnatural death in custody, the Madras High Court awarded compensation to his next of kin.

(h)'Sabu E.K.'v.'State of Kerala'[Sabu E.K.'v.'State of Kerala, 2016 SCC OnLine Ker 22210 : (2016) 4 KLJ 105]

48.8.'The victim was tortured in a police station and succumbed to his injuries. In view of the unnatural death in custody the Kerala High Court awarded interim compensation to the next of kin of the deceased until the criminal trial against the police officers concerned was concluded.

(i)'Ravindra Nath Awasthi'v.'State of U.P.'[Ravindra Nath Awasthi'v.'State of U.P., 2009 SCC OnLine All 337 : (2009) 2 AWC 2090]

48.9.'The victim was an advocate held guilty of contempt of court. While he was undergoing his sentence, he was severely beaten up by the prison authorities and succumbed to his injuries in hospital. Due to the unnatural death in custody, the Allahabad High Court directed payment of compensation to the next of kin of the deceased.

(j)'Madina'v.'State of Rajasthan'[Madina'v.'State of Rajasthan, 2000 SCC OnLine Raj 203 : 2000 Cri LJ 4484]

48.10.'The victim died in police custody on account of the use of third degree methods. Due to the unnatural death in custody, compensation was awarded by the Rajasthan High Court to the next of kin of the deceased.

(k)'Dukhuram'v.'State of Chhattisgarh'[Dukhuram'v.'State of Chhattisgarh, (2011) 3 MPHT 81]

48.11.'The deceased was taken from the police station in order to recover stolen articles alleged to have been hidden by him at a secret place. He was brought to a pond and compelled to dive into the pond. At that time he was handcuffed and in chains. Subsequently, the dead body of the deceased was found floating in the pond. In view of the unnatural death, while the deceased was in the custody of police officers, the Chhattisgarh High Court awarded compensation.

(l)'Santosh Kumari'v.'State of H.P.'[Santosh Kumari'v.'State of H.P., 2007 SCC OnLine HP 45 : 2008 ACJ 1684]

48.12.'The victim died while he was in police custody and it was found that he had injuries on his head, shoulders, eyes, knees and private parts. He died in hospital as he was not given medical assistance in time. In view of the unnatural death while in custody, the Himachal Pradesh High Court awarded compensation to the next of kin of the deceased.

(m)'State of J&K'v.'Sajad Ahmad Dar'[State of J&K'v.'Sajad Ahmad Dar, 2015 SCC OnLine J&K 160]

48.13.'The victim died due to cardiopulmonary arrest while detained in the District Jail under the Jammu and Kashmir Public Safety Act, 1978. It was held that death was due to carelessness, non-seriousness and negligence in not extending medical treatment. In view of the unnatural death in custody, the Jammu and Kashmir High Court awarded the compensation to the next of kin of the deceased.

(n)'Meena Singh'v.'State of Bihar'[Meena Singh'v.'State of Bihar, 2001 SCC OnLine Jhar 74 : 2001 Cri LJ 3573]

48.14.'The victim was attacked and killed by co-prisoners by the use of chhura, iron rods and belts, etc. The next of kin of the deceased were awarded compensation by the Patna High Court for the unnatural death of the victim in custody.

(o)'Lawyers for Justice'v.'State of M.P.'[Lawyers for Justice'v.'State of M.P., 2015 SCC OnLine MP 7488 : AIR 2015 MP 212]

48.15.'The victim was facing trial for offences under Section 302 of the Penal Code, 1860. While he was undergoing treatment in a hospital he was shot dead by an unknown person. In view of the unnatural death while in custody, the Madhya Pradesh High Court awarded compensation to the next of kin of the victim.

***

The need to compensate

54.'The case law indicates that over the last several decades this Court and almost every High Court has relied on Article 21 of the Constitution and thought it appropriate to compensate the next of kin for an unnatural custodial death. The constitutional courts can go on delivering judgment after judgment on this issue and award compensation, but unless the State realises that custodial death is itself a crime and monetary compensation is not necessarily the only appropriate relief that can be granted to the next of kin of the deceased, such unnatural deaths will continue unabated. Therefore, what is needed is a review of all prisons with a humanitarian nuance.

55.'Over the last several years, there have been discussions on the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realise that persons who suffer an unnatural death in a prison are also victims'sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence, the need to compensate the next of kin.'

CONCLUSION

17. In view of the foregoing analysis, this Court finds that the death of the deceased occurred while in custody and control of the State authorities, and that the material placed on record unmistakably establishes a violation of the fundamental rights guaranteed under Article 21 of the Constitution of India. Custodial torture is a naked violation of human dignity and degradation that destroys self-esteem and being of the victim to the absolute core. Custodial torture is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. Despite recommendations for banishing torture from the investigative system, growing incidence of torture and deaths in police custody and prisons continue to persist. Custodial violence and deaths strike the very core of the rule of law and are an affront to human dignity. The State, being the custodian of life and liberty of persons in its custody, bears a strict and non-delegable duty to ensure their safety. Failure to discharge this obligation attracts public law liability.

18. The explanations offered by the respondents is neither cogent nor sufficient to displace the presumption of the death of the petitioner's son eventuated in prision. Accordingly, the onus which squarely lay upon the State to account for the circumstances leading to the death, has not been satisfactorily discharged. The contention of the State that the death was due to suicide and was not an unnatural death does not hold water as has been categorically demonstrated by the judgments as discussed above. The Hon'ble Supreme Court in **Re-Inhuman Conditions in 1382 Prisons** (Supra) has categorically held that a suicide would amount to an (internal) intentional injury and would be an unnatural death wherein the liability would squarely fall on the State. In light of the same, one may patently come to a conclusion that the facts of the present case disclose a clear infringement of constitutional protections, warranting intervention under Article 226 of the Constitution.

19. It is well settled, inter alia, in **Nilabati Behera** (Supra) and **D.K. Basu** (Supra) that this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is empowered to award monetary compensation as a remedy in public law for established violations of fundamental rights, independent of and in addition to remedies available in private law. Monetary compensation, while not a complete substitute for the loss of life, could provide some measure of solace for the bereaved family and act as a deterrent against future custodial violence.

20. With regard to the issue of the amount of compensation to be paid to the victim, in the judgment of Meghalaya High Court in **Suo Motu Custodial Violence** (Supra), a categorization was made with regard to the quantum to be paid creating three categories- (a). sum of Rs.15 lacs for a person below the age of 30 years; (b). between the age group of 30 to 45 years quantum of Rs.12 lacs and (c). for those above 45 the quantum to be Rs.10 lacs. However, it appears that this judgment has been stayed by the Hon'ble Supreme Court in **The State of Meghalaya Vs. Killing Jana and others** in SLP(C) Diary No.47683/2023 vide order dated January 22, 2024 especially with regard to the categories created by the High Court for award of different compensations based on the age of the victim. In light of the same, one cannot apply the said judgment as an authoritative precedent for taking a decision on the quantum of compensation. In recent years, as illustrated in the judgments cited above, the High Courts and the Hon'ble Supreme Court have awarded a sum of Rs.10 lacs for custodial deaths.

21. Upon sifting through the ratios laid down in the aforesaid judgments, the following steps must be taken as a preliminary step in case of custodial death:

A. The family members of the deceased must be informed immediately by the jail authoritiees about the death of the deceased. A panchnama with independent panchas shall be prepared immediately on the spot in accordance with Section 174 CrPC (corresponding Section 194 BNSS) without any delay.

B. A post mortem examination must be conducted promptly mentioning the cause of death without any delay. The video recording of the post mortem examination in case of custodial death of the deceased must be mandatorily carried out.

C. An inquest report by the judicial magistrate concerned must be submitted in accordance with Section 176 CrPC (corresponding Section 196 BNSS) immediately after considering all the witnesses, post mortem report and panchnama.

D. The monetary compensation in order to provide solace to the next of kin of the deceased in custody must be paid as fixed by National Human Rights Commission after considering the peculiar facts and circumstances of the individual custodial death case.

22. Accordingly, the writ petition is allowed. Consequently, the respondents are directed to pay compensation of Rs.10,00,000 (Rs Ten Lacs Only) to the legal heirs of the deceased within a period of three weeks from date.

23. This compensation shall be without prejudice to the right of the petitioners to pursue appropriate civil or criminal proceedings against the officials concerned. The State Government is further directed to frame guidelines fixing compensation by adopting relevant and cogent parameters in awarding compensation in custodial death cases akin to the multiplier method based on age, income and dependants as available under the Motor Vehicles Act, 1988.

24. The writ petition stands allowed in the above terms.

(2026) 2 ILRA 1518
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.02.2026

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 1145 of 2026

Anshul Rana **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for consideration

The matter pertains to writ petition challenging order of State Human Rights Commission closing complaint relating to property dispute, encroachment, and drainage rights.

Headnotes

Constitution of India, 1950-Article 226-Protection of Human Rights Act,1993-Section 21(5), 2(1)(d)-Jurisdiction-Property dispute-Title & Possession-Encroachment-Easementary rights-Civil remedy –Revenue proceedings-Alternative remedy-Writ-Maintainability-No interference-Dismissed.(9 to 18)

Held

The court ruled that the dispute is purely property-related, not human rights violation. Human right commission lacks jurisdiction over title/possession disputes. Remedies available under civil law and U.P. Revenue Code. Hence, no illegality in impugned order. (E-6)

Case law Cited

G.Manikyamma Vs Roudri Coop. Housing Scoiety Ltd., (2014) 15 SCC 197-referred to.

List of Acts

Constitution of India, 1950
Protection of Human Rights Act,1993.
U.P. Revenue Code,2006

List of Keywords

HRC, Jurisdiction, Property dispute, Civil remedy, Revenue remedy, writ jurisdiction.

Case Arising from

CIVIL JURISIDICTION: WRIT-C No.- 1145 of 2026
Anshul Rana Vs. State of U.P. Thru. Prin. Secy. Revenue Lko. & 5 Ors
From the judgment and order dated 20.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner(s):-
Aditya Tiwari
Adv. for Respondent(s):-
C.S.C.

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

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. The instant writ petition has been filed by the petitioner challenging the order dated 11.03.2025 passed by the U.P. State Human Rights Commission (hereinafter referred to as the "Commission") in Case No. 4294/24/75/2022 registered on 20.12.2022, whereby the complaint of the petitioner has been disposed of indicating therein that no further action is required in the complaint lodged by the petitioner.

3. Learned counsel for the petitioner submitted that the Commission has closed the complaint of the petitioner without any affirmative action, ignoring the fact that the grievance of the petitioner is still to be redressed.

4. The petitioner initially made a complaint vide his letter dated 20.11.2022, which was registered as Case No. 4294/24/75/2022, and thereafter, in the proceedings before the Commission, submitted an application dated 15.12.2024, which is annexed with the writ petition as Annexure No. 10, in which a specific point-wise complaint has been made by the petitioner, which are 14 in number.

5. The Commission, while entertaining the complaint of the petitioner initially, vide order dated 20.12.2024, sought a report from the District Magistrate, Bareilly, due to a typing error, as in fact it should have been from the District Magistrate, Sambhal. However, the Additional District Magistrate (Nagar), Bareilly, vide his letter dated 21.01.2025, forwarded the matter to the office of the District Magistrate, Sambhal and a copy of the same was also forwarded to the Commission for information. Subsequently, the Additional District Magistrate (Finance and Revenue), Sambhal,

vide his letter dated 12.02.2025, informed the Commission that the complaint dated 15.12.2024 was got inquired into by the Tehsildar, Sambhal, who, in his report dated 12.02.2025, has indicated that the matter stands resolved between the parties with regard to the flow of the drain and encroachment on the pond land as well as on the land of the petitioner. The Commission taking note of report submitted by Additional District Magistrate (Finance and Revenue), Sambhal vide letter dated 12.02.2025 proceeded to pass order dated 11.03.2025, which is under challenge in the present writ petition.

6. We have gone through the order dated 11.03.2025 passed by the Commission, which records that the grievance of the petitioner with regard to the land in question, i.e., Gata No. 132 admeasuring 0.154 hectare, situated in Village Mumbai Thakuran, Sambhal, recorded as abadi land, Category 6(2), in the revenue records, was taken up by the Sub-Divisional Magistrate, Sambhal, on 20.05.2021 for resolving the dispute between the parties after deliberation with the interested parties and, with their consent, the drain has been made through Gata No.132 and has been connected with the pond so that the problem of waterlogging is solved. Regarding the other Gata No. 130, it has been indicated in the order dated 11.03.2025 that the said land is the private land of the petitioner/complainant and it is in possession of the petitioner. Regarding other Gata Nos. 123, 131 and 128, it has been indicated that the said plots of land belongs to Gram Samaj, and are public utility land. It is also indicated that Gata No. 134 is recorded in the revenue record as a pond and is free from encroachment.

7. The aforesaid facts have been recorded in the order dated 11.03.2025 on the basis of report dated 12.02.2025 submitted by the Additional District Magistrate (Finance and Revenue), Sambhal. The Commission has taken into consideration the 14-points complaint made by the petitioner, out of which points 1 and 2 of the complaint were in respect of the landed property of the petitioner, whereas points nos.3 to 5 were in respect to public utility land, regarding which, as per the report of the Additional District Magistrate (Finance and Revenue), Sambhal dated 12.02.2025, necessary steps were already taken. In reference to points 6 to 14 of the complaint, it has been noticed by the Commission that the petitioner, with regard to such complaint, has already filed Case No. 58 of 2021 in the Court of the Chief Judicial Magistrate, Sambhal, which is pending. In such circumstances, the Commission, by order dated 11.03.2025, disposed of the complaint of the petitioner recording therein that no further action is required in reference to the complaint lodged by the petitioner/complainant.

8. Having considered the arguments of learned counsel for the petitioner, we proceed to analyse the nature of the complaint filed by the petitioner before the Commission and the steps taken by the Commission in furtherance of such complaint while finally disposing of the complaint vide order dated 11.03.2025. The complaint, as per the application of the petitioner dated 15.12.2024 annexed with the writ petition as Annexure No. 10, reflects that the petitioner"s primary allegation is in reference to a dispute relating to his private land, i.e., Gata No. 130, and the easementary right of the passage of the drain through abadi land, i.e., Gata No. 132, and removal of encroachment from land Gata No. 134, which is recorded in the revenue records as a pond. Further allegations in the complaint dated 15.12.2024 are with respect to the high-handedness of the authorities while disposing of the claim of the petitioner.

9. When we go through the scheme of the statutory enactment, i.e., the Protection of Human Rights Act, 1993 (hereinafter referred to as the Act, 1993), we find that Section 21 of the Act, 1993 provides for the constitution of the State Human Rights Commission. Section 21(5) provides that the State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution, meaning thereby those State matters which are mentioned in the State List and the Concurrent List. The term "human rights" has been defined in Section 2(1)(d) to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Thus, the State Commission has the power to inquire into violation of human rights as defined under Section 2(1)(d) in reference to matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.

10. The nature of the dispute/complaint that has been raised by the petitioner before the Commission vide his complaint dated 15.12.2024 reflects that the same are related to the property dispute of the petitioner, for which there is already a remedy provided under the common civil law related to property as well as statutory enactments as in the U.P. Revenue Code, 2006, that is to say, Section 67 for removal of encroachment from public utility land and Section 134 pertaining to individual right. In this regard, the judgment of the Hon"ble Supreme Court in the case of ***G. Manikyamma v. Roudri Coop. Housing Society Ltd., (2014) 15 SCC 197***, is worth mentioning. Paragraph Nos. 40 to 46 of the same are quoted hereinbelow:"

40. The Human Rights Commission, in our view, would not be competent forum for the examination of the abovementioned issues. Both the first respondent Society as well as the encroachers, in our view, wrongly invoked the jurisdiction of the Human Rights Commission instead of pursuing the appropriate remedies available to them in law, and the Human Rights Commission was too willing to exercise authority without any jurisdiction. We are also of the opinion that the High Court resorted to more of a mediation activity than the determination of the legal issues involved in the case.

41. In our opinion, the Human Rights Commission does not have any jurisdiction to deal with the disputed questions of title and possession of the property.

42. We make it clear that in P.T. Munichikkanna Reddy v. Revamma [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] , this Court examined the impact of a claim of adverse possession over rented property in the context of the claim of a person who has a valid title in his favour. This Court upon examination of Beaulane Properties Ltd. v. Palmer [Beaulane Properties Ltd. v. Palmer, 2005 EWHC 817 : (2005) 3 WLR 554 : (2005) 4 All ER 461 (Ch)] and J.A. Pye (Oxford) Ltd. v. United Kingdom [J.A. Pye (Oxford) Ltd. v. United Kingdom, (2005) 49 ERG 90 : 2005 ECHR 921] opined: (P.T. Munichikkanna Reddy case [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] , SCC p. 77, para 43)

"43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part

of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English courts is quite visible from the judgments of Beaulane Properties Ltd. v. Palmer [Beaulane Properties Ltd. v. Palmer, 2005 EWHC 817 : (2005) 3 WLR 554 : (2005) 4 All ER 461 (Ch)] and J.A. Pye (Oxford) Ltd. v. United Kingdom [J.A. Pye (Oxford) Ltd. v. United Kingdom, (2005) 49 ERG 90 : 2005 ECHR 921] . The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."

43. P.T. Munichikkanna Reddy case [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] arose out of a suit filed under Section 9 of the Code of Civil Procedure, 1908 (for short "CPC") where both the plaintiff and defendant asserted their title to the property in dispute. The plaintiff in the alternative claimed that he had perfected the title by adverse possession. It was a case where the original owner of the property sold the same piece of land to both the parties to the suit. The sale in favour of the defendant is anterior to the sale in favour of the plaintiff. It was in the background of the abovementioned facts, this Court examined the question. P.T. Munichikkanna Reddy case [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] is not an authority for the proposition that the Human Rights Commission either National or State constituted under the Protection of Human Rights Act, 1993 are competent to adjudicate upon the disputed questions of title and possession.

44. The functions and powers of the Commission are enumerated under Section 12 of the Protection of Human Rights Act, 1993, which reads as follows:

"12. Functions of the Commission."The Commission shall perform all or any of the following functions, namely"

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of"

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights."

It can be seen from the language, there is nothing in Section 12 which authorises the Human Rights Commission to adjudicate upon the disputes of title and possession of property.

45. Apart from that, there is neither any examination nor any determination by any competent body of the rights of the first respondent Society and its members on one hand, and the encroachers on the other hand, for that matter, even the rights and authority of the State over the property in dispute.

46. In the circumstances, we deem it appropriate to set aside the orders of the Andhra Pradesh Human Rights Commission dated 17-2-2011 and 18-3-2011 and the judgment of the learned Single Judge dated 26-12-2012 in Roudri Coop. Housing Society Ltd. v. Deptt. of Revenue [Roudri Coop. Housing Society Ltd. v. Deptt. of Revenue, WP No. 10414 of 2011, order dated 26-12-2012 (AP)] and also the judgments in Y. Muthyalu v. Roudri Coop. Housing Society [Y. Muthyalu v. Roudri Coop. Housing Society, Writ Appeal No. 580 of 2011, decided on 2-7-2012 (AP)] dated 2-7-2012 and the judgment in State of A.P. v. Roudri Coop. Housing Society Ltd. [State of A.P. v. Roudri Coop. Housing Society Ltd., Writ Appeal No. 1125 of 2013, decided on 20-8-2013 (AP)] leaving it open to the parties to seek their remedies before the appropriate fora, if they are so advised. We also direct all the parties including the authorities of the State to maintain status quo obtaining as on today with respect to the possession of the various parties until the competent court/forum determines the rights of the first respondent Society and also the encroachers with respect to the land in question admeasuring 4 acres 10 guntas.

(Emphasis supplied by us)

11. With regard to some of the allegations which are referred to in the complaint from point Nos.5 to 14, the petitioner has already initiated proceedings before the Chief Judicial Magistrate, Sambhal. Thus, we are of the view that, in fact, the complaint of the petitioner primarily related to his property, for which he has an efficacious remedy under the common civil law, and hence the

complaint of the petitioner before the Commission was misconceived and, in fact, could not have been entertained at all. Hence, we do not find any illegality or irregularity in the impugned order dated 11.03.2025.

12. Accordingly, the writ petition stands **dismissed.**

13. No order as to costs.

(2026) 2 ILRA 1524
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 2130 of 2026

Kishori Lal **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

A. Whether the subsequent government order dated 08.07.2021 is clarificatory to the earlier one and, being clarificatory in nature, can be used as a external aid to understand the government notification dated 02.08.2018 for the purpose of granting ex gratia relief in a case where the death due to snake bite occurred on 23.08.2019.

B. Whether in the absence of a conclusive opinion regarding the cause of death in the postmortem report, the claim of the petitioner can be sustained on the basis of consistent and statements of witnesses which find mention in official proceedings, particularly when such evidence uniformly supports the petitioner's version and the policy in question is a welfare measure in cases of State specific disaster/ natural calamity, which are listed in government notification.

Head Notes

The Constitution of India, 1950-Article 226; Notification dated 27.06.2016 bearing notification number 303/1- 11-2016-4(G)/16, Notification dated 02.08.2018, bearing notification number-UO 30/1-11-2018-4(G)/201- Petitioner's wife died due to snake bite and under the Government notification dated 02.08.2018, and the petitioner claimed ex gratia payment of Rs.4,00,000/-

That subsequent legislation or policy can be referred to as an external aid to understand an earlier provision, particularly when the later measure is beneficial, clarificatory, or declaratory in nature and not creating any new right. It is an established principle of law that later legislation or policy can sometimes throw light on the legislative intent behind an earlier provision, especially when the later law clarifies rather than changes the position. Later statute, amendment, or policy may be used as an interpretative aid if it explains or clarifies an ambiguity in the earlier law or is declaratory or explanatory in nature or the same reflects the legislature's understanding of the earlier provision.

The petitioner had promptly informed the police about the death of his wife explaining the reason of the death as well. The General Diary entry records the cause of death as a snake bite. The inquest proceedings and spot inspection conducted by the Lekhpal further corroborate the petitioner's version, with statements of eyewitnesses confirming that the death occurred due to snake bite while the deceased was working in the agricultural field. There is no discrepancy or conflict in the statements recorded at any stage, and the postmortem report merely states that the cause of death could not be ascertained, without contradicting the consistent evidence of the eyewitnesses. In such circumstances, the principle of *contemporanea expositio* is relevant here and reliance on consistent official records should be placed to decide petitioner's claim.

Held- Petitioner is entitled to relief under the Government notification dated 02.08.2018, read harmoniously with the clarificatory order dated 08.07.2021, which is brought to control possible mischief under order 02.08.2018. The impugned rejection of the claim on technical grounds cannot be sustained and, therefore, **the order dated 02.08.2018 and 08.07.2021 are hereby quashed.** (E-15)

(Para 18, 23 & 25)

Case Law Cited

WPIL Ltd. Ghaziabad vs Commissioner Of Central Excise, Meerut, (2005) 3 SCC 73; State Bank of India vs V. Ramakrishnan, (2018) 17 SCC 394; Mahendra Prasad Agarwal vs. Arvind Kumar Singh and Others being SLP (C) No. 1714 of 2025;

List of Acts

The Constitution of India, 1950; Notification dated 27.06.2016 bearing notification number 303/1- 11-2016-4(G)/16, Notification dated 02.08.2018, bearing notification number- UO 30/1-11-2018-4(G)/201

List of Keywords

ex gratia payment; death due to snake bite, Notification dated 27.06.2016, 02.08.2018; principle of contemporanea exposition; rejection on technical grounds; cannot be sustained

Case Arising From

Petition under Article 226 of the Constitution of India with the prayer to issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to pay Rs.4,00,000/- to the petitioner in view of the Government notification dated 02.08.2018 and the government order dated 08.07.2021.

Appearances for Parties

Counsel for Petitioner(s) : Shashi Kumar Mishra
Counsel for Respondent(s) : C.S.C.

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Shri Shashi Kumar Mishra, learned counsel for the petitioner and Ms. Shruti Malviya, learned brief holder appearing for the State-respondents.

2. The petition is filed under Article 226 of the Constitution of India with the prayer to issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to pay Rs.4,00,000/- to the petitioner in view of the Government notification dated 02.08.2018 and the government order dated 08.07.2021.

3. The background fact of the matter is that on 23.08.2019, wife of the petitioner, Smt. Raj Kumari, while working in an agricultural field got snake bite and resultantly died. Subsequently, in

this regard, General Diary entry bearing No. 015 dated 24.08.2019 was recorded by the police, wherein it was written that the deceased had died due to snake bite. On the same day, inquest report was prepared, and the statements of the witnesses got recorded, which indicated that the death had occurred due to snake bite. The postmortem examination of the deceased was also conducted on 24.08.2019, however, the postmortem report did not conclude the cause of death as such and recorded that the cause of death could not be ascertained. Consequently, the viscera of the deceased was preserved and handed over to authorities for examination.

4. Subsequently, petitioner applied for the ex gratia payment, claiming that death of his wife was due to snake bite, which stood covered under the Government notification dated 02.08.2018 for benefits in terms of compensation. According to the procedure, site inspection was conducted, during which the Lekhpal interacted with people in village, who were present and had witnessed the incident. Thereafter, report dated 23.03.2022 was prepared and submitted by the Lekhpal. The report recorded that people present there had stated that the death was due to snake bite. Following this, on 30.03.2022, the Sub-Divisional Magistrate, Konch, District Jalaun, wrote a letter to the Additional District Magistrate, Jalaun. The letter relied on the Lekhpal's report, mentioning the on-site inspection and statements made by people in village, who were present at that time. People present there, stated that the petitioner's wife while engaged in agriculture work in her field died on 23.08.2019 due to snake bite. However, the Sub-Divisional Magistrate concluded as finding that the case did not get covered under government notifications and, therefore, the petitioner was not entitled to ex gratia payment. The reason for the rejection was that postmortem report did not record the reason for death as snake bite, whereas the report, in fact, stated that the cause of death could not be ascertained.

5. Petitioner also raised his grievance through the ?Jansunwai Portal? by filing online complaints bearing reference Nos. 40016522003379 and 40016522005028. He reiterated his claim that his wife had died due to snake bite and that ex gratia payment had not been granted to him. The Sub-Divisional Magistrate, Konch, again rejected the claim of the petitioner vide order dated 28.05.2022, referring the same Lekhpal?s report dated 23.03.2022 and the postmortem report dated 24.08.2019. The order also referred the Government order dated 08.07.2021, however, this time concluded that since the death had occurred before 08.07.2021, the case of the petitioner?s wife of her death due to snake bite would not be covered under this notification.

6. Learned counsel appearing for the petitioner submitted that the death of the petitioner?s wife was due to snake bite and, therefore, this case was covered under the Government notification dated 02.08.2018, and the petitioner was entitled to ex gratia payment of Rs.4,00,000/-. He further submitted that from the very inception, including the General Diary entry, the inquest report, and the statements of people in village during spot inspection by the Lekhpal, a consistent version had been that the deceased died due to snake bite while working in the agricultural field.

7. Learned counsel further submitted that the impugned order itself referred to the report, which mentioned statements of people present at the place of occurrence who all had supported petitioner?s statement regarding the cause of death. It was contended that there was no material on record suggesting any cause of death other than the snake bite and the rejection of the claim of the petitioner was baseless for want of due without application of mind.

8. Learned counsel appearing for the petitioner further submitted that the postmortem report did not attribute the death to any other cause and merely recorded that the cause of death could not be ascertained. In such circumstances, the inability of the medical report to conclusively determine the cause of death could not have been construed against the petitioner, particularly when the medical evidence did not contradict the eyewitnesses accounts. Learned counsel submitted that where there was no conflict between medical evidence and eyewitness testimony because postmortem report did not state any direct reason for death. He further submitted that where the medical report did not negate the version of eyewitnesses, the consistent and corroborated statements of eyewitnesses deserved due weight, and the application of the petitioner should not have been rejected stating that there was no document to support cause of death being snake bite. He further submitted that the rejection of the petitioner?s claim for ex gratia payment was an arbitrary decision and hence unsustainable in law.

9. Per contra, learned brief holder appearing for the State supports the impugned orders passed by the authorities and submitted that the same is rightly passed in accordance with the applicable government notifications. She contends that the petitioner failed to furnish any documentary evidence along with his application to establish that the death of his wife had occurred due to snake bite. She further submitted that the claim of the petitioner cannot be considered under the subsequent Government order dated 08.07.2021, as the death of the petitioner?s wife had taken place much before 08.07.2021.

10. In the light of aforesaid facts and the rival submissions advanced by the learned counsel for the parties, the question that falls for consideration before this Court is whether the subsequent government order dated 08.07.2021 is clarificatory to the earlier one and, being clarificatory in nature, can be used as a external aid to understand the government notification dated 02.08.2018 for the purpose of granting ex gratia relief in a case where the death due to snake bite occurred on 23.08.2019. Thereafter this court is to consider whether in the absence of a conclusive opinion regarding the cause of death in the postmortem report, the claim of the petitioner can be sustained on the basis of consistent and statements of witnesses which find mention in official proceedings, particularly when such evidence uniformly supports the petitioner?s version and the policy in question is a welfare measure in cases of State specific disaster/ natural calamity, which are listed in government notification.

11. To appreciate the issues that arise for consideration, it is necessary to trace the circumstances leading to the issuance of government notifications. State of Uttar Pradesh issued notifications to address problem of State specific disaster in Uttar Pradesh. In this regard the first notification was issued on 27.06.2016 bearing notification number 303/1-11-2016-4(G)/16 providing for the modalities with respect to funds for expenditure to be incurred from State Disaster Response Fund (SDRF). For ready reference, relevant part of the above mentioned notification is reproduced below:

“2. Every year, a large number of lives and property are lost in the state due to unseasonal heavy rains, storms, lightning and heat waves. Therefore, in view of the above arrangement made by the Government of India, while cancelling Government notification No. 249/1-11-2015-4 (G)/2015, dated 15.04.2015 (as amended on 16.04.2015), the Governor is pleased

to give his approval to declare unseasonal heavy rains, storms, lightning and heat waves as state disasters.

3. Relief will be provided to the families of the persons affected by the said State disaster as per the standards and rates fixed by the Government of India for the State Disaster Relief Fund.

4. Expenditure in connection with the above mentioned State Disasters under Grant No. 51 under the Account Head "2245-Relief due to Natural Calamity-05-State Disaster Response Fund-800-Other Expenditure-06-Expenditure from State Disaster Response Fund-09-For other disasters declared by the State Government Expenditure from Disaster Response Fund-42 will be borne from other expenditure.

5. Action should be ensured as per the above decision taken by the State Government."

(Notification is originally in Hindi)

12. Subsequently on 02.08.2018, State issued another notification bearing notification number-UO 30/1-11-2018-4(G)/2015, where snake bite got specifically included along with other natural calamities. For ready reference the relevant part of the notification is reproduced below:

"2. In continuation of the above arrangement made by the Government of India, by Notification No. 303/1-11-2016-4 (G)/2015, dated 27.06.2016, unseasonal heavy rainfall, lightning strikes, storm and heat wave have been declared as State Disaster.

3. Hon?ble Governor accords approval to declare the following incidents as State-notified disasters, in addition to the disasters declared under the Government Notification dated 27.06.2016, namely: unseasonal heavy rainfall, lightning, thunderstorm and heat-wave, as well as boat accidents, ***snakebite****, accidents during sewer cleaning, gas leakage, and accidents resulting from falling into borewells within the State.*

4. There has been an agreement in principle to declare human-wildlife conflict a state disaster. Detailed guidelines in this regard will be issued separately.

5. The expenditure incurred in connection with the above declared State disasters will be borne under Grant No. 51 under the account head "2245- Relief due to natural calamity-05-State Disaster Response Fund-800-Other Expenditure-06-Expenditure from State Disaster Response Fund-09-Expenditure from Disaster Response Fund for other disasters declared by the State Government-42-Other Expenditure".

(Notification originally in Hindi)

13. Snake bite got included in the list in the year 2018 and with the experience, it was realized by the State that certain clarifications were required to make the welfare scheme effectively implemented and, therefore, the State through its additional chief secretary, has issued clarifications, which was sent to all district magistrates by the letter No.-157/A-11-2020-

04(G)/2015-TC dated 08.07.2021. For convenience and clarity, complete letter is reproduced below:

"Very important
No.-157/A-11-2020-04(G)/2015-TC

From, Manoj Kumar Singh,
Additional Chief Secretary,
Government of Uttar Pradesh.
To,
All District Magistrates,
Uttar Pradesh.
Revenue Section-11 Lucknow: Date: July 08, 2021

Subject:- ***Regarding the grant of ex-gratia assistance to the dependents of persons who have died due to snakebite.***

Sir,

1. In the above mentioned Government notification No. U.O.-20/Ek-11-2018-4(G)/2015 dated 02.08.2018, snakebite has been declared a State disaster, and it is provided that, in the event of death due to snakebite, ex-gratia assistance of Rs. 4.00 lakh shall be granted to the dependents of each deceased person.

2. It has come to the notice of the Government that, for the purpose of certifying death due to snakebite, the viscera of the deceased is sent to a forensic laboratory for examination, and during the pendency of the viscera examination report, ex-gratia assistance is not made available in a timely manner to the dependents of the deceased. As per the opinion of the State Forensic Legal Cell, there is no justification for insisting upon a viscera examination report in cases of snakebite, and it has been informed that death due to snakebite is not established solely on the basis of a viscera examination report.

3. In pursuance of the advice of the State Medico Legal Cell, and upon due consideration, it has been decided that, in cases of death due to snakebite, since the viscera examination report has no relevance, the following procedure shall be followed for the purpose of providing ex-gratia assistance to the dependents of the deceased:

(1) A Panchnama of the deceased should be prepared.

(2) A post-mortem examination of the deceased should be conducted.

(3) There is no need to preserve the viscera report of the deceased after post-mortem.

(4) In case of death due to snake bite, ex gratia assistance shall be provided to the dependents of the deceased within a maximum period of 7 days.

4. Accordingly, I am directed to state that, in cases of death due to snakebite, while strictly adhering to the procedure mentioned above, all matters relating to the grant of ex-gratia assistance to the dependents of the deceased shall be endeavoured to be disposed of within a period of 7 days.

Yours truly
Manoj Kumar Singh)
Additional Chief Secretary."
(Letter originally in Hindi)

14. Bare reading of the above noted notifications as well as subsequent communication leads us to infer that the underlying objective of the State is to extend timely support to families who have lost family member due to the circumstances contemplated therein. The scheme is in the nature of a welfare measure intended to provide relief to persons in need. Therefore, while determining entitlement under the scheme, rejection based on technicalities would be antithetical to the very aim and object sought to be achieved by the State.

15. After discussion on background and underlying principle qua purpose of above notifications, the issue for determination is, whether the subsequent government notification dated 08.07.2021 can be relied upon as an external aid to understand or interpret the government notification dated 02.08.2018. It is a well-established principle of administrative law that subsequent instructions, circulars, or notifications can be used as clarificatory aids in interpreting an earlier policy, particularly where the earlier policy is beneficial in nature. Beneficial schemes or policies of the State are required to be construed purposively and liberally to advance their intended objective, and not to be seen in a hyper-technical or restrictive manner.

16. In ***WPIL Ltd. Ghaziabad vs Commissioner Of Central Excise, Meerut, (2005) 3 SCC 73,*** the Supreme Court, while considering the nature and effect of clarificatory notifications, referred to its earlier decision in ***CCE vs Wood Craft Products Ltd., (1995) 3 SCC 454.*** The Supreme Court observed that where a notification is clarificatory in character, it operates retrospectively, as it does not introduce something new but merely clarify and makes explicit what was already implicit in the existing legal framework. The Supreme Court has held as under :

"15. The learned counsel for the appellant is also right in relying upon a decision of this Court in CCE v. Wood Craft Products Ltd. [(1995) 3 SCC 454] In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties."

17. In ***State Bank of India vs V. Ramakrishnan, (2018) 17 SCC 394***, the Supreme Court has dealt with the issue of amendment which held to be retrospective in nature. In this case, the Supreme Court has quoted the judgment in case of ***CIT vs Vatika Township (P) Ltd., (2015) 1 SCC 1,*** observing as follows:

"32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as ?declaratory statutes?. The circumstances under which provisions can be termed as ?declaratory statutes? are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:

'Declaratory statutes. The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court (in Central Bank of India v. Workmen [Central Bank of India v. Workmen, AIR 1960 SC 12, p. 27, para 29]): ?For modern

purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word ?declared? as well as the word ?enacted?.? But the use of the words ?it is declared? is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ?to explain? an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ?shall be deemed always to have meant? is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

18. In view of the above principle, we are of the view that subsequent legislation or policy can be referred to as an external aid to understand an earlier provision, particularly when the later measure is beneficial, clarificatory, or declaratory in nature and not creating any new right. It is an established principle of law that later legislation or policy can sometimes throw light on the legislative intent behind an earlier provision, especially when the later law clarifies rather than changes the position. Later statute, amendment, or policy may be used as an interpretative aid if it explains or clarifies an ambiguity in the earlier law or is declaratory or explanatory in nature or the same reflects the legislature?s understanding of the earlier provision.

19. It is also a well settled principle that statements, reports, and records created at or near the time of an event carries a considerable weight in determining facts, particularly when there is no conclusive evidence. In the present case, the General Diary entry, the inquest report, and the statements of witnesses recorded by the Tehsildar and other officials immediately following the death of the petitioner?s wife constitute contemporaneous records, consistently stating that the death occurred due to snake bite. The postmortem report, though inconclusive, does not contradict these records. Therefore, after applying the principle of contemporanea expositio, consistency of statements indicate that they are reliable evidence in determining the cause of death, and the authorities are bound to give due weight to such contemporaneous material while adjudicating claims under a beneficial policy. Failure to consider contemporaneous evidence and giving undue weightage to hyper-technical reasons like inconclusive postmortem is against well-recognized legal principles.

20. Having considered this preceding issue, the next question that arises for consideration is the nature of the order/circular dated 08.07.2021 issued by the State Government. It is clear from

the bare reading of the order that it merely clarifies as to how claims arising from snake bite deaths should be considered under the earlier policy to make the beneficiaries get compensation without delay. It does not impose any new limitation, nor does it affect deaths that occurred prior to its issuance. The principle regarding clarificatory notification is well recognized, and according to which, a notification or circular that only elaborate the intention of an earlier policy is to be read harmoniously with the original notification and the subsequent notification is especially relevant in guiding authorities on proper implementation.

21. After careful consideration of the submissions made by the learned counsel for the parties and upon perusal of the records, it is evident that the government notification dated 02.08.2018 clearly recognizes death due to snake bite as a circumstance entitling the dependents of the deceased to ex gratia relief. It is also apparent that the notification dated 02.08.2018 is a State-specific policy intended to aid in cases of disasters or calamities which are not included for relief under other policies. The said notification, therefore, contemplates relief to families affected by specific local contingencies, including death due to snake bite.

22. The subsequent government notification dated 08.07.2021 specifically addresses circumstances where dependents of a deceased person who died due to snake bite were being denied or delayed ex gratia relief on technical grounds, particularly due to the non-availability of viscera reports. The notification explicitly clarifies that the absence of a viscera report shall not be a ground to reject the claim and instructs the District Magistrates across the State to ensure timely disbursement of ex gratia relief, preferably within seven days. Bare reading of the order demonstrates that it is clarificatory in nature and intended to reinforce the objective of the notification dated 02.08.2018, rather than creating any new policy. Learned Standing Counsel?s argument justifying rejection of the petitioner?s claim on the ground of inconclusive postmortem findings or unavailability of the viscera report is therefore wholly untenable. The clarificatory notification was issued precisely to prevent denial or delay of relief to affected families on such technical grounds, ensuring that the purpose of the policy is fulfilled.

23. In the present case, the petitioner had promptly informed the police about the death of his wife explaining the reason of the death as well. The General Diary entry records the cause of death as a snake bite. The inquest proceedings and spot inspection conducted by the Lekhpal further corroborate the petitioner?s version, with statements of eyewitnesses confirming that the death occurred due to snake bite while the deceased was working in the agricultural field. There is no discrepancy or conflict in the statements recorded at any stage, and the postmortem report merely states that the cause of death could not be ascertained, without contradicting the consistent evidence of the eyewitnesses. In such circumstances, the principle of contemporanea expositio is relevant here and reliance on consistent official records should be placed to decide petitioner?s claim.

24. Applying the principles discussed in forgoing paragraphs, it is clear that the order dated 08.07.2021 is a guidance to interpret and implement the notification dated 02.08.2018 in cases of death due to snake bite. Consequently, we are of the view that the petitioner?s claim very much fell within the ambit of the policy framework, and the authorities ought to have considered it on that basis.

25. In the light of the above discussion, it is evident that the petitioner is entitled to relief under the Government notification dated 02.08.2018, read harmoniously with the clarificatory order dated 08.07.2021, which is brought to control possible mischief under order 02.08.2018. The impugned rejection of the claim on technical grounds cannot be sustained and, therefore, the order dated 02.08.2018 and 08.07.2021 are hereby quashed. Matter is required accordingly remitted to the District Magistrate, Jalaun, with a direction to consider the petitioner?s claim afresh in accordance with the policy, without raising technical objections regarding the inconclusive postmortem report or unavailability of viscera report.

26. It is one of those cases where we find that documents speak volume of the merit of claims for compensation set up by petitioner having discussed the provisions contained under the Government Order and further policy with regard to grant of compensation not depending upon the viscera report etc., we are of the clear view that claim of compensation deserves to be allowed.

27. There are authorities to the effect that if the High Court while exercising its jurisdiction under Article 226 of the Constitution finds facts of the case to be full setting merit of the case set up by petitioner that it should not hesitate in granting appropriate relief instead of remitting the matter for reconsideration by the authority. 28. In our above considered view, we are supported by the recent decision of the Supreme Court dated 10.02.2026 in the case of ***Mahendra Prasad Agarwal vs. Arvind Kumar Singh and Others being SLP (C) No. 1714 of 2025***, in which vide paragraph 13,14, and 15, the Court has observed thus:

"13. Facts that we have recounted till now reveal a sad reflection, not our laws, but the way we practice our laws and work our judicial remedies. We are not be mistaken as sermonising, for such episodic disposal could feature even in the practice of Supreme Court. Our endeavour is to ensure that we take notice of it and adopt course correction.

14. There is no doubt about the fact that the "consider jurisprudence", so routinely adopted these days and if we may use the expression - to throw the ball out of the Court, is counterproductive and harms the system.

15. When a claim of a right is legal and justified, relief must follow. The Constitutional or statutory remedies are not intended for academic discourse. If a case deserves relief, it must be granted then and there, unflinchingly if need be. Balancing of equities is not to be confused with avoiding or postponing the relief. These are not matters of law, but of its working and practice. Unlike law and its procedures, good practices that evolve over a period of time are far more precious than written laws, as it is in this practice that we see acceptance and internalization of the spirit of law. It is necessary to recognize, nurture and develop good practices which become habits. These habits come from the shared belief, values and attitudes that breathe vitality into rule of law. Legal culture integrates collective beliefs, fostering habits. It is necessary and in fact compelling to keep our remedies simple, effective and efficient."

29. In view of above, writ petition succeeds and is allowed. The District Magistrate, Jalaun is directed to accord benefit of compensation to the petitioner for untimely death of the deceased due

to snake bite. The District Magistrate, shall pass the order within a period of six weeks from the date of presentation of certified copy of this order.

(2026) 2 ILRA 1534
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.02.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE MRS. GARIMA PRASHAD, J.

Writ C No. 3256 of 2026

Mukteshwar Mahadev Mukteshwari Durga Dharmarth Seva Samiti & Anr.
...Petitioner

Versus

State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether tenants, by continuing in occupation and asserting tenancy rights, can prevent or delay demolition of a building declared dangerous under Section 331 of the Uttar Pradesh Municipalities Act, 1959.

HEADNOTE

Uttar Pradesh Municipalities Act, 1959 – ss.331, 334 – U.P. Regulation of Urban Premises Tenancy Act, 2021 – s.21 – Dangerous and dilapidated building – Demolition – Tenancy rights vis-à-vis public safety – Vacation of premises

Held: Petitioner–Samiti was the owner of a building which had become highly dilapidated and posed imminent danger to passers-by and occupants, and a notice dated 03.08.2021 was issued under Section 331 of the Uttar Pradesh Municipalities Act, 1959 directing demolition of the unsafe structure – On 29.08.2025, a portion of the building collapsed causing obstruction to traffic and risk to public safety – Certain tenants continued to occupy the remaining portion of the building and instituted civil suits seeking injunction, though no interim protection was granted in their favour, yet their continued occupation prevented demolition, compelling the petitioner to approach the Court seeking a direction to the authorities to demolish the building – Once the building had been declared to be in a ruinous and dangerous condition and a demolition notice had been issued, the occupants were under a legal obligation to vacate the premises, and their continued occupation, despite structural danger and partial collapse, was contrary to Section 334(3) – Municipal Commissioner fully empowered to order vacation of the building and to remove occupants with police assistance under Section 334(4) for ensuring demolition – It is well recognised that public safety overrides tenancy rights, and a tenant cannot insist on continuing in occupation of a structure which is unsafe and poses risk to life – Once a building is found unfit for human habitation, municipal authorities are legally empowered to proceed with demolition, and tenants cannot obstruct such statutory action – Tenants cannot object to expeditious demolition where the authorities have found the building unsafe – Accordingly, the building having been found to be in a ruinous condition and posing threat to life, demolition cannot be delayed on account of tenancy disputes – Respondent authority directed to demolish the building within the stipulated time with necessary police assistance. (Paras 11, 12, 13, 16, 17, 18) (E-5)

CASE LAW CITED

Nil

List of Acts

Uttar Pradesh Municipalities Act, 1959;
U.P. Regulation of Urban Premises Tenancy Act, 2021.

List of Keyword

Ruinous condition; Structure declared dangerous; Unfit for human habitation; Dangerous to any person; Imminent danger; Protection of life of individuals; Demolition of building; Statutory powers of Municipal Commissioner; Execution of demolition; Tenanted building; Public safety overrides tenancy rights; Exigency of demolition; Continued occupation contrary to law; Legal obligation to vacate; Obstruction to demolition not sustainable.

CASE ARISING FROM

Notice dated 03.08.2021 issued under Section 331 of the Uttar Pradesh Municipalities Act, 1959.

Appearances for Parties

Advs For Petitioner: Trivikram Singh
Advs For Respondents: Abhishek Kumar Yadav, C.S.C., Vineet Sankalp

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondents, and Sri Abhishek Kumar Yadav, learned counsel appearing for respondent no.3.

2. The present writ petition has been filed seeking a direction to the respondent authorities to demolish the building owned by the petitioner/Mukteshwar Mahadev Mukteshwari Durga Dharmarth Seva Samiti, situated at Inglishialine, House No. S-21/71-A, Varanasi, which, according to the petitioner, is in a highly dilapidated condition and poses imminent danger to passers-by as well as to persons residing in the building and its neighborhood.

3. Learned counsel for the petitioner submits that respondent no.3-Nagar Nigam, Varanasi issued a notice dated 03.08.2021 under Section 331(1)(2) of the Uttar Pradesh Municipalities Act, 1959 (hereinafter referred to as "the Act of 1959"), directing demolition of the unsafe structure within seven days. Pursuant thereto, the petitioner submitted representations dated 03.08.2021, 13.08.2021 and 17.08.2021 before the concerned Magistrate. It is further submitted that the Municipal Commissioner sought a report from Police Station Sigra, which submitted a detailed report dated 21.08.2021 confirming that the building had become dilapidated and required demolition. Despite the aforesaid, no effective action was taken. Consequently, on 29.08.2025, a portion of the building collapsed, disrupting traffic and posing serious risk to public safety.

4. Learned Standing Counsel, on instructions, submits that the notice regarding the dangerous building was issued in 2021 and that a part of the structure has already been demolished by the petitioner. However, certain tenants continue to reside in the remaining portion, which has not been repaired. It is further stated that one tenant has instituted Original Suit No. 2307 of 2021 against the owner and that proceedings are still pending, which fact has allegedly been concealed by the petitioner.

5. Refuting the aforesaid submissions, learned counsel for the petitioner contends that the pendency of litigation has been duly disclosed in paragraphs 15 and 16 of the writ petition as well

as in the supplementary affidavit. It is submitted that a Suit No. 1977 of 2021 was filed by a tenant Rita Jaiswal, wherein interim injunction was initially declined but subsequently granted in appeal, but the suit itself came to be dismissed in default on 17.03.2023. As on date, no interim protection subsists in her favour. It is further submitted that tenant Vinod Kumar has instituted Suit No. 2307 of 2021 seeking permanent injunction, however, no interim relief has been granted therein. His earlier claim of ownership before the Small Causes Court also stood withdrawn. Similarly, a third tenant Anant Kumar filed Suit No. 2971 of 2021 seeking injunction, but he too has failed to secure any interim protection from any competent court.

6. Learned counsel for the petitioner vehemently submits that none of the tenants has obtained any stay against demolition or dispossession from any competent court. Importantly, no proceedings have been initiated challenging the demolition notice dated 03.08.2021. It is contended that while the Uttar Pradesh Regulation of Tenancy Act, 2021 protects tenant rights, such protection cannot override statutory powers under Section 331 of the Act of 1959 where a structure is found to be ruinous and dangerous to human life.

7. This Court has examined the provisions of the U.P. Regulation of Urban Premises Tenancy Act, 2021 so as to ensure that the right available to a tenant under the statutory scheme is clearly protected. Chapter V of the Tenancy Act, 2021, contains provisions relating to protection of tenants against eviction. Section 21(1) of the Tenancy Act, 2021 confers protection upon a tenant in the manner provided in the Statute itself. Sub-section (2) of Section 21 permits the Rent Authority to make an order of eviction where the tenanted premises requires demolition. Sub-section (2)(e) of Section 21 reads as under :-

"21. ***Protection of tenant against eviction-*** *(1) """""". (2) The Rent Authority may, on an application made to it by the landlord in such manner as may be prescribed, make an order for eviction and recovery of possession of the premises on one or more of the following grounds, namely:-*

(a) """""""."

(b) """""""".

"(c) """"""".."

(d) """""""..."

(e) where it is necessary for the landlord to carry out any repair or construction or rebuilding or addition or alteration or demolition in respect of the premises or any part thereof, which is not possible to be carried out without the premises being vacated:"

Provided that after such repair, construction, rebuilding, addition or alteration, the tenant may be allowed to reoccupy the premises only when it has been mutually agreed to between the landlord and the tenant and a new tenancy agreement has been submitted with the Rent Authority:"

Provided further that the tenant shall not be allowed to reoccupy the premises,-"

(i) in the absence of submission of such mutual tenancy agreement with the Rent Authority; and"

(ii) in cases where the tenant has been evicted under the orders of a Rent Authority.

"""""""."

"""""".""

8. Section 4 of the Tenancy Act, 2021 provides for tenancy agreement. It also deals with tenancy created before the commencement of the Tenancy Act, 2021."

9. Having examined the statutory framework, this Court finds that any tenant claiming protection under the Tenancy Act, 2021 is at liberty to approach the competent Authority for appropriate relief, which may thereafter pass suitable orders in accordance with law. The right which is available to a tenant in respect of dilapidated building, however, will have to be enforced subject to the provisions of Section 331 of the Act, 1959 which deal with a special exigency where the tenanted building requires imminent demolition for protection of life of individuals. Sections 331(1) and 331(3) of the Act, 1959 are as under:-

331 (1) If it shall at any time appear to the Municipal Commissioner that any structure (including under this expression any building wall, parapet, pavement, floor steps, railing, door or window frames or shutters or roof, or other structure and anything affixed to or projecting from or resting on, any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof, the Municipal Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair, such structure or thing or do one or more of such things and to prevent all cause of danger therefrom."

(2) """"

"(3) If it appears to the Municipal Commissioner that the danger from a structure which is ruinous or about to fall is imminent he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger."

10. This Court further notes that Section 334 of the Uttar Pradesh Municipalities Act, 1959 expressly empowers the Municipal Commissioner to order vacation of a building or any portion thereof where such structure is found to be in a ruinous or dangerous condition within the meaning of Section 331. Upon issuance of such notice, every person in occupation is statutorily bound to vacate the premises, and continued occupation is prohibited unless the notice is withdrawn. The

provision also authorises removal of occupants through police assistance in case of non-compliance. Sections 334 of the Act, 1959 are as under:-

334. *(1) Notwithstanding the provisions of any other law to the contrary, the [Municipal Commissioner] may, by notice in writing specifying the grounds therefor, order any building or any portion thereof to be vacated forthwith or within such time as may be specified in the notice "*

(a)..

(b)..

(c) if the building or part thereof is in a ruinous or dangerous condition within the meaning of section 331.

(2) The affixing of such written notice on any part of such premises shall be deemed a sufficient intimation to the occupiers of such building or portion thereof.

(3) On the issue of a notice under sub-section (1) every person in occupation of the building or portion thereof to which the notice relates shall vacate such building or portion as directed in the notice and no person shall so long as the notice is not withdrawn enter the building or portion thereof except for the purpose of carrying out any work which he may lawfully carry out.

(4) The [Municipal Commissioner] may direct that any person who acts in contravention of sub-section (3) shall be removed from such building or part thereof by any police officer.

(5) The [Municipal Commissioner] shall, on the application of nay person who has vacated any premises in pursuance of a notice under sub-section (1), reinstate such person in the premises on the withdrawal of such notice, unless it is in his opinion impracticable to restore substantially the same terms of occupation by reason of any structural alteration or demolition.

(6) The [Municipal Commissioner] may direct the removal from the said premises by any police officer of any person who obstructs him in any action taken under sub-section (5) and may also use such force as is reasonably necessary to affect entry in the said premises.

11. In the present case, once the building of Mukteshwar Mahadev Mukteshwari Durga Dharmarth Seva Samiti has been officially declared dangerous and a demolition notice dated 03.08.2021 has already been issued, the occupants are under a legal obligation to vacate the premises. Their continued occupation, despite clear findings of structural danger and partial collapse of the building on 29.08.2025, is directly contrary to Section 334(3). The Municipal Commissioner is, therefore, fully empowered under Section 334(4) to seek police assistance for removal of occupants and to ensure execution of demolition.

12. While sub-section (5) preserves limited reinstatement rights upon withdrawal of notice, such provision has no application where demolition becomes inevitable due to safety concerns. Accordingly, the statutory scheme makes it abundantly clear that once a building is declared

dangerous, individual occupancy rights stand subordinated to public safety, and obstruction to demolition cannot be legally sustained.

13. This Court also takes note of the settled legal position that *public safety overrides tenancy rights.* A tenant"s right to occupy premises under the U.P. Regulation of Urban Premises Tenancy Act, 2021 cannot be invoked to compel continued residence in a structure declared dangerous, nor can such right be used to expose occupants or the public to risk of life. Once a building is found unfit for human habitation, municipal authorities are legally empowered to proceed with demolition, and tenants cannot obstruct such statutory action.

14. It is equally well recognised that landlords are entitled to seek eviction where premises become unsafe for occupation. Conversely, tenants possess the right to demand maintenance of the property in habitable condition, and in case of neglect, may undertake necessary repairs and seek reimbursement in accordance with law.

15. However, none of these private rights can prevail over statutory duties of the Nagar Nigam to remove dangerous structures. That said, procedural fairness requires that occupants be afforded a reasonable opportunity to remove their personal belongings prior to demolition, unless emergent circumstances warrant immediate action.

16. It is held that the rights of the tenants in such an exigency will have to be dealt with under the Tenancy Act, 2021. The tenants, however, will not be entitled to object to the expeditious demolition of the tenanted building, particularly when the authorities have inspected the said premises and found the requirement of its demolition as imperative. The applicable scheme under the Act, 1959 for protection of life of individuals on account of building being dilapidated and posing threat to life of individuals will have to be given primacy over the protection of tenancy rights of individual applicants."

17. In view of the facts and circumstances, this Court is satisfied that the building in question is in a ruinous condition and deserves to be demolished without waiting for the dispute with the tenants to be resolved. Whatever rights they may be having under the provisions of Tenancy Act will always be available to them and the same cannot be held to be a ground to further delay the demolition of the building in question.

18. Accordingly, the Respondent No.3 is directed to demolish the building in question within two weeks from today duly notifying the date and time of demolition. Respondent No.4 is directed to ensure that necessary police force is provided during the time of demolition to ensure safety, security as well as maintenance of law and order. The respondent authority may recover the costs so incurred in demolition of the building from the petitioner as per law.

19. With the aforesaid observations/ directions, the writ petition is allowed.

(2026) 2 ILRA 1540
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 4232 of 2024

Mushtaq Ahmad **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(A). Whether the State Government was bound by Arbitration Committee' report as an award and to question it, it could have applied only under Section 34 of the Arbitration and Conciliation Act, 1996 and not otherwise.
(B). Whether Secretary who represented State Government could have recalled his earlier order accepting the report/ recommendation of Arbitration Committee without there being any averment or recitals coming in the order impugned that earlier order was obtained by fraud and/or misrepresentation.

Head Notes

The Constitution of India, 1950-Article 226; The Arbitration and Conciliation and Act, 1996-Section 34- Authority is not vested with power to recall its order for the sake of recall only. The authority is hide bound in law to record reasons and justify its action for recalling order- If an order does not suffer from any misrepresentation or fraud or an order in not bad for want of authority of law, it is to be taken as genuine order passed after due application of mind and hence such order cannot be permitted to be recalled.

While this court remanded the matter, it did not set aside the order of under Secretary dated 16th March, 2017 accepting the report/recommendation of three member arbitration committee. It recommend the matter for hearing petitioner as the order dated 11th July, 2017 recalling the order 30th June, 2017 was being set aside- There is no whisper of misrepresentation or fraud in getting order 30th June, 2017 passed, rather the findings are that recommendation of arbitration committee are flawed one. Secretary tried to sit over and above the recommendations of the Arbitration Committee which was earlier accepted by the State Government to test whether it was a mere recommendation or it was a complete award under order passed by Arbitration Committee. This remand does not empower the authority to travel beyond findings returned to a different conclusion than what has been returned by Arbitration Committee. Thus without challenging the matter under Section 34 of Arbitration and Conciliation and Act, 1996, the government is bound to accept recommendation of the arbitration committee.

Order of recall does not pass the test of principles upon which a recall can be justified qua administration or quasi judicial action.

Held- Findings returned on the basis of documents available in 2016 cannot be disturbed on the basis of some new report obtained after 8 years. This was certainly beyond scope of enquiry by the State to dilute the findings arrived at in the arbitration proceedings. The order of recall even on merits is bad. Thus order of recall cannot be sustained in law-**Petition allowed.** (E-15)

(Para 23, 24, 26 & 28)

Case Law Cited

Indian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; Budhia Swain and Others v. Gopinath Deb and Others (1999)4 SCC 396;

List of Acts

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

List of Keywords

Recall order for the sake of recall only; Authority hide bound to record reasons for recalling order; Order does not suffer from ; Misrepresentation or fraud or ; Genuine order passed after due application of mind ; such order cannot be permitted to be recalled.

Case Arising From

Order dated 9th January, 2024 rejecting the representation of the petitioner dated 19.9.2023 being baseless and directing for 90 percent of recoverable amount of Rs. 49,27,905/- from the petitioner and 10 percent from the Chief Fish Development Officer

Appearances for Parties

Counsel for Petitioner(s) : Alok Singh, Ramendra Pratap Singh
Counsel for Respondent(s): C.S.C.

(Delivered by Hon'ble Ajit Kumar, J.
&
Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Sri Ramendra Pratap Singh, learned Senior Advocate assisted by Sri Alok Singh, learned counsel for the petitioner and Sri S.K.Srivastava, learned Additional Chief Standing Counsel for the State respondents.

2. Briefly stated facts of the case are that in terms of Government Order dated 08th March, 2000 and consequential amended Government Order dated 20th April, 2001 fisheries department of the State published notice for auction of reservoir in district Sonbhadra and Mirzapur namely, Dhandhraul Reservoir and Baraudha Reservoir, Class I and Class III category respectively for fisheries on 8th December, 2014 and petitioner being highest bidder was granted fisheries lease in respect of Dhandhraul reservoir, Class I category, for a lease rent of Rs. 60,00,000/- per year, extandable to next two years on a year to year basis. The standard qua fisheries rights in reservoir came to be awarded to the petitioner on 17.12.2014 for the financial year 2014-15 and petitioner immediately undisputedly deposited 25 percent amount to Rs. 15 lacs before Auction Committee. The agreement was entered and petitioner spent money on seeds to grow fishes for the purposes of fishing. In order to lay eggs/ seeds in the clean reservoir seeds for growing fish for the fishing purposes and to start with fishing, petitioner was directed to enter an agreement vide letter dated 18th March, 2015 and was directed to deposit entire dues by 31st March, 2015, failing which interest would accrue @ 2 percent per month on delayed payment and in the event he failed to make deposits, tender lease qua fishing rights would automatically stand terminated.

3. Petitioner since failed to deposit any further amount, he was served with another notice on 25th June, 2015 to deposit remaining amount of Rs. 45 lacs alongwith interest by 30th June, 2015, else amount will be recoverable as arrears of land revenue. Petitioner replied to this notice vide letter dated 30th June, 2015, lamenting upon conduct of the people managing the dam, in opening the dam gate, which resulted in the grown fishes get slipped into canal from the reservoir and resultantly he suffered huge loss and resultantly he could not do much fishing and since this was done without notice to petitioner, he could not do anything in the matter and hence considering the quantum of remaining there in the reservoir, the contract money deposited was sufficient. Vide letter dated 14th July, 2015, petitioner informed to Joint Director of fisheries' department that as against expected 850 quintal of fish, he could fish out only 45.5. quintal of fish from the Dhandhraul reservoir and this was informed to the officers of the department who were posted at the reservoir. However, since there was serious disputed questions of fact as per arbitration clause under the agreement, one Bhishm Lal Vermal , Director Fisheries, U.P. was appointed as an arbitrator who issued a notice to the petitioner on 17th February, 2016 to appear and to put up his defence. The arbitrator further passed an order on 4th March, 2016 to the effect that since matter was engaging attention in a pending arbitration, therefore, recovery certificate dated 3rd December, 2015 for a sum of Rs. 49,27,905/- should not have been pressed into service. However upon this assurance that arbitration was going, petitioner withdrew his complaint made before consumer forum and order to that effect was passed by presiding officer of the consumer forum on 30th September, 2016. It is further noticeable that sole arbitrator stood transferred and consequently matter of arbitration was referred to Arbitration Committee appointed by the concerned Secretary, State of U.P. under his order dated 21st September, 2016. This committee consisted of Dr. Nazul Haq, Managing Director of Fisheries, Cooperative Societies Ltd. Lucknow as Chairman with N.S. Rahmani, Chief Manager of Fishing Development Board and A.K.Lal, Deputy Director, Headquarters, Directorate of Fisheries, member of Secretary. The matter was contested before Arbitration Committee by petitioner and ultimately arbitration committee arrived at a conclusion that since maximum fishes got slipped away into the canal on the opening of dam sluice gate reducing to lowest level of water in the reservoir, hence not much fishing could be done and fishing was only to the extent of 45.5. quintals as against 850 quintals, for which lease was awarded. The Arbitration Committee reached out to the conclusion that fishing for the financial year 2014-15 could be only of 45.5 quintals of which, the average cost would be Rs.4.60 lacs and petitioner since had already deposited Rs. 15 lacs as security amount in terms of bank guarantee of Rs, 9.93 lacs with respondent and since Rs. 22 lacs has been determined as lowest price and of contract amount money deposited by petitioner to the tune of Rs. 24.93 lacs was more than 22 lacs, hence there was no loss caused to the department. It was a finding returned by the Arbitration Committee that since contract was not there on 'as is where is' basis, it was duty of the department to have ensured enough water in the reservoir in the event if sluice gates were to be opened so as to ensure that fishes do not get slipped away into the canal causing loss to contractor and hence contractor cannot be held responsible for the loss. The Arbitration Committee, thus, concluded that though loss was caused to the department but since fish lease had already been cancelled, therefore, government should waive off recovery dues taking sympathetic consideration of the matter. Upon this arbitration, judgment being submitted to the State Government, the State Government accepted the same and waived off recovery vide order dated 16th March, 2017. Paragraphs 4 and 5 of the order are important and hence reproduced hereunder:

'4- उपरोक्तानुसार गठित मध्यस्थत समिति द्वारा उपलब्ध करायी गयी अपनी आख्या में यह अवगत कराया गया कि सिंचाई विभाग मस्त्य विभाग द्वारा लापरवाही, दोषपूर्ण सेवा व अनुचित व्यापार प्रकिया अपनाते हुए बगैर सूचना दिये ही धंधरौल जलाशय के डैम व घाघर मुख्य नहर को एकाएक खोल देने व जलाशय को शून्य जलस्तर पर कर देने से डैम व घाघरा नहर के जल निकासी मार्ग से जलाशय की करोड़ों रूपये की मछलियां घाघरा नदी व घाघरा मुख्य नहर में गिर/ बह जाने के कारण ठेकेदार द्वारा मत्स्य विभाग के निर्धारित लक्ष्य 850 कुन्तल के सापेक्ष 45.5 कुन्तल मछलियाँ जलाशय के निकाली जा सकी। आख्या में यह भी उल्लेख किया गया है कि आगामी वर्षा मे धंधरौल जलाशय का न्युनतम मूल्य रू0 22.00 लाख ही निर्धारित किया गया है, जो कि वर्ष 2014-15 में श्री मुश्ताक द्वारा भुगतान की गयी धनराशि रू0 24.93 लाख (रू0 15 लाख 25 प्रतिशत तथा रू0 9.93 लाख जमानत राशि) की तुलना में कम है। पूर्व तथा आगामी वर्षा में प्राप्त राजस्व के सापेक्ष विभाग को कोई हानि नहीं हुई है। अतः मध्यस्थता समिति द्वारा ठेकेदार श्री मुश्ताक अहमद कि प्रार्थना पत्र में किये गये निवेदन व वर्णित परिस्थितियों में गुण दोष के आधार पर अवशेष राशि को आर०सी० के माध्यम से वसूली को माफ करने पर शासन स्तर से सहानुभूति पूर्वक विचार कर निर्णय लिये जाने की संस्तुति की गयी।

5- इस सम्बन्ध मे मुझे यह कहने का निर्देश हुआ है कि शासन द्वारा मध्यस्थता समिति द्वारा की गयी संस्तुति के अनुसार ठेकेदार श्री मुश्ताक अहमद पुत्र स्व० इसहाक अहमद निवासी पूरब मोहाल हामिदनगर जनपद सोनभद्र पर धंधरौल जलाशय की अवशेष धनराशि/किश्त रू0 49,27,905 (रु० उनचास लाख सत्ताइस हजार नौ सौ पांच मात्र) की आर०सी० के माध्यम से वसूली को माफ किये जाने का निर्णय लिया गया है।

अतः उपरोक्तानुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करे।'

English Translation by this Court:

" 4. It has been apprised by above constituted arbitration committed vide its report that because of carelessness flawed service and illegal application of business rules and that too without notice the gate of reservoir dam and that of the main Dhandhraul Canal were opened which resulted in bringing dam water in its lowest level and fishes worth crores of rupees slipped away into Dhandhraul reservoir and main canal for which only 45.5. quintals of fishing could be done under the contract. This has also been submitted in the report that in subsequent order through rains the price of Dhandhraul reservoir were fixed as Rs. 22 lacs, which was less than Rs. 24.93 lacs (15 lacs price 25 percent of the contract and Rs. 9.93 lacs secured amount) already deposited. There was no loss caused to the fishing department comparing previous year and the coming year rainy season. Accordingly, arbitration committee recommends State Government to write-off liability of petitioner by way of recovery of setting of the amount already paid taking sympathetic consideration in the matter.

5. I have been directed to state in this matter that government has decided to write-off the remainder amount of recovery Rs. 49,27,905 in the light of recommendation made by the arbitration committee in favour of contractor Mustaq Ahmad, S/o Ishak Ahamd, R/o East Mohal, Hamidnagar, district Sonbhadra.

Accordingly, necessarily, it may be proceeded"

4. This order, however, came to be recalled on 30th June, 2017 not assigning any specific reason, but only recording a fact that upon re-examination of report submitted by Arbitration Committee, it was found that there was no transparency and proper appreciation of evidence and documents before Arbitration Committee arriving at conclusion to recommend for waiving off of debts, consequentlly recovery came to be issued on 11th July, 2017 for a sum of Rs. 49,27,905/-.

Petitioner challenged this order on the ground that authority has proceeded ex parte in recalling order, which was not proper administrative exercise of power.

5. Writ petition being Writ C No. 37592 of 2017 was entertained and interim protection was granted, but subsequently while petition was allowed setting aside the order and recovery order dated 30.6.2017 dated 11th July, 2017 and also recovery citation dated 21st July, 2017, remitting matter to the Principle Secretary, Department of Animal Husbandry and Fisheries, Government of U.P. Lucknow to decide afresh. Now after matter was remitted, again an order came to be passed on 9th January, 2024 rejecting the representation of the petitioner dated 19.9.2023 being baseless and directing for 90 percent of recoverable amount of Rs. 49,27,905/- from the petitioner and 10 percent from the Chief Fish Development Officer. This order, therefore, was awarded in a sense that the order dated 30th June, 2017 stands modified.

6. Two fold arguments have been advanced by learned Senior Advocate appearing for the petitioner:

(a) Once arbitral award had been passed holding petitioner not guilty for violating any terms of contract though department suffered loss, thus findings became final and were subject to review only in the event arbitration petition was filed before District Judge and thereafter an appeal preferred, if aggrieved; and

(b) Administrative exercise of power by the State to accept Arbitration Committee recommendation could not have been recalled unless and until findings came to be returned and that order was obtained by fraud and/or misrepresentation and that the order was without any authority of law and this being no fact position of the case earlier, order dated 16th March, 2017 could not have been recalled.

7. Yet another argument has been advanced by Sri Singh, learned Senior Advocate appearing for the petitioner that matter was remanded by court only for a limited purpose and this is to the extent that petitioner was to be heard as order was passed without hearing, but opportunity of hearing does not mean that authority which is vested with power can pass order reviewing/recalling is earlier order on merits when it was no questioned. Thus Mr. Singh submits that petition deserves to be allowed and order as well as recovery deserves to be quashed.

8. Meeting the above submission Sri S.K.Singh, learned Chief Standing Counsel raised three points:

a. There was no concept of Arbitration Committee and only single member arbitrator was to appoint and hence committee could not have acted as an arbitrator;

b. Arbitration Committee's order dated 17.10.2016 was only recommendation, and therefore, it was open for the State government to have taken a different stand.

c. The order passed by Secretary is based on sound legal principle of justice as opportunity of hearing was afforded, inasmuch as, sufficient material was there to doubt the findings returned by the arbitration committee.

9. In support of his above submission, Sri Srivastava, emphasized upon a point of law that once party had entered an agreement with another party, it was bound by arbitration of the agreement, and therefore, petitioner was required to deposit entire lease rent by 31st March, 2015 and in any case by extended period of 30th June, 2015. He argued that subsequent report dated 5.12.2023 raised by Director, Fisheries, reservoir water could not be emptied or could not be brought to its minimal level by opening the sluice gate of dam to allow fishes pushed in reservoir to get overflowed with water through gate. Thus, according to him finding returned by the Arbitration Committee was perverse. He also reiterated a fact position that Arbitration Committee colluded with petitioner in recording a finding in his favour by concluding that he was liable to the dues and amount already deposited by him could not have been set off against dues. He submitted that against all these members of the Arbitration Committee, disciplinary proceedings had been initiated.

10. Having heard learned counsel for the respective parties and having perused the records, two legal points emerged for our consideration:

i. Whether the State Government was bound by Arbitration Committee' report as an award and to question it, it could have applied only under Section 34 of the Arbitration and Conciliation Act, 1996 and not otherwise

ii. Whether Secretary who represented State Government could have recalled his earlier order accepting the report/ recommendation of Arbitration Committee without there being any averment or recitals coming in the order impugned that earlier order was obtained by fraud and/or misrepresentation.

11. Coming to the first aspect involved in the matter, we find there to be no quarrel between the parties as to arbitration clause, nor there is any quarrel in respect of the matter of reference made to arbitrator as State Government itself had appointed one Bhism Lal Verma as an arbitrator.

12. The averment has been made vide paragraph 28 that arbitrator was transferred from department of fisheries to revenue department and said arbitration matter was thereafter referred to a three member committee appointed by the State Government through order passed by Special Secretary dated 21st September, 2016. Paragraph 28 of the writ petition runs as under:

"2*8. That the sole Arbitrator was transferred from the Department of Fisheries and Revenue Department, hence the Arbitration matter was referred to the three member Arbitrator committee. The appointment of three member Arbitrators committee were made by office order dated 21.09.2016. Section 2d defines about Arbitrational Tribunal. Section 10 of the Arbitration and Conciliation Act, 1996, defines about numbers of Arbitrator. The photocopy of the order dated 21.09.2016 is being filed here and marked as Annexure No. 18 to this writ petition"*

13. This appointment of Arbitration Committee has not been denied, rather allegations have been made against petitioner that since he did not appear before sole arbitrator, he closed arbitration proceeding on 7.4.2016 and in the circumstances, government was compelled to appoint three member arbitration committee. Paragraph 36 of the counter affidavit runs as under:

"That the contents of paragraph no. 28 of the writ petition, as stated, are absolutely wrong and incorrect, hence vehemently denied. It is wrong to say that the sole arbitrator was transferred from the department of fisheries and revenue department, hence the arbitration matter was referred to the three-member Arbitrator Committee. It is reiterated that the petitioner himself did not appear and cooperate the sole arbitration proceedings, it is therefore, the sole arbitrator closed the arbitration proceeding vide order dated 7.4.2016. Thereafter, the Government proceeded to appoint three member Conciliation Committee."

14. This above quoted paragraph 36 of the counter affidavit has been sworn on the basis of record, but no records have been appended in form of order dated 7.4.2016 by which it could be inferred that arbitrator had closed the arbitration proceedings, instead what we find is that order of Secretary of the State Government appointing a three member arbitration committee does not refer to any such order. Thus in absence of specific denial to what has averred in paragraph 28 in the writ petition, it is liable to be assumed a that three member arbitration committee came to be appointed by the State Government after sole arbitrator had stood transferred.

15. In any view of the matter, once matter stood transferred to a three member arbitration committee, it will be taken as arbitration proceedings and Sri Sravastava, learned Additional Chief Standing Counsel could not point out anything from the relevant clauses of the agreement that there was a provision for appointment of a sole arbitrator and not a three member arbitration committee.

16. We have gone through terms of agreement entered between the parties and we do not find anything there to be any such thing in any of clauses which mandated for only sole /one member arbitrator. The relevant provision of agreement is quoted hereunder:

"11. जलाशय के ठेके के सम्बन्ध में किसी भी प्रकार का विवाद उत्पन्न होने की स्थिति में प्रकरण मध्यस्थ को दिया जायेगा। मध्यस्थ की नियुक्ति निदेशक मत्स्य द्वारा की जायेगी, जिनके द्वारा निर्णय अन्तिम एवं सभी पक्षों को मान्य होगा।"

English translation by this Court:

"In the event of any dispute relating to contract of reservoir, matter will be referred for mediation. Mediator shall be appointed by Director Fisheries who decision shall be final and shall be binding upon the parties."

17. Thus, it is clear that there was a valid appointment of three member arbitration committee and it came to pass an award on 17.10.2016 settling payments already made by petitioner against recovery and directing for State to waive off recovery in terms of findings returned by the the Arbitration Committee. So finding part of the Arbitration Committee clearly records that as per agreement petitioner was to do fishing to the tune of 850 quintals of fish from reservoir whereas he could do finishing only 45.5. quintals because water of the reservoir got at the bottom and most of

the fishes slipped through sluice gate into canal and nearby area after it was opened and that too without notice to the petitioner. These findings were never assailed and hence would be taken for the purpose of arbitration as having a binding effect under the Arbitration and Conciliation Act, 1996. The Arbitration Committee's award could have been challenged of course, before District Judge under Section 34 of the Arbitration and Conciliation Act, 1996 but the State chose not question it but to accept the same. Accordingly on behalf of State Government an order came to be passed by under Secretary on 16th March, 2017 accepting report and writing off of the entire dues of the petitioner.

18. From the above quoted paragraphs (vide paragraph 3 above) of the order of the Under-Secretary dated 16th March, 2017, it has become absolutely clear that findings returned by the Arbitration Committee had been accepted in toto and consequently relief was granted to the petitioner but suddenly this order came to be recalled for no justifiable reasons, vide order dated 30th June, 2017. Findings returned in the order dated dated 30th June, 2017 given justified reason for recall was that the order passed by the Arbitration Committee was without proper appreciation of documents and suffered from lack of transparency, inasmuch as, report was ex parte. The reasons assigned in the order dated 30th June, 2017 vide paragraphs 2 and 3 of the order is reproduced hereunder:

"2. इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि प्रकरण मे मध्यस्थता समिति द्वारा उपलब्ध करायी गयी रिपोर्ट/संस्तुति का पुनः परीक्षण करने पर यह पाया गया कि मध्यस्थता समिति द्वारा प्रकरण के सम्बन्ध मे सम्पूर्ण तथ्यों का निष्पक्ष व पारदर्शी विश्लेषण न करते हुए एक पक्षीय आख्या प्रस्तुत करते हुए श्री मुस्ताक अहमद पुत्र श्री इस्हाक अहमद निवासी पूरब मोहान हामिदनगर जनपद सोनभद्र पर श्रेणी-1 क धंधरौल जलाशय जनपद सोनभद्र की अवशेष धनराशि/किश्त रू0 49,27,905/- की आर०सी० मे माध्यम से वसूली को माफ किये जाने के सम्बन्ध में अनियमित रूप से अपनी संस्तुति शासक को प्रस्तुत की गयी।

3. उक्त प्रकरण में सम्यक विचारोपरान्त पूर्व ठेकेदार श्री मुस्ताक अहमद पुत्र श्री इस्हाक अहमद निवासी पूरब मोहान हामिदनगर जनपद सोनभद्र पर श्रेणी-1 क धंधरौल जलाशय जनपद सोनभद्र की अवशेष धनराशि/किश्त रू0 49,27,905/- (रू० उन्चास लाख सत्ताईस हजार नौ सौ पाच मात्र) की आर०सी० के माध्यम से वसूली को माफ किये जाने हेतु विषयक शासन के उक्त संदर्भित आदेश संख्या 1959/सत्रह-म-2016-0-9(320)/2016 दिनांक 16 मार्च 2017 को तत्कालीन प्रभाव से निरस्त किया जाता है।

कृपया उपरोक्त तत्काल आवश्यक कार्यवाही सुनिश्चित करते हुए कृत कार्यवाही से शासन को भी अवगत कराने का कष्ट करे।

भवदीय

30.06.17

डा० सुधीर एम० बोबडे

मुख्य सचिव"

<u>English Translation by this Court:</u>

"2. In this regard I have been directed to state that after re-examining the report/recommendation of the arbitration committee and having analysed in an impartial and transparent manner, it has been found that arbitration committee had submitted ex parte report directing/recommending for writing off the dues of Rs. 49,27,905/- in respect of class I reservoir

Dhandhraul of which contract was awarded to Mustaq Ahmad S/o Ishhaq Ahmad, R/o- East Mohan, Hamidnagar, district Sonbhadra .

3. Having examined the matter comprehensively regarding liability imposed upon Mustaq Ahmad S/o Ishhaq Ahmad, R/o- East Mohan, Hamidnagar, district Sonbhadra of Rs. 49,27,905 through recovery certificate in respect of Dhandhraul reservoir, the order being no.1959/17-M-2016-0-9(320)/2016 dated 16th March, 2017 issued to write-off of dues, is hereby cancelled.

Please do needful measures accordingly immediately."

19. Recitals as contained in the above quoted paragraphs amounted to reviewing the order passed earlier by the under Secretary dated 16th March, 2017. If the Chief Secretary or the Special Secretary is taken to be higher authority, then it amounted to an appeal sitting over and above the order of the Under-Secretary which in our considered view may be a gross indiscipline for want of statutory provision may invite disciplinary action. Power of review cannot be, therefore, available, but power to recall would of course, be available provided, it is brought to the notice of the authority that earlier the order was obtained by fraud/misrepresentation or of course, in the event order was without authority of law. What we find is that in earlier order dated 16th March, 2016, there was absolute discussion on the findings returned by the Arbitration Committee, but in order of recall dated 13th June, 2017, there was no reason assigned as to why this finding earlier accepted was bad. Upon being challenged before this Court ,this order came to be set aside by the court by a detailed judgement dated 26th April, 2023 directing for reconsideration of the matter and passing order afresh. The Court basically quashed the order for the reason that order was passed by the Secretary to the Government without affording opportunity of hearing. Now this time, petitioner represented the matter and the order was passed after considering the representation.

20. One of the arguments advanced by Sri Singh, learned Senior Advocate appearing for the petitioner was that merely for a fact that matter was remanded, it did not mean that authority got vested with power to take fresh decision on merits. It was further argued before this Court that it would remain question of law as to whether order passed by Secretary on behalf of the State after applying its mind could have been recalled in the absence of any finding of misrepresentation or fraud.

21. The legal position as emerges out in the case of I**ndian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550**, the Supreme Court vide paragraph 20 has held thus:

"*20. By filing letter No.2775 of 26.8.91 along with the Review Petition and contending that the other letter, namely, letter No.2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16.11.93, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No.2776 dated 26.8.91 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell together (Fraus*

et jus nunquam cohabitant). It has been repeatedly said that Fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent).

21. In Smith v. East Elloe Rural District Council (1956) AC 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, Lazarus Estates Ltd. v. Beasley (QB at p. 712). Denning, L.J. said:

" No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.'

22. This view has been further approved by Supreme Court in the matter in the case of **Budhia Swain and Others v. Gopinath Deb and Others (1999)4 SCC 396**, in which the Supreme Court vide paragraph 6 has held thus:

"What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order.

i) obtained by fraud practised upon the court,

(ii) when the court is misled by a party, or

(iii) when the court itself commits a mistake which prejudices a party.

In A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531, para 130] (vide para 130), this Court has noticed motions to set aside judgments being permitted where

(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,

(ii) a judgment was obtained by fraud,

(iii) a party has had no notice and a decree was made against him and such party approaches the court for setting aside the decision ex debito justitiae on proof of the fact that there was no service."

23. From the above sound legal principle of law enunciated in above cited decisions, it is clear that authority is not vested with power to recall its order for the sake of recall only. The authority is hide bound in law to record reasons and justify its action for recalling order.

24. In our considered view an order if does not suffer from any misrepresentation or fraud or an order in not bad for want of authority of law , it is to be taken as genuine order passed after due application of mind and hence such order cannot be permitted to be recalled. We find apt here to

mention that while this court remanded the matter, it did not set aside the order of under Secretary dated 16th March, 2017 accepting the report/recommendation of three member arbitration committee. It recommend the matter for hearing petitioner as the order dated 11th July, 2017 recalling the order 30th June, 2017 was being set aside. After going through the entire order impugned in this petition, we find that there is no whisper of misrepresentation or fraud in getting order 30th June, 2017 passed, rather the findings are that recommendation of arbitration committee are flawed one. Secretary tried to sit over and above the recommendations of the Arbitration Committee which was earlier accepted by the State Government to test whether it was a mere recommendation or it was a complete award under order passed by Arbitration Committee. This remand does not empower the authority to travel beyond findings returned to a different conclusion than what has been returned by Arbitration Committee. Thus without challenging the matter under Section 34 of Arbitration and Conciliation and Act, 1996, the government is bound to accept recommendation of the arbitration committee.

25. In view above, first point stands answered in favour of petitioner and against the State.

26. Coming to second point as to whether order could have been recalled. We have already held above held that order of recall does not pass the test of principles upon which a recall can be justified qua administration or quasi judicial action .

27. Besides above, we find that under the order impugned new report has come to be relied upon which is dated 5th December, 2023 much after cancellation of lease. There was no occasion for respondents to have obtained report only in the year 2023 more than eight years expiring since 2015. The maintenance of reservoir and minimum level of water was an issue in 2015 and what happened in 2015 cannot be said to have remained same in 2023. For investigation or enquiring a matter of incident happened in the year 2015, there was absolutely no occasion for calling a fresh report in 2015 to test the order passed on the basis of report available in the year 2015. No recitals contained in the order impugned go on to demonstrate that this report of the year 2023 was shown to the petitioner at any point of time. The entire order is based upon report which shows that minimum level of water was maintained and the reservoir cannot be emptied and hence findings were bad.

28. In our considered view findings returned on the basis of documents available in 2016 cannot be disturbed on the basis of some new report obtained after 8 years. This was certainly beyond scope of enquiry by the State to dilute the findings arrived at in the arbitration proceedings. The order of recall even on merits is bad. Thus order of recall cannot be sustained in law.

29. In view of above, writ petition thus succeeds and is allowed. The order dated 9.1.2024 passed by Additional Chief Secretary, U.P. Government, Annexure No. 1 is quashed and consequential order dated 18.1.2024 passed by respondent no. 4 (Annexure no. 2) if any shall be automatically quashed.

30. No order as to cost.

(2026) 2 ILRA 1551
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 8940 of 2025

Greater Noida Industrial Development Authority ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

ISSUE FOR CONSIDERATION

Whether a revision under Section 41(3) of the U.P. Urban Planning and Development Act, 1973 against a demand notice is maintainable;
Whether the revisional authority has jurisdiction to review its own order;
Whether absence of opportunity of hearing vitiates the revisional order; and
Whether the allottee was entitled to grant of zero period benefit in the facts of the case.

HEADNOTE

U.P. Urban Planning and Development Act, 1973 – s. 41(3) – Revision – Maintainability – Review jurisdiction – Opportunity of hearing – Lease allotment – Reduction of land area –Zero period

Held: On 14.12.2022, GNIDA issued a demand notice regarding lease premium and lease rent calculated up to 15.12.2022, amounting to Rs.1,06,78,71,600.15 – The opposite party no.2 filed a revision under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, read with Section 12 of the U.P. Industrial Area Development Act, 1976 – The revision was allowed by the order dated 19.10.2023, holding that the allottee is entitled to be granted zero period benefit till execution of the supplementary deed on 29.04.2014.
The power conferred upon the State Government under Section 41(3) is wide enough to examine the propriety of a demand – After having submitted to the jurisdiction of the revisional authority and having contested the revision on merits and having filed successive review applications, the petitioner cannot be permitted to raise the plea of non-maintainability for the first time in writ proceedings – Court held that the revisional authority has no power to review its orders – Court found no force in the submission of the petitioner that the impugned revisional order was passed without giving an opportunity of hearing, as the record revealed that the petitioner had filed detailed objections against the revision, which were taken into consideration while deciding the revision and were dealt with appropriately.
Although the lease-deed was executed on 24.11.2010, a supplementary lease-deed was executed on 29.04.2014, reducing the area of the leased land by about 40%. The opposite party no.2 was not at fault for the substantial decrease in the area leased out and suffered for the delay in finalisation of the area – Execution of lease deed in respect of land which GNIDA had no right to transfer and subsequent execution of a correction deed decreasing the land area was without any fault of the opposite party no.2 – The lessee could not even prepare a development plan till a possession certificate in respect of the revised land area was issued on 05.05.2014 – The Court held that the revisional authority has not committed any error or illegality and that the

opposite party no.2 is entitled to be granted the benefit of zero period till execution of the supplementary deed on 29.04.2014 – Accordingly, the orders dated 29.05.2024 and 07.11.2024 passed by the Revisional Authority on the review applications filed by the petitioner were set aside, while the finding that the lessee is entitled to get zero period benefit till execution and registration of the supplementary deed dated 29.04.2014 is upheld, with consequential directions. (Paras 22,23,24, 34, 35, 36, 41, 44, 45) **(E-5)**

CASE LAW CITED

Siemens Ltd. v. State of Maharashtra (2006) 12 SCC 33;
Harjinder Singh v. State of U.P., 2011 SCC OnLine All 2094;
M/s Apace Buildtech Pvt. Ltd. v. State of U.P., Writ-C No. 3010 of 2022;
M/s Eco Green Build Tech Pvt. Ltd. v. State of U.P., 2025:AHC-LKO-30241-DB;
Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society (2013) 11 SCC 531;
Meghmala v. J. Narasimha Reddy (2010) 8 SCC 383.

List of Acts

U.P. Urban Planning and Development Act, 1973
U.P. Industrial Area Development Act, 1976

List of Keyword

Demand notice; Revision; Maintainability; Review jurisdiction; Opportunity of hearing; Zero period; Lease allotment; Reduction of land area; Estoppel; Jurisdictional challenge.

CASE ARISING FROM

From orders dated 19.10.2023, 29.05.2024 and 07.11.2024 passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973

Appearances for Parties

Advs For Petitioner: Sachin Upadhyay

Advs For Respondents: C.S.C.; Apoorva Tewari; Siddharth Nandwani;

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

1. Heard Shri Upendra Nath Mishra, Senior Advocate assisted by Shri Sachin Upadhyay, Advocate, the learned counsel for the petitioner, Shri Rahul Shukla, the learned Additional Chief Standing Counsel for the State and Shri J.N. Mathur, Senior Advocate assisted by Shri Siddharth Nandwani, Advocate, the learned counsel for the respondent No.2.

2. By means of means of the instant writ petition filed under Article 226 of the Constitution of India the petitioner-Greater Noida Industrial Development Authority (hereinafter referred to as 'GNIDA') has challenged the validity of an order dated 19.10.2023, passed by the opposite party no.1 - the State Government, in Revision No.6430/77-4-23/01 Appeal/23, under Section 41(3) of U. P. Urban Development and Planning Act, 1973 (Annexure No.3 to the petition), order dated

29.05.2024, passed by the opposite party no.1 in Case No.2836/77-4-24/01/Appeal/23, under Section 41(3) of U. P. Urban Development and Planning Act, 1973 (Annexure No.2 to the petition) and order dated 07.11.2024 (Annexure No.7 to the petition).

3. Briefly stated, the facts of the case are that in the year 2010 GNIDA had invited applications for allotment of land for developing residential township in Sector 16-C, Greater Noida (West) as per scheme code BRS03/2010. The tender submitted by M/s Mahagun India Private Limited (the opposite party no.2) was accepted and an allotment letter dated 19.08.2010 was issued in its favour. On 24.11.2010, GNIDA executed a lease-deed in favour of the opposite party no.2 in respect of land bearing plot No. GH-04, situated in Sector 16C, Greater Noida admeasuring 2,41,570 square meters, for a total premium of Rs.279,27,90,770/-. The opposite party no.2 paid Rs.27,92,79,077/- and the balance amount of premium was to be paid in instalments between the period 19.02.2011 and 19.08.2020. As per the terms and conditions of the lease, the opposite party no.2 was obliged to submit a building plan and the master plan showing the phases for execution of the project for approval within six months from the date of possession and it was required to commence construction within 12 months from the date of delivery of possession, which was the date of execution of the lease-deed. The project was to be completed in a maximum of five phases within a period of seven years from the date of execution of the lease-deed, which could be extended by three years, subject to payment of the stipulated time extension charges. Clause-4 of the lease-deed specifically provided that in case the lessee fails to complete the project within the aforesaid period, including the extended period of 10 years, the allotment and the lease shall be cancelled.

4. On 26.07.2011, GNIDA informed the opposite party no.2 that a correction deed was required to be executed, changing the leased area from 2,41,570 square meters to 1,45,737.80 square meters and the correction deed was executed on 22.04.2014. On 05.05.2014, physical possession of the leased land was handed over to the opposite party no.2 and a possession certificate was issued.

5. On 10.05.2016, the opposite party no.2 wrote a letter to GNIDA, stating that out of the revised area of 1,45,737.80 square meters, physical possession of only 1,37,400.80 square meters had been handed over to it and possession of 8,337 square meters of land had not been delivered to the lessee because of some pending litigation. Subsequently, possession of land bearing khasra no.189, measuring 3,070 square meters and khasra no.257, measuring 950 square meters (totalling to 4,020 square meters), was given to the lessee, but physical possession of land bearing khasra no. 192, measuring 4,317 square meters was not delivered to the lessee. The lessee stated that GNIDA was not entitled to charge any interest on the outstanding amount till possession of the entire leased land was handed over to it.

6. On 28.10.2016, the opposite party no.2 submitted a drawing of the project for approval of GNIDA. On 23.01.2017, the opposite party no.2 moved an application for extension of time for completion of the project by allowing an initial three years' period and zero period for construction and completion of a minimum 15% area, and paid Rs.50,56,625/- as time extension fee. On 30.01.2017, GNIDA sent a letter to the opposite party no.2, informing that the zero period from 12.05.2011 till 24.08.2012 (470 days) had been granted. It was stated in the letter that the time for

completing the first phase stood expired on 09.03.2015 and the first phase of the project ought to have been completed by 07.11.2016. Paid time extension for completion of the first phase of the project was granted till 09.03.2017.

7. On 09.10.2016 GNIDA approved the development plan for the total plot area measuring 1,45,737.80 square meters, which was valid for a period of five years.

8. On 23.02.2017 the petitioner issued a partial occupancy certificate for 10 towers constructed by the opposite party no.2. On 07.03.2017 the opposite party no.2 requested for execution of sub-lease-deeds in favor of the allottees. On 19.04.2017 GNIDA issued a letter to the opposite party no.2 demanding payment of the pending dues. On 25.01.2018, an allottee of the opposite party no.2 filed a complaint before GNIDA, stating that the opposite party no.2 was executing conveyance deeds in respect of areas exceeding the area approved by GNIDA in the partial occupancy certificate. On 09.02.2018, GNIDA issued an occupancy certificate in respect of 1649 units in nine residential blocks and commercial blocks to the opposite party no.2.

9. The opposite party no.2 filed an application before the Additional District Magistrate (Finance and Revenue), Gautam Buddha Nagar, for refund of excess stamp duty paid by it, which application was rejected by means of an order dated 21.08.2018. The opposite party no.2 challenged the order dated 21.08.2018 by filing Writ-C No. 36468 of 2018 before this Court sitting at Allahabad. The aforesaid writ petition was disposed off by means of an order dated 01.11.2018 by providing that the opposite party no.2 may file an application before the Joint Secretary, Government of Uttar Pradesh, Lucknow, who shall re-adjudicate the matter regarding refund of stamp duty in view of the law laid down by the Hon'ble Supreme Court in the judgment of ***Committee-GFIL Versus. Libra Buildtech Private Limited and others*** reported in (2015) 16 SCC 31 and the order dated 28.05.2018 passed by this Court in Writ-C No. 16639 of 2018.

10. On 22.08.2019, GNIDA issued a notice to the opposite party no.2, stating that it had committed default in payment of Rs.32,36,93,305/-. The letter informed them that a policy for re-scheduling the dues was in vogue and in case the petitioner wanted to avail the benefit under the policy, he could submit an application until 31.08.2019. The letter asked the petitioner to deposit the balance amount by 31.08.2019 or to apply for re-scheduling the payment of dues, failing which proceedings for the cancellation of the lease would be initiated.

11. On 23.12.2019, opposite party no.2 gave a letter to GNIDA stating that the area of land allotted and leased and the amount payable by the lessee was altered and adjusted by GNIDA and the opposite party no.2 had not been handed over possession of the entire land area as per the allotment letter and the initial lease-deed. The affected area was more than 30% of the total area allotted, which had effected the project planning, execution and cash flow of the company and, therefore, the opposite party no.2 was eligible for getting the zero period benefit as per the policy. The opposite party no.2 requested that approval be accorded for a zero-interest period from day one i.e. 19.08.2010 to 05.05.2014 (the date of handing over possession).

12. In this regard, the contention of GNIDA is that land measuring 1,45,737 square meters had been allotted and handed over to the opposite party no.2 on 05.05.2014. The demands had been

revised accordingly, the amount already deposited had been adjusted and the balance amount was payable in 16 half-yearly instalments. The opposite party no.2 had already been granted the benefit of a zero period from 12.05.2011 till 24.08.2012 by means of a letter dated 30.01.2017. GNIDA claims that the lessee was not entitled to any further benefit of zero period. GNIDA issued a notice dated 31.01.2020 directing the opposite party no.2 to pay the pending lease premium and stating that in case of failure of the opposite party no.2 to pay the amount, its lease shall be cancelled.

13. The opposite party no.2 filed Writ-C No. 6647 of 2020 before this Court sitting at Allahabad, regarding refund of stamp duty. On 03.03.2020, this Court passed an order in the aforesaid writ petition directing the State and GNIDA to file counter affidavits clarifying as to whether the State of U.P. or GNIDA is the authority responsible for refund of the proportionate amount of stamp duty.

14. On 14.12.2022, GNIDA issued a demand notice regarding lease premium and lease rent calculated till 15.12.2022, amounting to Rs.1,06,78,71,600.15. The opposite party no.2 filed a revision under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, read with Section 12 of the Greater Noida Industrial Development Authority Act with the following prayers: -

"*I. To issue a suitable order or direction calling for the record and quashing the impugned order dated 14.12.2022 passed by the respondent authority vide letter No.ग्रे.नौ./बिल्डर्स/2022/4307.*

II. To issue a suitable order or direction directing the respondent to pay excess stamp duty amounting to Rs.6,14,18,000/- (Rupees Six Crores Fourteen Lakhs Eighteen Thousand only) alongwith interest @ 18% p.a. calculated w.e.f. 25.11.2010 till actual payment to petitioner;

III. To issue a suitable order or direction directing the respondent authority to declare the period from 2011 to 2015 as 'zero period' due to farmer agitation, subsequent waiver of the entire interest of the zero period and adjustment with principal amount of the land premium paid to Respondent for plot no. GH-04, Sector-16C, Greater Noida (WEST) and reschedule the payment plan of the said plot of land as the entire project of the petitioner company was stalled without any fault of the petitioner, firstly due to farmer agitation, and Secondly due to inaction of Greater Noida Industrial Development Authority (GNIDA) in regard to repeated request for Zero period;

IV. To issue a suitable order or direction directing the respondent authority to declare the period from 15-03-2020 to 25-09-2020 as 'zero period' due to outbreak of Noval Corona Virus (COVID-19), subsequent waiver of the entire interest of the zero period and adjustment with principal amount of the land premium paid to Respondent for plot no. GH-04, Sector-16C, Greater Noida (West);

V. To issue a suitable order or direction directing the respondent authority to declare the period from 01-04-2021 to 30-06-2021 as 'zero period' due to second wave of Covid-19 as a force majeure event and subsequent waiver of the entire interest of the zero period sand adjustment with

principal amount of the land premium paid to Respondent for plot no. GH-04, Sector-16C, Greater Noida (West);

VI. To issue a suitable order or direction. directing the respondent authority to declare the period from 10-06-2020 to 07-11-2022 as 'zero period' due to pending litigation between authority and the builders in Supreme Court in WP (C) No. 940 of 2017 Bikram Chatterji & Anr Vs Union of India, subsequent waiver of the entire interest of the zero period and adjustment with principal amount of the land premium paid to Respondent for plot no. GH-04, Sector-16C, Greater Noida (West);

VII. Issue appropriate orders for awarding damages for the financial loss and loss of time suffered by the petitioner;

VIII. Pass such other and further orders as this Hon'ble Authority may deem fit and property in the facts and circumstances of this case."

15. GNIDA filed objections against the revision inter alia stating that the petitioner had already been granted the benefit of zero period from 12.05.2011 to 24.08.2012 and the instalments payable after the zero period were postponed by six months each. The petitioner had submitted a representation dated 24.12.2019 for being given the benefit of zero period in terms of the Government Order dated 05.12.2019, which was examined by a committee. The committee recommended that after the Hon'ble Supreme Court cancelled the acquisition of land in village Shahberi, 95,832.20 square meters of land was affected and only 145,737.80 square meters of land remained to be allotted. GNIDA had communicated with the opposite party no.2 for execution of a declaration/correction deed on 26.07.2011, but the allottee caused a delay in execution of the deed till 22.04.2014. As the delay in execution of the declaration/correction deed has been caused by the allottee, it is not entitled to get the benefit of time extension. It is specifically stated in its reply that plot no. GH04, Sector C, allotted to the opposite party no.2, consists of lands bearing Khasra numbers 190, 192, 261, 262, 263, 266, 255, 253, 252, 251, 249, 248, 269, 290, 271, 272, 274, 275, 270, 268, 245, 246, 243 and 250 situated in village Chipiana Khurd and as per a report dated 22.01.2020 submitted by the legal department of the authority, no writ petitions were pending regarding the aforesaid lands.

16. The report submitted by the committee further stated that the building plan was approved on 12.05.2016 and the completion certificate of 1802 flats constructed in 10 towers in the first phase of the project was issued on 23.02.2017, which shows that constructions had been raised till that date.

17. The revision was allowed by the impugned order dated 19.10.2023, passed by the State Government holding that although the land was allotted to the opposite party no.2 and a lease-deed was executed on 24.11.2010, as the acquisition of land in village Shahberi was quashed by the Hon'ble Supreme Court a supplementary lease-deed was executed on 29.04.2014 reducing area of the leased land. This High Court had also quashed the acquisition of a part of the land by an order dated 12.05.2011. In these circumstances, it was not possible to raise any construction on the land. The land allotted to the opposite party no.2 got affected by the orders passed by the Court due to

fault of the GNIDA and there was no fault of the allottee in it and, therefore, the allottee is entitled to be granted zero period benefit till execution of the supplementary deed on 29.04.2014. The revisional authority further held that the High Court had passed a stay order dated 16.03.2016 in respect of 9,937 square meters area of the allotted land, which continued to remain operative till 04.08.2017 and declared zero period for the aforesaid area for the aforesaid period. The revisional authority further ordered that the allottee will be entitled to a reduction of the interest rate as per the Government Order dated 09.06.2020 and zero period for the Covid-19 pandemic in furtherance of the Government Order dated 20.07.2022. The revisional authority directed GNIDA to ensure refund of the amount of excess stamp duty in compliance with the Government Order dated 25.06.2019. The revisional authority set aside the notice dated 14.12.2022, directed the GNIDA to recalculate the dues of the opposite party no.2 and directed the opposite party no.2 to deposit 25% of the amount of dues within one month and to pay the balance amount in four six-monthly instalments.

18. GNIDA has contended that Writ-C No.6647 of 2020 filed by the opposite party no.2 regarding refund of excess amount paid as stamp duty is still pending consideration of this Court sitting at Allahabad and this fact was concealed by the opposite party no.2 and the State Government has passed the impugned order dated 23.10.2023 directing refund of the amount of stamp duty ignoring the fact of pendency of writ petition regarding the aforesaid prayer. Placing reliance on a judgment of the Hon'ble Supreme Court in the case of **Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others**: (2013) 11 SCC 531, the learned Counsel for GNIDA has submitted that a person who indulges in misleading, concealing and clever drafting is guilty of fraud and is not entitled to invoke the jurisdiction of any Court of law.

19. The petitioner has also placed reliance on a judgment of Hon'ble Supreme Court in the case of **Meghmala Vs. J. Narssimha Reddy: (2010) 8 SCC 383** in which the Hon'ble Supreme Court has observed as under: -

"28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay 1956 All. E.R. 349), the Court observed without equivocation that 'no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.'

* * *

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of Courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression 'fraud' involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572; Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh Vs. T. Suryachandra Rao AIR 2005

SC 3110; K.D. Sharma Vs. Steel Authority of India Ltd. & Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir & Ors. (2008) 13 SCC 170).

34. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the Court. (Vide S.P. Changalvaraya Naidu (supra); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi & Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr. AIR 2004 SC 2836).

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the Court. Every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est."

20. On 28.12.2023, GNIDA filed an application before the State Government for review of the order dated 19.10.2023 and it filed another application dated 01.03.2024 for recalling the order dated 19.10.2023 inter alia stating that the revisional authority had not taken into consideration the fact that the zero period benefit had already been granted to the opposite party no.2 and further, that there was no stay order passed in respect of the plot in question. This application was decided by means of an order dated 29.05.2024 recalling the direction for declaring zero period from 16.03.2016 to 04.08.2017 in respect of 9,937 square meters land as there was no stay order operating in respect of the said land. The remaining pleas of GNIDA were rejected.

21. GNIDA filed yet another application for review of the order dated 29.05.2024 which was rejected by means of an order dated 07.11.2024 passed by the State Government stating that the original allotment was made in favour of the opposite party no.2 on 24.11.2010. A supplementary deed was executed on 29.04.2014 because acquisition of 95,832.20 square meters was affected by means of an order passed by the Hon'ble Supreme Court. The land could not be demarcated immediately and it has been demarcated by letters dated 17.04.2012, 08.07.2013, and 04.02.2014, issued by GNIDA. Thereafter, a declaration deed was executed on 22.04.2014, it was registered on 29.04.2014 and a possession certificate in respect of the revised land area was issued. It does not appear that the opposite party no.2 has caused a delay in the matter and, therefore, a zero period was declared from 24.11.2010 till 22.04.2014. The revisional authority directed GNIDA to ascertain the benefits to which the opposite party no.2 is entitled. The Revisional Authority clarified that in case the allottee has deposited any excess amount, the same would not be refunded to it in furtherance of the order dated 07.11.2024.

22. Assailing the validity of the aforesaid orders, the learned counsel for the petitioner has submitted that all the orders passed by the revisional authority are without jurisdiction as Section 41 (3) of the U.P. Urban Planning and Development Act provides for filing revision against orders by which any case is decided. He has submitted that it has been held by a Division Bench of this Court in the judgment dated 30.05.2022, passed in the case of **M/s Apace Buildltech Private Limited Vs. State of U.P. and two others**: Writ-C No. 3010 of 2022, that the condition precedent for the State Government to exercise its powers under Section 41 (3) of the Act of 1973 is that there has to be a record of a case disposed off or there has to be an order passed by the Authority/Chairman. In the absence of any case disposed of or an order passed by the authority/Chairman, the State Government is not vested with the powers of revision. The demand notice cannot be termed to be a case disposed off or an order passed by the Authority and a revision filed under Section 41 (3) of the U.P. Urban Planning and Development Act against a demand notice will not be maintainable.

23. The second submission of the learned counsel for the petitioner is that Section 41(3) of the Act of 1973 makes it mandatory to provide an opportunity of hearing before any order is passed, but the order dated 29.05.2024 has been passed without giving an opportunity of hearing to the petitioner.

24. The learned counsel for the petitioner has next submitted that in the order dated 27.03.2025, passed in Case No.1508/77-4-25-53-Appeal 2023 titled **M/s Easter Agro Products Industries Private Limited Vs. UPCIDA, Lakhanpur, Kanpur,** the revisional authority itself has held that an application for review of an order passed in revision is not maintainable. In the judgment dated 21.05.2025, passed by a Division bench of this Court in **M/s Eco Green Build Tech Private Limited Vs. State of U.P.** Writ-C No. 26214 of 2020 (Neutral Citation 2025AHC-LKO-30241-DB) it has been held that the revisional authority has no jurisdiction to review its order.

25. The learned counsel for the petitioner GNIDA has submitted that all the orders passed by the revisional authority are without jurisdiction.

26. The opposite party no.2 has raised a preliminary objection that the writ petition suffers from the latches.

27. Upon this objection being raised, the petitioner filed a supplementary affidavit stating that the order on the second review application was passed on 07.11.2024. The opposite party no.2 preferred an application dated 10.02.2025 seeking approval of occupancy certificate and sub lease-deed for proportionate area of the project. A payment intimation notice was issued to the opposite party no.2 on 17.02.2025 and thereafter the file was sent to the Finance Department of the petitioner authority for obtaining approval for filing of the writ petition. Thereafter opinion of a Chartered Accountant was obtained, who initially gave an opinion without considering the zero period policy. Therefore, the matter was again sent to the Chartered Accountant. Upon examination of the documents and opinions, it was found that the petitioner authority stands at the risk of suffering loss to the tune of Rs.149.93 Crores and, therefore, guidelines/reconsideration of the State Government was sought. A letter for review was prepared, but the same was retracted as the

petitioner authority decided that the State Government does not have the power to review its orders passed under Section 41(3) of the U.P. Urban Development and Planning Act, 1973. In June, 2025 the petitioner authority again sought legal opinion in the matter and thereafter the petitioner's counsel advised that a writ petition should be filed after the summer vacations challenging the order dated 19.10.2023, passed by the State Government on the ground that the demand notice should not be construed as an order as per the order dated 30.05.2025, passed by a Division Bench of this Court in the case of ***M/s Apace Buildltech Private Limited Vs. State of U.P. and two others:*** 2022:AHC-LKO:30003-DB.

28. In the counter affidavit filed by the opposite party no.2 it has been stated that the demand notice dated 14.12.2022 was in the nature of a final order as the petitioner had made quantification of the alleged liability of the opposite party no.2 and had demanded the quantified amount, failing which coercive measures would be taken against it. This is not a demand notice and this is final order of demand coupled with a threat of coercive measures in case of non-compliance with the order. Therefore, the writ petition is maintainable. Regarding the petitioner's plea of non-maintainability of the revision and the review applications on the ground of lack of jurisdiction the opposite party no.2 has stated that these pleas were never raised by the petitioner before the revisional authority. The petitioner cannot be permitted to raise new pleas for the first time before this Court which pleas were not raised either in the revision or in the two review applications filed by the petitioner itself. The opposite party no.2 has further stated that although the review applications filed by the petitioner were not maintainable, para 17 of the impugned order dated 19.10.2023 was modified by the revisional authority on the basis of concession/ undertaking given by the opposite party no.2 as it did not intend to join issue with the petitioner authority and to put a quietus to the disputes in the interest of allottees of the project who are still awaiting execution of the sub lease-deeds in their favour, which has been withheld owing to the continuing disputes between the petitioner and the opposite party no.2.

29. In reply to the objection regarding maintainability of the Revision, the learned Counsel for the opposite party has relied upon a judgment of the Hon'ble Supreme Court in the cases of **Siemens Ltd. v. State of Maharashtra:** (2006) 12 SCC 33 and a judgment rendered by a Single Judge Bench of this Court in **Harjinder Singh Vs. State of U. P.**: 2011 SCC OnLine All 2094.

30. In **Siemens Ltd. v. State of Maharashtra** (supra), the Hon'ble Supreme Court held that: -

'9.'Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including'State of U.P.'v.'Brahm Datt Sharma'[(1987) 2 SCC 179],'Special Director'v.'Mohd. Ghulam Ghouse'[(2004) 3 SCC 440] and'Union of India'v.'Kunisetty Satyanarayana'[(2006) 12 SCC 28], but the question herein has to be considered from a different angle viz. ***when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See'K.I. Shephard'v.'Union of India'[(1987) 4 SCC 431). It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.***

10.'The said principle has been followed by this Court in'V.C., Banaras Hindu University'v.'Shrikant'[(2006) 11 SCC 42], stating:

'48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In'K.I. Shephard'v.'Union of India'[(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] this Court held: (SCC p. 449, para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' '

(See also'Shekhar Ghosh'v.'Union of India'[(2007) 1 SCC 331 : (2006) 11 Scale 363] and'Rajesh Kumar'v.'D.C.I.T.'[(2007) 2 SCC 181 : (2006) 11 Scale 409])

11.'A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable.'

(Emphasis added)

31. In **Harjinder Singh v. State of U.P.:** (Supra), a Single Judge Bench of this Court held that: -

"*10. ... it is apparently clear that a wide power has been conferred upon the State Government to act suo-moto or an application by a person and to call for the records for satisfying itself with regard to legality or propriety of any order passed or direction issued by the Development Authority or its Chairman. The State Government has been conferred a power to issue such directions in the matter under Section 41(3) as it may deem fit.*

11.'In the opinion of the Court, the power conferred upon the State Government under Section 41(3) is wide enough to entitle it to examine the propriety of the demand of Rs. 22,16,640/- as compounding fee on the plea raised by the present petitioner that it was exorbitant. It is for the State Government to satisfy itself whether in the fact of the case such demand of compounding fee is legal and proper or not and to issue such direction as it may deem fit.

12.'Since the State Government has failed to exercise its powers vested in it under Section 41(3) of the Act 1973. The order impugned dated 12.12.2011 cannot legally be sustained. It is held that the State Government is not correct in holding that the revision-petition as filed against the

order of the Vice-Chairman demanding the compounding fee, was not maintainable. The order is, therefore, set aside. The revision is restored to its original number."

32. **M/s Apace Buildltech Private Limited Vs. State of U.P. and two others**: Writ-C No. 3010 of 2022 had been filed challenging the demand notices and an order dated 28.10.2020 passed by the State Government in purported exercise of its revisional powers vested in it under Section 41(3) of the U.P. Planning and Development Act read with Section 12 of U.P. Industrial Area Development Act, 1976. The petitioners had sought a direction to the respondent-New Okhla Industrial Development Authority to decide the claim of Zero Period. The order dated 28.10.2020 was challenged on the ground that an opportunity of hearing was not provided to the petitioner and the order was passed in violation of the principles of natural justice. This Court accepted this submission and held that adequate opportunity of hearing was not provided to the petitioner. Having observed this, the Court further noticed that if the order dated 28.10.2020 was quashed for the reason of non-observance of the principles of natural justice, the matter will have to be remitted to the State Government for decision of the revision petition afresh. The Division Bench held that 'The demand notice dated 17.01.2018, in our considered opinion, cannot be termed to be a case disposed of or an order passed by the Noida authority. In this view, the revision petitioner under Section 41(3) of the Urban Planning and Development Act against the demand notice dated 17.01.2018 is not maintainable.' Yet, the Division Bench did not quash the order passed in revision holding that 'no fruitful purpose would be served even if we quash the order passed by the State Government on 18.10.2020. (sic: 28.10.2020)'

Regarding the prayer for issuing a direction to the Noida Authority for deciding the petitioner's claim in respect of Zero Period Policy, this Court found that the petitioner's claim for benefit of Zero Period Policy had not been rejected. Therefore, this Court disposed off the writ petition with a direction to New Okhla Industrial Development Authority to take a reasoned decision on the claim of the petitioner in respect of the Zero Period Policy.

33. Thus it is significant to note that the judgment of the Hon'ble Supreme Court in the case of **Siemens Ltd. v. State of Maharashtra** (Supra) was not placed before the Division Bench deciding the case of **Apace Buildtech** (Supra) and, therefore, it has not been taken into consideration by the Division Bench. In the case of **Apace Buildtech** the revision had been allowed without giving an opportunity of hearing to the petitioner. Although this Court held that the revision against the notice was not maintainable, this Court did not quash the order allowing the revision, as it would not serve any useful purpose. Another significant fact in that case was that the authority had not taken any final decision regarding the claim of the builder for zero period. In the present case, the authority has already taken a final decision rejecting the builder's claim of zero period, like it was the case in the case of **Siemens Ltd. v. State of Maharashtra** (supra). The petitioner GNIDA had filed detailed objections against the revision and it did not submit that the revision was not maintainable. On 28.12.2023, GNIDA filed an application for review of the order dated 19.10.2023 and it filed another application dated 01.03.2024 for recalling the order dated 19.10.2023 inter alia stating that the revisional authority had not taken into consideration the fact that the zero period benefit had already been granted to the opposite party no.2 and further, that there was no stay order passed in respect of the plot in question. This application was decided by means of an order dated 29.05.2024 recalling the direction for declaring zero period from 16.03.2016 to 04.08.2017 in

respect of 9,937 square meter land as there was no stay order operating in respect of the land. Even in review, GNIDA did not contend that the revision was not maintainable. Thereafter GNIDA filed yet another application for review of the order dated 29.05.2024 and even in this application it was not contended that the revision was not maintainable.

34. After having submitted to the jurisdiction of the revisional authority and having contested the revision on its merits and after itself having filed two successive applications for review of the order passed in revision, the petitioner has contended before this Court for the first time in this petition which has been filed on 09.09.2025, i.e. about two years after the order passed in revision, about ten months after the order passed in the second review application filed by GNIDA, that the revision and the review applications were not maintainable. This plea has been raised on legal advice keeping in view the fact that the order of the revisional authority would cause financial loss to the petitioner.

35. Keeping in view the aforesaid facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in the case of **Siemens Ltd. v. State of Maharashtra** (supra), and the view taken by the Single Judge Bench in **Harjinder Singh v. State of U.P.**: (Supra), that the power conferred upon the State Government under Section 41(3) is wide enough to examine the propriety of a demand, which view is in consonance with the principle laid down by the Hon'ble Supreme Court in **Siemens Ltd. v. State of Maharashtra** (supra), I reject the contention of the petitioner that the revision filed by the opposite party no. 2 under Section 41(3) of the U. P. Urban Planning and Development Act was not maintainable. However, I find force in the submission of the learned Counsel for the petitioner that the revisional authority has no power to review its orders. The learned Counsel for the opposite party no. 2 has also not opposed submission and he has submitted that the opposite party no. 2 had not opposed the maintainability of the successive review applications filed by the petitioner to give a quietus to the dispute.

36. The learned counsel for the petitioner has submitted that the revisional authority has decided the revision without giving an opportunity of hearing to the petitioner, however, the record reveals taht the petitioner had filed detailed objections against the revision, which have been taken into consideration while deciding the revision and have been dealt with appropriately. Therefore, I find no force in the submission of the learned counsel for the petitioner that the impugned revisional order has been passed without giving an opportunity of hearing to the petitinoer.

37. Now I proceed to examine the validity of the revisional order on its merits. GNIDA had invited applications for allotment of land for developing residential township in the year 2010. An allotment letter was issued in favour of the opposite party no.2 on 19.08.2010. GNIDA had executed a lease-deed in favour of the opposite party no.2 on 24.11.2010, in respect of land bearing plot No. GH-04, situated in Sector 16C, Greater Noida admeasuring 2,41,570 square meters.

38. On 26.07.2011, GNIDA informed the opposite party no.2 that a correction deed was required to be executed reducing the leased area from 2,41,570 square meters to 1,45,737.80 square meters and the correction deed was executed on 22.04.2014. Thus the leased area was decreased by about 40%. A certificate of handing over physical possession of the leased land was issued on 05.05.2014.

39. On 10.05.2016, the opposite party no.2 wrote a letter to GNIDA, stating that out of the revised area of 1,45,737.80 square meters, physical possession of only 1,37,400.80 square meters had been handed over to it and possession of 8,337 square meters of land had not been delivered to the lessee because of some pending litigation. Subsequently, possession of land bearing khasra no.189, measuring 3,070 square meters and khasra no.257, measuring 950 square meters (totalling to 4,020 square meters), was given to the lessee, but physical possession of land bearing khasra no. 192, measuring 4,317 square meters was not delivered to the lessee. The lessee stated that GNIDA was not entitled to charge any interest on the outstanding amount till possession of the entire leased land was handed over to it.

40. GNIDA claims to have granted the benefit of a zero period from 12.05.2011 till 24.08.2012. On the claim of the opposite party no. 2 for zero period benefits, GNIDA claims that it had informed the opposite party no.2 about the requirement for execution of a declaration/correction deed on 26.07.2011, but the opposite party no. 2 has caused the delay in the execution of the deed till 22.04.2014.

41. The revisional authority held that although the lease-deed was executed on 24.11.2010, a supplementary lease-deed was executed on 29.04.2014, reducing the area of the leased land by about 40%. The opposite party no. 2 is not at fault for the substantial decrease in the area leased out by GNIDA. The opposite party no.2 would suffer for the delay in finalisation of the area of the project, as it would have an adverse impact on the planning and completion of the project. Therefore, the opposite party no. 2 is entitled to be granted the benefit of zero period till execution of the supplementary deed on 29.04.2014. I find no error or illegality in this recommendation of the committee. The revisional authority further held that the High Court had passed a stay order dated 16.03.2016 in respect of 9,937 square meters area of the allotted land, which continued to remain operative till 04.08.2017 and declared zero period for the aforesaid area for the aforesaid period. The revisional authority further ordered that the allottee will be entitled to a reduction of the interest rate as per the government order dated 09.06.2020 and zero period for the Covid-19 pandemic in furtherance of the Government Order dated 20.07.2022. The revisional authority directed GNIDA to ensure refund of the amount of excess stamp duty in compliance with the Government Order dated 25.06.2019.

42. The revisional authority set aside the notice dated 14.12.2022, directed the GNIDA to recalculate the dues of the opposite party no.2 and directed the opposite party no.2 to deposit 25% of the amount of dues within one month and to pay the balance amount in four six-monthly instalments. However, as refund of the excess amount paid as stamp duty is still pending consideration of this Court sitting at Allahabad in Writ-C No.6647 of 2020 filed by the opposite party no.2, the direction passed by the revisional authority for refund of the amount of stamp duty ignoring the fact of pendency of writ petition regarding the aforesaid prayer is unsustainable in law.

43. On the first review application filed by GNIDA, the revisional authority has recalled the direction for declaring zero period from 16.03.2016 to 04.08.2017 in respect of 9,937 square meters land as there was no stay order operating in respect of the land. On the second review application filed by GNIDA, the revisional authority has directed GNIDA to ascertain the benefits to which the

opposite party no.2 is entitled and in case the allottee has deposited any excess amount, the same would not be refunded to it in furtherance of the order dated 07.11.2024.

44. The original allotment was made in favour of the opposite party no.2 on 24.11.2010. A supplementary deed was executed on 29.04.2014 and registered on 29.04.2014 and a possession certificate in respect of the revised land area was issued on 05.05.2014, as has been pleaded by GNIDA itself in para 37 of the Writ Petition. Execution of lease deed in respect of land in respect of which it has been held that GNIDA had no right to transfer and subsequent execution of a correction deed decreasing the land area, was without any fault of the opposite party no. 2. The lessee could not even prepare a development plan, what to say about execution of the plan, till a possession certificate in respect of the revised land area was issued on 05.05.2014. Therefore, the revisional authority has not committed any error or illegality.

45. Accordingly, the petition is ***allowed.*** The orders dated 29.05.2024 (Annexure No.2 to the petition) and 07.11.2024 (Annexure No.7 to the petition) passed by the Revisional Authority on the review applications filed by the petitioner are set aside. The finding recorded in the order dated 19.10.2023, passed by the opposite party no.1 - the State Government, in Revision No.6430/77-4-23/01 Appeal/23, under Section 41(3) of U. P. Urban Development and Planning Act, 1973 (Annexure No.3 to the petition) that the lessee ' opposite party no. 2 is entitled to get zero period benefit till execution and registration of the supplementary deed dated 29.04.2014 is upheld. The direction for declaring zero period from 16.03.2016 to 04.08.2017 in respect of 9,937 square meter land is set aside. The direction of the revisional authority regarding refund of stamp duty is also set aside. The petitioner is directed to issue a revised demand notice by giving zero period benefit to the opposite party no. 2 till execution and registration of the supplementary deed dated 29.04.2014 and giving a reasonable time to the opposite party to deposit the amount. In case the opposite party deposits the amount as aforesaid, no coercive action shall be taken against it and the petitioner will execute the requisite deeds/documents in favour of the opposite party no.2/its allottees in accordance with the law.

(2026) 2 ILRA 1565
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.02.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 12432 of 2025

Vansh Nigam & Anr. ...Petitioner

Versus

Workmens Compensation Commissioner/ Collector Lakhimpur Kheri & Ors. ...Respondents

Issue for consideration

The petitioners' father died of electrocution in 2015, leaving behind two minor children who were his sole dependents. Upon attaining majority, they filed for compensation under the Public Liability Insurance Act,1991 which the collector initially rejected as time-barred under the statutory five year limitation period.

Headnotes

Civil law-Constitution of India, 1950- Public Liability Insurance Act,1991- Sections 5,6,7 and Rule 5-Limitation Act,1963-Sections 6, 8 and 29(2)-Condonation of delay for minors-Death due to electrocution-Claim filed by minor dependents after attaining majority-Rejection by collector as time-barred under five-year reflecting period of section 6(3)-The Collector functions as court as the Act and Rules confer inherent powers under section 151 CPC-In the absence of express exclusion, the provisions of sections 4 to 24 of the Limitation Act apply to proceedings under this special statute by virtue of section 29(2)-Petitioners being minors at the time of accident are entitled to the benefit of section 6 and may institute the application within three years of the cessation of legal disability-Impugned order quashed.(Para 19 to 24)

Held

The court held that the Collector functions as a "court" while adjudicating claims, as the the Public Liability Insurance Act and rules confer inherent powers under section 151 of CPC. Consequently, Section 29(2) of the Limitation Act,1963 applies, as its provisions are not expressly excluded by the special statute. Petitioners who were minors at the time of accident, are entitled to the benefit of section 6 and may file for relief within three years of attaining majority. Furthermore, the Collector cannot dismiss a claim as time barred when he failed his statutory duty under section 5 to verify the accident and invite applications. The impugned order was quashed and the matter was remanded for a fresh decision on its merits. (E-6)

Case law Cited

Laxmi Engineering works Vs P.S.G.Industrial Institute: (1995) 3 SCC 583 & M/s Consolidated Engg. Enterprises Vs Principal Secy. Irrigation Deptt. & Ors 2008(7) SCC 169, Vijay Madanlal Choudhary Vs Union of India, Bhakra Beas Management Board Vs Excise & Taxation Officer: (2020) 17 SCC 692-referred to.

List of Acts

Constitution of India, 1950
Public Liability Insurance Act,1991
Limitation Act,1963
Code of Civil Procedure,1908

List of Keywords

Public Liability Insurance Act,1991, Limitation Act,1963, Legal Disability, Minority, Condonation of Delay, Collector as a "Court", Inherent powers, Section 29(2) Applicability, Statutory Duty of Collector, Beneficial legislation, Electrocution compensation.

Case Arising from

CIVIL JURISDICTION: WRIT-C No.- 12432 of 2025

Vansh Nigam & Anr. Vs. Workmens Compensation Commissioner/Collector Lakhimpur Kheri & 3 Ors

From the judgment and order dated 27.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner(s):-

Deo Raj Singh

Advs. for Respondent(s):-

C.S.C., Aprajita Bansal, Neerav Chitravanshi

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

1. Heard Sri Deo Raj Singh, Advocate, the learned counsel for the petitioner and Ms. Aparajita Bansal, Advocate, the learned counsel for the opposite parties.

2. The instant writ petition filed under Article 226 of the Constitution of India has been filed by the petitioners namely (i) Vansh Nigam, aged about 19 years, S/o Late Indresh Kumar and (ii) Khushi Nigam, aged about 17 years, minor daughter of Late Indresh Kumar, through her brother and guardian Vansh Nigam, aged about 19 years, challenging the validity of an order dated 05.06.2025 passed by the Collector, Lakhimpur Kheri, in Case No. 673 of 2024 under Section 6 of the Public Liability Insurance Act, 1991 rejecting the petitioners' claim under Section 6 of the Public Liability Insurance Act 1991.

3. Briefly stated, facts of the case are that the petitioners' father, Indresh Kumar expired on 28.04.2015 due to electrocution while he was merely 30 years of age. He used to run a beetle shop cum provision store and also used to do cultivation. His income was Rs.20,000/- per month and he was the sole earning member of his family. At the time death of their father, the petitioners were aged 9 years and 7 years respectively.

4. When the petitioner no. 1 attained majority and the petitioner no. 2 was still a minor aged 16 years, they filed an application under Section 6 (3) of the Public Liability Insurance Act, 1991 before the Prescribed Authority / Collector, Kheri for claiming compensation under the aforesaid Act. The opposite parties filed a written statement stating that no claim under Section 6(3) of the aforesaid Act can be filed after the expiry of 5 years since the date of the accident and, therefore, the suit is time-barred.

5. Upon this, the petitioners filed an application under Section 14 of the Limitation Act, 1963 stating that they had filed a Miscellaneous Case No. 3 of 2016, under Order XXXIII, Rule 1 CPC for permission to file a suit in forma pauperis. That suit was dismissed in default on 25.11.2023. After the petitioner no.1 attained majority, he has filed the application under Section 6(3) of the Public Liability Insurance Act without any further delay.

6. The Prescribed Authority / Collector has rejected the application by the impugned order dated 05.06.2025 holding that an application under Section 6(3) of the Public Liability Insurance Act can be entertained only within a period of 5 years since the date of the accident. The application under Section 14 of the Limitation Act has been filed belatedly, and therefore, the same cannot be allowed.

7. Challenging the validity of the aforesaid order, the learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court in the cases of Laxmi Engineering Works Vs. P.S.G. Industrial Institute: (1995) 3 SCC 583 and M/s Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and others: 2008 (7) SCC 169, which are on the point of applicability of Section 14 of the Limitation Act.

8. Per contra, Ms. Aprajita Bansal, the learned counsel for the opposite party has submitted that Section 6(3) of the Public Liability Insurance Act, 1991 permits entertaining applications under Section 6(1) within a period of five years from the date of accident and it does not contain any provision for condonation of delay for filing of application. She has submitted that the impugned order does not suffer from any illegality.

9. Before proceeding to examine the validity of the impugned order, it would be appropriate to have a look at some relevant provisions of the Public Liability Insurance Act, 1991, which are being reproduced below:

*'**5. Verification and publication of accident by Collecto**r.- Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (1) of Section 6.*

***6. Application for claim for relief.**'(1) An application for claim for relief may be made'*

(a) by the person who has sustained the injury;

(b) by the owner of the property to which the damage has been caused;

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(1-A) Where any damage has been caused to any public property or private property due to manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, transfer or such other processes, of such hazardous substance, an application for claim for restoration of the property may be made by the owner of the property or such other person, as may be prescribed, to the Collector.

(2) Every application under sub-section (1) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed.

(3) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.'

*7. **Award of relief.**'(1) On receipt of an application under sub-section (1) of Section 6, the Collector shall, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid.*

(2) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section,'

(a) the insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section (2-B) of Section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct;

(b) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under Section 7-A, to the person or persons referred to in sub-section (1) such amount as may be specified in that scheme;
(c) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.

(4) In holding any inquiry under sub-section (1), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit.

(5) The Collector shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the insurer or the owner against whom the award is made under sub-section (1) fails to deposit the amount of such award within the period specified under sub-section (3), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.

(7) A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application for relief under sub-section (1) of Section 6.

(8) Where an owner is likely to remove or dispose of his property with the object of evading payment by him of any amount of the award, the Collector may, in accordance with the provisions of Rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), grant a temporary injunction to restrain such act.

(9) Where the environment is affected or damaged due to manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, transfer or such other processes, of such hazardous substance, the Central Government may, on an application made by the Central Pollution Control Board or the State Pollution Control Board, as the case may be, allocate the fund from the Environmental Relief Fund for restoration of the damage so caused in the manner as may be prescribed.'

10. In exercise of the powers conferred by Section 23 of the Public Liability Insurance Act, 1991, the Central Government has framed the'Public Liability Insurance Rules, 1991, Rule 5 whereof is as follows:

'5. Powers of Collector.'*(i) The Collector may follow such summary procedure for conducting an inquiry on an application for relief under the Act, as he thinks fit.*

(ii) The Collector shall have all the powers of a Civil Court for the following purposes namely:'

(a) summoning and enforcing the attendance of any person and examining him on oath.

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examining of witness or documents;

(f) dismissing an application for default or proceeding ex-parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) inherent powers of a civil court preserved under Section 151 of the Code of Civil Procedure, 1908.'

11. It is also important to note that there is no provision in the Public Liability Insurance Act which prohibits applicability of the Limitation Act to proceedings under the Act.

12. Section 5 of the Public Liability Insurance Act casts a statutory duty upon the Collector that upon coming to know about the occurrence of an accident, he should himself verify the occurrence of such accident and thereafter he should invite applications under Section 6(1) of the Act for claiming relief under the Act by making a proper publication. There is nothing on record to indicate that the Collector has performed this statutory duty by making any publication inviting applications after the accident in which the petitioners aged 9 and 7 years had lost their father.

13. As the Public Liability Insurance Act is a special Act, Section 6(3) whereof provides the limitation period of five years for filing an application under Section 6(1) of the Act, which is different from the limitation period of three years prescribed by the Schedule for suits claiming money decrees, the provisions of Section 3 shall apply as if the period of five years was the period prescribed by the Schedule under the Limitation Act and for the purpose of determining any period of limitation prescribed for an application under Section 6(1) of the Public Liability Insurance Act, the provisions contained in sections 4 to 24 shall apply as they are not expressly excluded by any provision of the Public Liability Insurance Act.

14. One more aspect needs to be examined, and that is that the Limitation Act normally applies to Courts and not Tribunals. In this regard, it becomes important to keep in mind the provisions of Section 7 (5) of the Public Liability Insurance Act, which provides that the Collector shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). The most important thing is that Rule 5 (ii) (h) of the'Public Liability Insurance Rules, 1991, provides the Collector shall have the inherent powers of a civil court under Section 151 of the Code of Civil Procedure, 1908. The Civil Courts' inherent powers under Section 151 C.P.C. are not conferred upon tribunals and it is the single most important feature which indicates that while performing adjudicatory functions under the Public Liability Insurance Act, the Collector functions as a Court so as to make the provisions of the Limitation Act applicable to it.

15. In the case of'***Vijay Madanlal Choudhary'v.'Union of India,'2022 SCC OnLine SC 929,*** the Hon'ble Supreme Court referred to a King's Bench judgment in the case of'Seaford Court Estates ld., which is as follows: -

'274*.'We may profitably advert to the judgment in'Seaford Court Estates ld.'[1949] 2 K.B. 481, which states:*

"A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature*.'That was clearly laid down by the resolution of the judges in'Heydon's case,'(1584) 3 Co. Rep. 7a, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his second volume'Eyston'v.'Studd'(1574) 2 Plowden 465.'**Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as***

they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.' *(Emphasis added)*

16. The Public Liability Insurance Act is a beneficial legislation which has been enacted to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accidents covered under the provisions of the Act. Section 5 of the Public Liability Insurance Act casts a statutory duty upon the Collector that upon coming to know about the occurrence of an accident, he should himself verify the occurrence of such accident and thereafter he should invite applications under Section 6(1) of the Act for claiming relief under the Act by making a proper publication. Therefore, its provisions should be interpreted in a manner which would be in consonance with the object of the Act. It could never have been the intention of the framers of the Public Liability Insurance Act that the benefits under the Act will be denied to minor children of a deceased victim of an accident merely because they were minors and due to this legal disability, they could not file the application within that period and when they filed the application immediately after attaining majority, the limitation period of five years mentioned in Section 6(3) of the Act had expired.

17. Therefore I hold that the Prescribed Authority / Collector acts as a Court and applicability of the provisions of the Limitation Act, 1963 to an application under Section 6(1) of the Public Liability Insurance Act is not barred.

18. Now I proceed to examine certain relevant provisions of the Limitation Act, which are being reproduced below: -

'Section 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) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disability, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation.--For the purposes of this section, 'minor' includes a child in the womb.'

Section 7 - Disability of one of several persons

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.-- This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II.-- For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

Section 8 - Special exceptions

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.'

Section 29 - Savings

(1) Nothing in this Act shall affect section 25'of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Section 25 and 26'and the definition of "easement" in section 2'shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.'

19. In'**Bhakra Beas Management Board v. Excise & Taxation Officer: (2020) 17 SCC 692,** the Hon'ble Supreme Court held that the provisions contained in Section 29(2) of the Limitation Act would be attracted where there is no express exclusion or by implication.

20. In'**Consolidated Engg. Enterprises v. Irrigation Deptt.** (supra) it was held that: -

"20.'Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law'.'

21. As the petitioners were minors at the time of the accident in which they lost their father, they certainly have the right to file the application within a period of three years after attaining majority, as per the provisions contained in Sections 6 and 8 of the Limitation Act.

22. It is also to be kept in mind that at the time of the accident, the petitioners were children aged 9 and 7 years and due to legal disability they could not file an application for claiming compensation for death of their father and for their failure to file an application during their disability due to minority, the Collector has rejected their application as barred by limitation period whereas the Collector himself is guilty of non-performance of his statutory duty under Section 5 of the Public Liability Insurance Act which requires that after coming to know about the occurrence of an accident, the Collector should himself verify the occurrence of an accident and thereafter he should invite applications under Section 6(1) of the Act for claiming relief under the Act by making a proper publication.

23. Therefore, the Collector has committed a legal error in dismissing the application under Section 6(1) of the Public Liability Insurance Act as barred by the period of limitation of five years as provided in Section 6(3) of the Act.

24. In view of the foregoing discussion, the writ petition is ***allowed***. The impugned order dated 05.06.2025 passed by the District Magistrate / Collector Lakhimpur Kheri in Case No. 673 of 2024 under Section 6 of the Public Liability Insurance Act, 1991 , rejecting the petitioners' claim under Section 6 of the Public Liability Insurance Act 1991 as time barred, is quashed. The matter is remanded to the Prescribed Authority / Collector Lakhimpur Kheri for being decided afresh on its merits in accordance with the law, expeditiously, without granting any unnecessary adjournment to any of the party keeping in view the provision contained in Section 7(7) of the Public Liability Insurance Act, which mandates that a claim for relief in respect of death of any person shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such

claim within three months of the receipt of the application for relief under sub-section (1) of Section 6.

(2026) 2 ILRA 1575
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.02.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 27261 of 2007

Shailesh Kumar Yadav IPS **...Petitioner**
Versus
U.O.I. & Ors. **...Respondents**

Issue for consideration

The matter involves an IPS officer challenging CIC orders that imposed a maximum penalty and recommended disciplinary action for a 145-day delay in providing RTI information.

Headnotes

Civil law-Constitution of India,1950-Article 226-Right to Information Act,2005-Sections 20(1) & 20(2)-Penalty and Disciplinary Action-Applicability-Pre conditions for penalty-Requirement of "without reasonable cause" or "mala fide" intent-Delay of 145 days in furnishing information-Staff shortage and heavy workload justifying delay-Imposing maximum penalty of Rs. 25000 without awaiting the directed inquiry report is a procedural impropriety-Disparaging remarks and pre-determined bias by Information Commissioner is against the natural justice-Allowed.(Para 16 to 36)

Held

The court held that Section 20 of the RTI Act does not mandate a penalty for every delay, the Commission must first form a reasoned opinion that the officer acted without "reasonable cause" or with "mala fide" intent. Mere institutional negligence or delays caused by staff shortages and heavy workloads do not constitute "persistent default" as required for disciplinary recommendations under section 20(2).The CIC committed procedural impropriety by imposing the maximum penalty of Rs. 25000 without awaiting the results of its own directed inquiry report. Disparaging remarks made by the Information Commissioner against the petitioner reflected a pre-determined bias and a lack of impartiality, violating the principles of natural justice. The court quashed the impugned orders finding them arbitrary and legally unsustainable. (E-6)

Case law Cited

Manohar Vs State of Maharashtra, (2012) 13 SCC 14, Yudhister VS State Information Commission Haryana & Ors, 2017 SCC OnLine P&H 6592, Shailesh Kumar Yadav Vs Union of India & Ors, Special Leave to Appeal (C) No. 10430 of 2009-referred to.

List of Acts

Constitutions of India, 1950
Right to Information Act, 2005

List of Keywords

Right to information, Penalty provision, disciplinary action, mala fide intent, reasonable cause, persistent default, staff shortage, institutional delay, Procedural impropriety, Apprehension of bias, Pre-determined Mindset, IPS officer (deputation).

Case Arising from

CIVIL JURISDICTION: WRIT-C No.- 27261 of 2007
Shailesh Kumar Yadav Ips Vs. Union Of India & Ors
From the judgment and order dated 27.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):-
C.B. Yadav, Nisheeth Yadav, Rajesh Kumar Singh
Advs. for Respondent(s):-
A.S.G.I. S.C Santosh Kumar Mishra, Vinay Kumar Singh

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Sri C.B. Yadav, learned Senior Advocate assisted by Sri Nisheeth Yadav, learned counsel appearing for the petitioner, Sri Santosh Kumar Mishra, learned counsel appearing for respondents concerned and Sri Vinay Kumar Singh, learned counsel

2. This writ petition has been filed under Article 226 of the Constitution of India, seeking reliefs against the orders passed under the Right to Information Act, 2005. The petitioner prays for issuance of a writ, order or direction in the nature of certiorari for quashing the orders dated 08.02.2007 and 19.03.2007 passed by Dr O. P. Kejriwal, Information Commissioner, Central Information Commission. The petitioner further seeks issuance of a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the aforesaid orders dated 08.02.2007 and 19.03.2007, so far as they relate to the petitioner. The petitioner also prays for issuance of a writ, order or direction in the nature of mandamus directing the respondents to drop the entire proceedings initiated against the petitioner in pursuance of the above mentioned order dated 19.03.2007.

3. The brief fact of the matter is that at the relevant time, the Petitioner, an IPS officer was serving on deputation as the Regional Passport Officer (RPO), as well as Public Information Officer (PIO) in Ghaziabad. On 26.03.2006, respondent no.4, submitted an application under the Right to Information Act, 2005, seeking some information regarding duplicate passports, submission forms, procedures and time limits. The Petitioner endorsed the application on the same day, however, the application was returned to the applicant on 14.06.2006, by the Assistant Public Information Officer (APIO) due to the reason that the accompanying demand draft was drawn in favour of "Public Information, Ghaziabad" rather than the "Public Information Officer read with Passport Officer". Thereafter Respondent No. 4, resubmitted the application with the corrected draft on 26.06.2006. The Petitioner marked it to "PRO-I and the APIO, on 04.08.2006, directed the applicant to furnish a "Key Number" and "File Number," stating that the website could not be operated without these details. Aggrieved by this non-furnishing of information respondent no.4 filed a complaint under Section 18 of the RTI Act with the Central Information Commission (CIC), which has resulted into impugned orders challenged before this court in this petition.

4. The impugned order dated 08.02.2007 records that the information required by respondent no.4 has already been furnished by the petitioner vide letter dated 19.12.2006 and two weeks time was sought from the Commission to resolve the issue with the complainant, which got expired on 24.01.2007, however the PIO and RPO Ghaziabad did not produce any note of satisfaction. The order further records that the Commission decided to initiate penal action against the PIO under section 20(1) of the RTI Act 2005 for the delay of more than four months in providing the information, for which the penalty notice is being issued separately. With this observation the Central Information Commissioner passed the order dated 08.02.2007,where CIC made recommendation to the Chief Passport Officer and Joint Secretary, (CPV Division), Ministry of External Affairs to hold the enquiry into the matter and take strictest action against Regional Passport Officer, Ghaziabad under the intimation to the Commission at the earliest and in no case later than 31.03.2007.

5. Learned counsel for the petitioner submitted that it is a matter for fact that the impugned orders have been passed after hearing the petitioner but at the same time it is passed in complete violation of the principles of natural justice. He further submitted that the impugned order dated 08.02.2007 was passed arbitrarily and with mala fide intentions, which recommended the action against petitioner even before the petitioner files his explanation to the show cause issued to him regarding penalty imposition, which is also for the same allegation due to which the recommendation to the government is made to take action against petitioner in a time bound matter. Learned counsel further submitted that the impugned order dated 19.03.2007 is also bad in law as the CIC has failed to consider the explanation offered by the petitioner against the show cause notice while passing the order for imposing the maximum amount of penalty against the petitioner.

6. Learned counsel argued that the petitioner, by utilizing the "State Level Coordination Committee" guidelines, which allow RPOs to coordinate with the Local Intelligence Unit (LIU), instructed the Deputy Superintendent of Police (LIU) to approach the applicant regarding his satisfaction with the information provided. An LIU Sub-Inspector visited the applicant, who subsequently sent a letter to the CIC on 14.01.2007, stating that he had received the information and the controversy was resolved, subject to certain conditions regarding the improvement of the Passport Office's attitude. He further submitted that on 06.01.2007 the letter was sent by respondent no.4 to the concerned registrar of the Central Information Commission, bringing to his notice that information sought by the respondent has been received by him, and as such, as requested by the petitioner, the controversy has been resolved.

7. Learned counsel also argued regarding imposition of penalty, and submitted that the petitioner replied to the show-cause notice on 26.02.2007, however, the CIC, vide the impugned order dated 19.03.2007, imposed a penalty of Rs. 25,000/-, which is severe penalty and observed incorrectly that there is deployment of police to the applicant's residence which is amounted to intimidation and defamation, and thereafter recommended disciplinary action by the Ministry of External Affairs. He contends that the directions to the concerned department to hold enquiry was not desirable on the part of the Commission to proceed against the petitioner under section 20(1) of the Act of 2005 without waiting the report of the enquiry which was directed to be conducted by the Chief Passport Officer. He has reiterated that the order imposing penalty vide order dated

19.03.2007 was passed by the CIC without waiting the report from the Chief Passport Officer who was the highest authority of the office occupied by the petitioner at the relevant time.

8. Learned counsel for the petitioner relied upon the enquiry report and argued that the Chief Passport Officer has already held the enquiry and submitted its report on 21.03.2007. The report stated that if any mistake has been committed, it was on account of severe shortage of staff, increased work burden and continue pressure to clear the back-log of Passports in the office of Regional Passport Officer, Ghaziabad. He has further contended that the report clearly states that no officer can be blamed, and therefore, the decision taken by the Central Information Commission to impose penalty upon the petitioner was not advisable, The report further demonstrated that the office of Regional Passport Officer, Ghaziabad is already overburdened as it was receiving about 400 applications for issuing passport every day, and if any bonafide mistake has been done, the same cannot be treated any misconduct because it is neither deliberate nor intentional.

9. Learned counsel argued that the CIC did not indicate and advert as to how the petitioner is liable for delay caused therein and if the delay is caused by the machinery deployed therein, the petitioner cannot be blamed and no penalty can be imposed against him, especially when the enquiry report demonstrates that it was the situation which was responsible for the delay and no individual was to be held liable. Passing the impugned order to impose penalty without even waiting for the last date to conclude the enquiry as per its own order, indicates the element of malice, unfairness and arbitrariness.

10. Learned counsel for the petitioner further submitted that in a separate matter, respondent nos. 2 and 3, who was the same person, had passed an order dated 23.01.2009 imposing a penalty of Rs. 25,000/- upon the petitioner. He further stated that the said order came to be passed at a time when the petitioner, after completing his deputation in the Passport Office, was serving at the All India Institute of Medical Sciences, New Delhi. By the said order, the Director (Admin), All India Institute of Medical Sciences, New Delhi was directed to ensure compliance by recovering the penalty amount of Rs. 25,000/- in two installments from the salary of the petitioner and to remit the same to the Commission by way of demand draft to the Assistant Registrar, Central Information Commission, with a further direction that the first installment should reach the Commission by 10.03.2009 and the second installment by 10.04.2009.

11. The petitioner assailed the above-mentioned order before this court in Writ C No. 9948 of 2009, wherein this court observed that there was no finding of any mala fide conduct on the part of the petitioner qua the alleged delay in supply of information. Though this court declined to interfere in exercise of jurisdiction under Article 226 of the Constitution of India to set aside the order but the penalty was reduced from Rs. 25,000/- to Rs. 5,000/-. Against this order, the petitioner preferred Special Leave to Appeal (C) No. 10430 of 2009 before the Supreme Court, which was allowed by the order dated 07.07.2014. The Supreme Court observed that while the High Court had reduced the penalty, it had also recorded that the delay occurred on account of proper arrangements not having been made in the office regarding the records of applications received and placed before the petitioner, and that such delay was not alleged to be deliberate. The Supreme Court, being satisfied that the imposition of penalty was not justified, set aside the order of the High Court as well as the penalty order passed by the Central Information Commission. Learned counsel asserted

that the similar order by the same person against the petitioner, demonstrates that respondent CIC, Mr Kejriwal, was unfairly and arbitrarily targeting the petitioner and was misusing the office of the Central Information Commission in a high-handed manner.

12. On the other hand, learned counsel for the respondents no. 2 and 3 placed reliance upon the counter affidavit filed on behalf of respondent no.2 and 3 and submitted that there was a delay of 145 days in providing information. He argued that the penalty imposed was not extreme penalty and the respondent no.2 under the RTI Act, could have imposed heavier penalty. He took the stand that the decision to impose penalty was taken after giving full opportunity to the petitioner and the petitioner participated in the penalty proceedings before the Commission on 11.03.2007. He has further contended that respondent no.2 was not satisfied with the explanation of the petitioner and by a detailed and speaking order dated 19.03.2007 imposed a penalty of Rs.25,000/- on the petitioner.

13. As per learned counsel for respondents, respondent no.2 took serious view of the defamatory statements made by the petitioner and the scant regard shown to the members of the public and statutory body. He placed emphasis on paragraph 11 of the penalty order dated 19.03.2007, where respondent number two clearly observe as under :

"The Commission was mortified to observe that the passport officer and PIO, Shailesh Kumar Yadav, happens to be an officer from the Indian police services does not have any respect for the RTI act 2005, not does he have any respect for the members of the public or statutory body like the Central information commission. It is because of such officials that the general public perception about our bureaucracy being insensitive and high-handed gains strength."

14. He further submitted that after above observation, the impugned order recorded that the reply of the show cause notice did not have explanation, but it was full of lame excuses and abuses. He further argued that the PIO was responsible under the RTI Act and the error of subordinate officer did not absolve the PIO of the duty to ensure timely response. He further argued that the reasons given for delay were lame and the penalty was mandatory under Section 20(1) for delay without reasonable cause.

15. In rejoinder, learned counsel for the petitioner submitted that the submissions advanced on behalf of the respondent, when read with the tenor of the impugned orders, revealed a pre-determined approach. It was urged that the observations recorded therein traveled beyond objective adjudication and reflected a clear mindset, which was averse to the petitioner. He further contended that the undue haste with which the orders were passed, without proper appreciation of the material on record, strengthened the apprehension of bias. He emphasized particularly on the fact that the authority invoked both facets of Section 20, namely, the imposition of penalty as well as the recommendation to the Government for action against petitioner, without awaiting the enquiry report or expiry of the last date given for providing the report. According to the counsel of the petitioner, such simultaneous recourse, at a premature stage, demonstrates undue anxiety to proceed against the petitioner. It was thus submitted that cumulatively these circumstances, give rise to a reasonable likelihood of unfairness and vitiated the decision-making process, rendering the impugned orders arbitrary and unsustainable in law.

16. On the basis of the pleadings and submissions, the issue for consideration before this Court is whether imposition of the maximum penalty in the facts of the case was justified along with recommendation to the government to take action within a negligible time gap, and it is also to be determined that whether the question of penalty without first considering the enquiry report is legally justified.

17. Having heard learned counsel for the parties at length and upon careful perusal of the pleadings and documents on record, the core controversy appears as the power of the Commission to impose penalty and make recommendations, and therefore, we proceed to examine Section 20 of the Right to Information Act, 2005, which reads as under:

"20. Penalties. (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees; Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be. (2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

18. Upon a careful reading of the above provision, it becomes evident that the power to impose penalty is not for every delay or deficiency in furnishing information. The provision mandates that the Commission must first form an opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has acted without reasonable cause in refusing to receive the application, in failing to furnish information within the stipulated time, or has acted mala fide, knowingly furnished incorrect or misleading information, destroyed the requested information, or otherwise obstructed its disclosure. The existence of one of these jurisdictional facts is a necessary condition for the imposition of penalty.

19. Further, the first proviso incorporates the principles of natural justice by requiring that a reasonable opportunity of hearing be afforded before any penalty is imposed. It is a matter of fact that the second proviso places the burden upon the concerned officer to demonstrate that he acted reasonably and diligently. Thus, while the statute shifts the evidentiary burden on petitioner, it does not dispense with the foundational requirement that the Commission must record a clear and reasoned finding as to absence of reasonable cause or presence of mala fide conduct and the enquiry report, which got submitted timely, could have been used for the determination of the reason for delay.

20. Moving further, Sub-section (2) of section 20 operates in related yet in a distinct circumstance. Sub-section (1) contemplates monetary penalty for specified lapses, sub-section (2) empowers the Commission to recommend disciplinary action where the failure is not only without reasonable cause but also persistent. The expression recommend used in sub-section (2) is also significant, as it indicates that the Commission does not itself initiate or impose disciplinary punishment, but merely sets in motion the process under the applicable service rules.

21. Therefore, we are of the considered view that Section 20 provides a mechanism, that is, imposition of monetary penalty upon satisfaction of the statutory conditions, and recommendation for disciplinary action in cases of persistent and unjustified professional default. The exercise of such power must necessarily be preceded by objective consideration of the explanation offered and supported by cogent reasons reflecting application of mind.

22. Recommendations under Section 20 is intended to guide the administration and facilitate corrective action, however, when expressed in mandatory and time-bound language, they risk assuming the character of a binding direction. The statute does not empower the Commission to issue directions that override the discretion or functions of the administrative authorities. To make recommendations of binding nature would be seen as extension of the Commission?s powers beyond the statutory scheme.

23. The Supreme Court in a similar fact of the case, ***Manohar vs State of Maharashtra, (2012) 13 SCC 14,*** discussed various aspects of Section 20 of the RTI Act 2005, and observed that:

"31. It appears that the facts have not been correctly noticed and, in any case, not in their entirety by the State Information Commission. It had formed an opinion that the appellant was negligent and had not performed the duty cast upon him. The Commission noticed that there was 73 days' delay in informing the applicant and, thus, there was negligence while performing duties. If one examines the provisions of Section 20(2) in their entirety then it becomes obvious that every default on the part of the officer concerned may not result in issuance of a recommendation for disciplinary action. The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. ?Negligence? per se is not a ground on which proceedings under Section 20(2) of the Act can be invoked. The Commission must return a finding that such negligence, delay or default is persistent and without reasonable cause. In our considered view, the Commission, in the present case, has erred in not recording such definite finding. The appellant herein had not failed to receive any application, had not failed to act within the period of 30 days (as he had written a letter calling for information), had not mala fide

denied the request for information, had not furnished any incorrect or misleading information, had not destroyed any information and had not obstructed the furnishing of the information..."

24. In ***Manohar (supra),*** the Supreme Court analysed the term ?recommend? provided in Section 20 and held that:

"33. All the attributable defaults of a Central or State Public Information Officer have to be without any reasonable cause and persistently. In other words, besides finding that any of the stated defaults have been committed by such officer, the Commission has to further record its opinion that such default in relation to receiving of an application or not furnishing the information within the specified time was committed persistently and without a reasonable cause. Use of such language by the legislature clearly shows that the expression ?shall? appearing before ?recommend? has to be read and construed as ?may?. There could be cases where there is reasonable cause shown and the officer is able to demonstrate that there was no persistent default on his part either in receiving the application or furnishing the requested information. In such circumstances, the law does not require recommendation for disciplinary proceedings to be made. It is not the legislative mandate that irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts..."

25. The Supreme Court in Manohar (supra), has examined the scope and ambit of Section 20 of the Right to Information Act, 2005 and thereafter it was held that every default on the part of a Public Information Officer does not automatically trigger the imposition of penalty or a recommendation for disciplinary action. While the State Information Commission in that case was found negligence due to a delay of 73 days, the Supreme Court held that mere negligence or delay is not a ground for proceedings under Section 20(2). The Commission must record a reasoned opinion that the default was both persistent and without reasonable cause. Further, the Court emphasized that the term recommend in Section 20(2) must be read as ?may? rather than ?shall,? highlighting that the Commission is not obliged to recommend disciplinary action if the officer is able to show reasonable cause or if the default is not persistent. Each case must therefore be examined on its own facts, and the Commission?s opinion must be based on objective findings rather than assumptions or mere delay.

26. While dealing with identical issue, High Court of Punjab and Haryana has considered the amount of penalty being Rs. 25,000/- imposed upon the petitioner in case of ***Yudhister vs State Information Commission, Haryana and Others, 2017 SCC OnLine P&H 6592***. While dealing with the matter, the High Court has observed that it is settled principle of law that a hammer is not to be used to swat a fly and further observed that the petitioner appears to have not committed any act warranting disciplinary proceedings. The penalty in that case was already recovered from the petitioner but the disciplinary proceeding which was directed got set-aside by the High Court.

27. Applying the above principles to the facts at hand, it is to be determined whether orders passed by CIC and petitioner?s alleged defaults fulfil the conditions prescribed under Section 20(1) and (2) of the Right to Information Act, 2005. The fact of the present case clearly show that at no

stage, there was any allegation or observation supported by any evidence, by any authority or the Central Information Commission that there was any deliberate act or omission by the petitioner in supplying the information desired by the complainant. Instead, the fact finding inquiry report has clearly given justification for the delay at institutional level, which was more of infrastructure problem than has anything to do with the petitioner and the report in fact clearly says that the reason for delay shall not be assigned to any of the Officer.

28. On a careful consideration of the facts in the present case in the light of Section 20 of the Right to Information Act, 2005 and the principles enunciated by the Supreme Court in ***Manohar (supra)***, it is evident that the imposition of penalty upon the petitioner by the Central Information Commission vide order dated 19.03.2007 cannot be sustained. The petitioner had replied to the show-cause notice on 26.02.2007, and the enquiry directed to be conducted by the Chief Passport Officer was still in progress when the Commission imposed a penalty of Rs. 25,000/- and recommended disciplinary action. The enquiry report, submitted on 21.03.2007, clearly establishes that any inadvertent lapses, if at all, were attributable to severe shortage of staff, increased work pressure, and the extraordinary volume of applications being processed daily at the Regional Passport Office, Ghaziabad, and not due to any mala fide, deliberate, or intentional conduct by the petitioner.

29. In the facts and circumstances of the present case, there was no persistent default, nor was there any absence of reasonable cause, as contemplated under Section 20(1) and (2) of the RTI Act. The Commission?s action in imposing maximum monetary penalty and recommending disciplinary action without awaiting the report, reflects a procedural impropriety and an element of arbitrariness. In view of the statutory scheme and settled judicial principles, the penalty imposed on the petitioner was unjustified, especially when the complainant has later send the letter stating that he has received the required information.

30. Close scrutiny of the impugned order reveals that penalty order reveals that respondent no. 2 and 3 had already formed a prejudiced view against the petitioner even before a proper enquiry could be conducted. In paragraph 11 of the order dated 19.03.2007, respondent no. 2 described the petitioner in highly disparaging terms, noting that he does not have any respect for the members of the public or statutory body like the Central Information Commission, and further attributing to him the cause of public perception that bureaucracy is insensitive and high-handed. Such observations demonstrate that respondent no.2 approached the matter with a pre-determined opinion and a mindset already hostile to the petitioner, rather than an objective assessment of the facts.

31. The order imposing penalty dated 19.03.2007 has also observed in paragraph 13 that the Commission only wishes that it had the powers to dismiss the services of such ill-behaved, bureaucrats, and direct the foreign secretary to initiate disciplinary proceeding immediately on receipt of this order, against the PIO and Passport Officer, Ghaziabad, Shailesh Kumar Yadav. Proceeding to determine the penalty and also recommending action to the Government without awaiting the completion of the enquiry undermines the procedural safeguards enshrined in the statute.

32. The language used in both impugned orders travel far beyond consideration of statutory defaults under Section 20 of the RTI Act and indicates a lack of impartiality, reflecting that the penalty and disciplinary recommendation were influenced by bias and personal disapprobation, rather than grounded in

reasoned findings. Such conduct may give rise to a reasonable apprehension of bias or pre-judgment, thereby offending the principles of natural justice. Fairness, and due consideration of evidence are indispensable before any punitive or consequential action is taken.

33. Further, the order dated 07.07.2014 passed by the Supreme Court in ***Shailesh Kumar Yadav vs Union of India and Others, Special Leave to Appeal (C) No. 10430 of 2009,*** demonstrates that there is no allegation or observation for deliberate act or omission on the part of the petitioner, and therefore the respondent nos. 2 and 3 are not justified to impose penalty on the petitioner. Similar order is being passed against petitioner by same respondent officer in its order dated 19.03.2007 impugned in the present case and, therefore, the rational of the Supreme Court?s order in Special Leave to Appeal (C) No. 10430 of 2009 applies to this case as well and the impugned penalty order is not justified.

34. We are of the considered view that Section 20 of the RTI Act confers power to impose a penalty on officers who deliberately obstruct or delay the supply of information, however, the exercise of this power must be reasoned, proportionate, and preceded by a fair enquiry. Issuing the maximum penalty in tandem with a recommendation for Government action within a negligible time gap suggests undue haste and raises concerns of arbitrariness. While the Commission is entrusted with enforcement, it must ensure that its decisions are grounded in careful consideration of facts, statutory limits, and procedural fairness. The imposition of penalty and related recommendations must not appear rushed, prejudged, or compromise the statutory safeguards and the rule of law.

35. For the foregoing reasons, having regard to the statutory scheme under Section 20 of the Right to Information Act, 2005, the enquiry report of the Chief Passport Officer, and the circumstances demonstrating bias and pre-determined opinion on the part of respondent no. 2, this Court is satisfied that order dated 08.02.2007 and order dated 19.03.2007 passed by the Information Commissioner, Central Information Commission were unjustified, arbitrary, and contrary to law. Consequently, both the impugned orders dated 08.02.2007 and 19.03.2007 are quashed.

36. Thus this writ petition stands allowed as above with no order as to cost.

(2026) 2 ILRA 1584
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 39694 of 2009

U.O.I. & Anr. ...Petitioner
Versus
Central Information Commission New Delhi & Ors. ...Respondents

Issue for consideration

The matter pertains to a challenge by the Union of India against CIC(Central Information Commission) orders directing the disclosure of marks and photocopies of answer sheets for a departmental examination under the RTI Act.

Headnotes

Civil law-Constitution of India,1950-Article 226-Right to Information Act,2005-Sections 8(1)(j) & 11-Disclosure of candidate marks-Public activity vs. Private information-Marks obtained by participants in a competitive public examination are not "confidential private information" and must be disclosed as they relate to a public activity –There is no vested right for an applicant to obtain physical photocopies of another candidate's evaluated answer book, providing marks and allowing a perusal of the records is sufficient to satisfy the mandate of the Act-Thus, the orders of the Information Commission directing the supply of photocopies of third party answer sheets are liable to be quashed-Allowed partly.(Para 12 to 23)

Held

The court held that marks obtained by candidates in a public examination do not constitute "personal information" under section 8(1(j) of the RTI Act and must be disclosed to ensure transparency. While a candidate may peruse the answer sheets of others, there is no vested right to obtain photocopies of another candidate's evaluated scripts. The examining body does not share a fiduciary relationship with the examiner, but it does owe a duty to the examinee to maintain the confidentiality of their specific answer book against third parties. Consequently, the disclosure of marks is considered sufficient information to satisfy the mandate of the Act. The CIC orders were quashed to the extent they directed the supply of photocopies of third party answer sheets. (E-6)

Case law Cited

Special Leave Petition (Civil) No. 27734 of 2012, Girish Ramchandra Deshpande Vs Central Information Commissioner & Ors (2013 (1) SCC 212, Dr. Naresh Trehan & 5 Ors Vs Rakesh Kumar Gupta , 2014 SCC OnLine Del 6600, Central Board of Secondary Education & Anr. Vs Aditya Bandopadhyay & Ors (2011) 8 SCC 497-referred to.

List of Acts

Right to Information Act,2005
Constitution of India,1950

List of Keywords

Disclosure of marks, Third party information, Personal information, Public Activity, Transparency, Public interest, Answer sheets, Fiduciary relationship, Accountability.

Case Arising from

CIVIL JURISDICTION: WRIT-C No.- 39694 of 2009

Union of India Thru G.M. Diesel Locomotive & Anr Vs. Central Information Commission New Delhi & Ors

From the judgment and order dated 26.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv.s for Petitioner(s):-

Krishna Ji Shukla, Shekhar Kumar Yadav

Adv. for Respondent(s):-

Ashish Kumar Srivastava

(Delivered by Hon'ble Ajit Kumar, J.
&
Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Sri Krishna Ji Shukla, learned Advocate appearing for the petitioners and learned panel counsel for the Union of India.

2. Petitioners, Union of India and Public Information Officer, Diesel Locomotive Works, Varanasi are aggrieved by the two orders passed by Central Information Commission dated 13.05.2009 and the order dated 04.06.2009 dismissing the review petition.

3. Briefly stated facts of the case are that one Santosh Kumar, Office Superintendent-II, who had appeared in the written test held by the respondent Railways for the purpose of selection on the post of Legal Assistant, made an application under the Right to Information Act, 2005 (in short ?Act, 2005?) to the Information Officer, Diesel Locomotive Works, Varanasi asking for marks obtained by three candidates, himself, Manish Kumar Singh and Gorakh Sharma and photostat copies of their answer sheets. This application was made on 10.10.2008 in response to which the Senior Personnel Officer acting as nodal officer, Public Information supplied copy of the question paper demanded for,but in so far as the photocopies of the answer sheets was demanded, it was refused. However, the said Santosh Kumar who is respondent no. 3 here in this petition, was permitted to peruse the answer sheet on any working day. The information as to marks was also not disclosed. He filed an appeal against the order before the appellate authority on 23.10.2008 and the appellate authority, namely the Central Information Commission, New Delhi under its order dated 13.05.2009 directed for supplying the photocopies of answer sheets demanded by the appellant for Law Assistant Exams held on 30.07.2004. Aggrieved of this order, though the petitioners revealed the marks obtained by the three candidates to Sri Santosh Kumar vide letter dated 28.05.2009 but instead of supplying the photocopies of answer sheets, filed a review application taking plea that in the light of Full Bench decision of the Central Information Commission itself, such an information could be declined under Section 8(1)(j) of the Act, 2005.

4. However, the review petition was dismissed vide order dated 04.06.2009 on the ground that Indian Railways would fall under the category of Public Authority whose main action is not to conduct examinations, but is to conduct examination to fill up the posts and, therefore, answer sheets could have been supplied. The reviewing authority referred para 40 of the Full Bench judgment in which disposal of answer sheets was held to be not a general rule but each case will have to be examined individually.

5. The submission advanced by learned counsel for the petitioners is that the judgment of Full Bench of the Commission has not been appreciated properly by the appellate/ reviewing authority otherwise it would not have insisted for the photocopies of the answer sheets.

6. Per contra it is argued by learned counsel for the respondent no. 4 that there is no manifest error in the judgment of the Central Information Commission both initially passed in appeal and subsequently dismissing the review petition and, therefore, petition is devoid of merits. However, learned counsel for the respondents could not dispute that the marks of three candidates sought for in the information have been disclosed.

7. Having heard learned counsel for the respective parties and having perused the records, in order to appreciate the legal arguments advanced on behalf of the petitioners and the issue of giving

information regarding answers obtained in the answer sheet by the candidate in an open competition and then supplying the copies of the answer sheets.

8. It is true that if a candidate seeks an information about the other candidate?s marks, the it becomes a third party information and therefore, Rule 11 of Act, 2005 gets attracted but the information must be such in nature that if disclosed, it would cause any damage in terms of privacy of third party.

9. In order to appreciate the legal argument advanced, first we reproduce Section 8(1)(j) of Act, 2005 which runs as under:

"(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

10. From the reading of the aforesaid provisions, the intendment of legislature can be drawn to the effect that a personal information and disclosure thereof which has no relation to any public interest or to any public activity, such an information may not be given or the information which may cause unwarranted invasion of privacy of an individual, that may also not be given. So the authority will ensure that larger public interest justifies the disclosure of such information. The proviso further provides that an information which cannot be denied to Parliament or State Legislature shall also not be denied to any person. Thus, in substance, any information that does not invade the privacy of any individual may be withheld and the authority may not be placed under obligation to give this information, but otherwise, if an information can be given looking to larger public interest or where public activity may be involved, then such information shall be given. Section 11 speaks of an obligation in the matter of 3rd party information. Relevant provisions as contained under Section 11 are reproduced hereunder:

*"**11. Third party information**. -- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law,disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3)shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

(emphasis added)

11. From the bare reading of aforesaid provisions it goes clear that sufficient safeguards have been provided in the event any third party information is sought and in such circumstances, the authority, which is under the obligation to give information shall be giving notice to that third party to give its reply before the information is given. The main threat is on the confidentiality of information on the principle of right to privacy.

12. In a matter before the Supreme Court where the Central Information Commission had passed an order on 18.06.2009 against which an SLP was filed before the Supreme Court, the issue raised was whether the personal information could have been given or not particularly when the disclosure of which had no relationship with any public activity or public interest. Paragraph nos. 12, 13, 14 & 15 of the judgment in the matter of ***Special Leave Petition (Civil) No. 27734 of 2012, Girish Ramchandra Deshpande v. Central Information Commissioner & Others reported in (2013 (1) SCC 212*** is reproduced hereunder:

"12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression ?personal information?, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information,

appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

15. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed."

(emphasis added)

13. From the above quoted paragraphs of the judgment, we find that words and expression ?personal information?, ?public intent? and ?public activity? have been considered contextually to the information sought for. Any information which is specific to a third party would be a personal information would not be disclosed unless and until it relates to some public activity or where paramount public interest may outweight consideration of confidentiality in the name of privacy.

14. Public activity may be of varied nature i.e. chants, assembly, meetings etc. such as programmes with large gatherings men, women and youngsters/ children for social awareness, meetings organized for programmes and services. So the public activity means an activity relating to public in general in context to private or individual activity. Where the government or a public functionary gets involved either as organizer or promoter or an participant and such public functionary falls within the meaning of authority under the Right to Information Act, 2005, information relating to such activities becomes accessible to people in public interest.

15. In the case of ***Dr. Naresh Trehan & 5 others v. Rakesh Kumar Gupta, 2014 SCC OnLine Del 6600*** vide paragraph no. 25 the Delhi High Court has held that ?public activity? would denote activity done for the public and/ or in some manner available for participation by public or some section of the public.? The said High Court was distinguishing ta return of an individual or his consent being pursued by him as an information relating to a third party and there being no participation by public or some section of public, such an information was rightly not disclosed.

16. Here it would be relevant also to refer to the aims and objects for which the RTI was enacted. The very object in the preamble of the Act refers to an object of promotion of transparency and accountability in working of every public authority and also to contain corruption and to hold Governments and their instrumentalities accountable to the Government. So the purpose and object of the Act has been to provide information particularly in public interest affairs and where public

activity may be involved. Public interest and public activity have not been defined under the Act. Public interest normally in general could be where the common man?s interest in particular affairs may be not an individual interest but relating to society or otherwise a class or a group which can be classified for a limited extent with reference to subject matter for which the information relates to. Public activity is also in our considered view relates to substantial public interest involved where public at large gets affected. So in a matter where in general a public interest may be involved, the information must be given as a realm. The object of the Act is to give information subject to the riders created under Section 8. So wherever there is public interest involved and there is absolutely no private information sought for, the endeavour of the authority would be to furnish the information sought for.

17. In the instant case information required was relating to public examination held by the respondents for the post of Legal Assistant to which the applicant namely respondent no. 4 was an applicant like others regarding whose information was sought. The information was sought regarding marks obtained and we fail to understand as to how this information is private information or giving of this information to a candidate would amount to invading the privacy of a candidate. All those who have obtained marks, are open to all ultimately when the merit is prepared. While it may be true that for a certain period an information may be withheld in a matter where any investigation or enquiry is pending and marks have not been disclosed, but where no investigation or enquiry is pending such an information, if sought for under the RTI Act, such information can always be provided for and must be provided content of examination for a post may be for a classified section has an element of public activity where disclosure of marks obtained by candidates shall serve a larger public interest. Marks obtained by a candidate, if information regarding that is sought by another candidate who has also participated in examination, is not such a confidential private information which may require even consent of that third party under Section 8. Well of course, if an outsider seeks information, department may take a valid defence of confidentiality. However, on the question of photocopies of the answer sheets, it may involve checking of answer sheets, signatures of examiners etc. and therefore, it may not be appropriate to disclose the names, signatures of the examiners and for that purpose therefore, if the authority directs the applicants seeking information to peruse the answer sheets, it would suffice the need. There is no vested right in an applicant to obtain the photocopies of answer sheets of another candidate, however, he can always ask for the photocopy of his own answer sheet. The purpose of a candidate seeking information in such competitive examination can be understood as a curiosity to know how many marks he has obtained and whether his answer sheet is correctly examined or not, inasmuch as, the perusal of other candidate?s answer sheet can also be helpful to him but in no case we can compel an authority to supply the photocopies of answer sheets of other candidates. In matters of providing photocopies of the answer sheets, the local departmental rules can of course, be framed and there may be cases where Rules may not permit for providing photocopies of answer sheets and so in that case a candidate can be permitted to peruse the answer sheet. If a candidate is aggrieved in any manner for wrongful checking of answer sheet or he finds upon perusal that the answer sheets of other candidates contained wrongly awarded marks, he can always question this in an appropriate legal proceeding drawn in a court of law, where the court is always vested with the power to summon the answer sheets and the court has been summoning the answer sheets on case to case basis. Thus, on the count of furnishing marks of other desired candidates, the judgment and order passed by the Central Information Commission cannot be faulted with, nor we find any

manifest error in the order dismissing the review petition, but in the present case we find that the marks have not been disclosed to respondent no. 4 by the petitioners vide their letter dated 28.05.2009 which is sufficient desired information and therefore, we do not find that any further information is required to be furnished to the petitioner.

18. We may further observe that an application moved under the Right to Information Act, 2005 seeking relevant information, if furnished, the application stands satisfied. It may not be necessary always to provide the copies of the official records/ documents which the department considers would neither be necessary nor, would serve any purpose practically for which the information has been sought. If sufficient information is there and perusal of records is permitted, it should suffice the need qua mandate contained under the Act, 2005.

19. We would like here to further refer judgment of Supreme Court in the case of ***Central Board of Secondary Education & Anr v. Aditya Bandopadhyay & Ors, (2011) 8 SCC 497*** in which while dealing with the issue of supplying the copies of the answer books, the Court has observed vide paras 45, 46, 47, 48 & 49 thus:

"45. One of the duties of the fiduciary is to make thorough disclosure of all relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer-books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer-books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer-book, section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer-book, seeking inspection or disclosure of it.

46. An evaluated answer book of an examinee is a combination of two different `informations'. The first is the answers written by the examinee and second is the marks/assessment by the examiner. When an examinee seeks inspection of his evaluated answer-books or seeks a certified copy of the evaluated answer-book, the information sought by him is not really the answers he has written in the answer-books (which he already knows), nor the total marks assigned for the answers (which has been declared). What he really seeks is the information relating to the break-up of marks, that is, the specific marks assigned to each of his answers.

47. When an examinee seeks `information' by inspection/certified copies of his answer-books, he knows the contents thereof being the author thereof. When an examinee is permitted to examine an answer-book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer-book, there is no question of breach of confidentiality, privacy,

secrecy or trust. The real issue therefore is not in regard to the answer-book but in regard to the marks awarded on evaluation of the answer-book. Even here the total marks given to the examinee in regard to his answer-book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is how many marks were given by the examiner to each of his answers so that he can assess how is performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner.

48. This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is whether the information relating to the `evaluation' (that is assigning of marks) is held by the examining body in a fiduciary relationship. The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer-books. On a careful examination we find that this contention has no merit.

49. The examining body entrusts the answer-books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer-book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer-books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words the examining body is the `principal' and the examiner is the agent entrusted with the work, that is, evaluation of answer- books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner."

20. In the counter affidavit also nothing has been stated about any illegality or irregularly in checking the answer sheets.

21. Thus, according to us, sufficient information has been given and therefore, providing for photocopies of answer sheets of the petitioners is not necessary and the original order of commission to that extent and order in review offering the same deserve to reverse.

22. Writ petition thus, partly succeeds and is allowed to the extent the respondent nos. 1 & 2 are directed to provide photocopies of the answer sheets of the candidates. Since the petitioners have not raised any irregularity in his answer sheets therefore, information regarding marks is taken to be sufficient.

23. In view of the above, writ petition succeeds and is **allowed in part.** The orders passed by the Central Information Commission and the Information Commission dated 13.05.2009 and 04.06.2009 are hereby quashed to the extent they directed for supply of photocopies of answer sheets to the respondents.

24. Cost made easy.

(2026) 2 ILRA 1593
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.02.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Writ C No. 41127 of 2025
alongwith other cases

Noori & Anr. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for consideration

Major interfaith couples residing in live-in-relationship sought police protection due to threat from family members-State opposed citing violation of conversion law.

Headnotes

A. Constitution of India,1950-Article 226, 21- Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act,2021-Personal liberty-Choice of Partner-Live-in-relationship-Interfaith couple-Police Protection-No conversion- No violation of law-Protection granted-Allowed.(Para 25 to 51)
Held

The court ruled that Interfaith live-in relationship between consenting adults are protected under Article 21, and conversion law is not attracted without actual conversion. Personal autonomy and choice of partner are fundamental rights. Petitioners entitled to protection. (E-6)

Case law Cited

Kiran Rawat & Anr. Vs State of U.P. Thru Secy. Home, Lko & Ors 2023 SCC Online ALL 323,Asha Devi & Anr. Vs State of U.P. & Ors, Razia & Anr. Vs State of U.P & Ors, Late Singh Vs State of U.P & Anr (2006) 5 SCC 475,, Shafin Jahan Vs Asokan K.M & Ors (2018) 16 SCC 368, Nandkumar & Anr. Vs State of Kerala (2018) 16 SCC 620, Kamini Devi Vs State of U.P. Writ C No. 11108 of 2020, Soni Gerry Vs Gerry Douglas, (2018) 2 SCC 197, Shakti Vahini Vs Union of India (2018) 7 SCC 192, KS Puttaswamy Vs Union of India (2017) 10 SCC 1, Baby Aaliya (minor) Vs State of U.P. & Ors, Writ-C No. 6408 of 2025, Mohammad Shahnoor Mansoori Vs State of Delhi through Commissioner of Police & Ors , W.P. (CRL) No. 2305 of 2025, Supriyo @ Supriya Chakraborty & Anr. Vs Union of India, AIR 2023 SC 5823, Mayra @ Vaishnvi Vilas Shirshikar & Anr Vs State of U.P. & Ors Writ-C No. 14806 of 2021, Akanksha & Anr Vs State of U.P. & Three Ors, Writ-C No 35171 of 2025-referred to.

List of Acts

Constitution of India, 1950
Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021

List of Keywords

Interfaith live-in relationship, Article 21, personal liberty, police protection, conversion law, autonomy, dignity, fundamental rights, choice of partner.

Case Arising From

CIVIL JURISDICTION: WRIT-C No.- 41127 of 2025
Noori & Anr. Vs. State of U.P. & 4 Ors

From the judgment and order dated 23.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):-
Akhilesh Kumar Yadav, Shlok Jaiswal Uday Bhan Singh
Adv. for Respondent(s):-
C.S.C

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

1. Heard Sri Shwetashwa Agarwal, learned Senior Counsel appeared as Amicus Curiae and assisted by Sri Yashraj Verma, Sri Dinkar Lal, Sri Sirajuddin, learned counsel appearing on behalf of the petitioners, Sri Ashwani Kumar Tripathi & Sri Prabhash Kumar Tiwari, learned Additional Chief Standing Counsel alongwith Sri Yogesh Kumar, Sri Pramit Kumar Pal, Sri Suresh Babu, Sri Arvind Kumar Singh, Sri Vijay Kumar Srivastava, and Sri Phool Chand, learned Standing Counsel for the State-respondents, in all the writ petitions.

2. By means of the present writ petition, the petitioners have prayed for a writ in the nature of mandamus directing the respondents not to interfere in their peaceful life and liberty and also for a direction to provide protection.

3. A large number of petitions are being filed in this Court wherein the petitioners have decided to stay together in an interfaith live-in relationship and they claim that they have an apprehension of life threat from the private respondents. The Police of concerned Districts have been approached by them, but no heed was paid, therefore, they have approached this Court by way of filing these writ petitions. In all the writ petitions, the petitioners have prayed that the Police of their District be directed to provide protection from private respondents as well as other family members/relatives/associates of the private respondents from causing any harm to the petitioners.

4. Since controversy involved in all the writ petitions is similar, hence they are being decided by a common judgment.

5. This Court, taking note of the involvement of the important issue in the matter, requested Mr. Shwetashwa Agarwal, learned Senior Advocate, to assist the Court, as amicus curiae, which was accepted by the learned Senior Counsel and he argued the matter with the assistance of learned counsels named above.

6. Learned Senior Counsel argued that Article 21 of the Constitution of India grants the personal choice of whether to marry or not and be in a live-in relationship. A major person has a right to marry a person of his/her choice or to live with his/her partner. They have a right to live out of the wedlock.

7. The learned Senior Counsel citing several judgments of the Supreme Court as well as of the High Courts, stated that a live-in relationship between consenting adults of heterogenic sex does not amount to any offence. It is also submitted that Article 14 of the Constitution of India guarantees equal protection of law within the territory of India and Article 21 protects the right to

life and personal liberty. In these cases, the petitioners, claimed to be in an interfaith live-in relationship, have attained the age of majority which is a legal age to enter into any relationship with protection, according to their prayer.

8. On the other hand, learned Additional Chief Standing Counsel submitted that the petitioners are interfaith couples and they have not complied with the provisions of Section 8 and 9 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (hereinafter referred to as "the Act, 2021"). No application for conversion has been moved though the Act came into force on 27.11.2020. It is also submitted that the act of the petitioners is unlawful and illegal and the same cannot be protected in view of Section 3 and 5 of the Act, 2021. It is further submitted that the apprehensions of the petitioners are vague, speculative and unsupported by any contemporaneous complaint to local police authorities. There is no real and immediate threat to the life or liberty of the petitioners. No specific time, date or incident has been mentioned in the application allegedly moved before the police authorities. The State's obligations to protect arises only when no unlawful act has been done by the petitioners and the protection by the police authorities may be granted only when there exists a credible and immediate threat.

9. It is further submitted by the learned Additional Chief Standing Counsel that the case laws relied upon by the learned Senior Counsel for the petitioners will not come to the aid of the petitioners since these judgments were passed by the Hon'ble Apex Court prior to the promulgation of the Act, 2021, which came into force on 27.11.2020.

10. Learned Additional Chief Standing Counsel has relied upon judgment of the Division Bench of this Court in the case of **Kiran Rawat and Another vs. State of U.P. Thru. Secy. Home, Lko and Others** reported in **2023 SCC Online ALL 323**, to contend that a Muslim cannot reside in a live-in relationship as per their personal laws. He further relied upon the judgment of the Division Bench of this Court in the case of **Asha Devi and Another vs. State of U.P. and Others**, passed in Writ C No. 18743 of 2020, and opposed the petition.

11. In view of the order proposed to be passed, there is no need to issue notice to the private respondents and the petition is being disposed of finally with the consent of the learned counsels appearing for the parties.

12. It is submitted by the learned Senior Counsel for the petitioners that they are major and are residing in a live-in relationship and this particular fact has not been disputed by the learned Additional Chief Standing Counsel for the State of U.P. The petitioners belong to different religions. This Court is dealing with 12 writ petitions, wherein 7 girls are Muslims and they are residing with Hindu boys, whereas five girls are Hindu and they are residing with Muslim boys. It is further submitted that in all the petitions, it is stated that the petitioners fell in love with each other and they have decided to reside in a live-in relationship, but the private respondents are interfering in their peaceful living. The petitioners approached the police authorities, but no action was taken by the police authorities, therefore, they preferred the present writ petitions.

13. The learned Senior Counsel for the petitioners has placed reliance on the judgment passed by a co-ordinate Bench of this Court in the case of **Razia and Another vs. State of U.P. and**

Others, passed in Writ-C No. 27338 of 2023, in which the co-ordinate Bench of this Court relying upon various judgments, granted protection to the couple who were residing in an interfaith live-in relationship.

14. The learned Senior Counsel for the petitioners further submitted that in the case of **Razia (supra)** also, one of the party was Muslim by faith and the other party was Hindu by religion and in the identical situation, the Court has granted protection in the case of **Razia (supra)**.

15. Opposing the arguments advanced by the learned Senior Counsel for the petitioners, learned Additional Chief Standing Counsel for the State of U.P., placed reliance upon judgment of **Kiran Rawat (supra)** and argued that a Muslim cannot reside in a live-in relationship prior to his/her marriage.

16. Learned Senior counsel for the petitioners has relied upon the law laid down by Supreme Court in the case of **Lata Singh Vs. State of Uttar Pradesh and another (2006) 5 SCC 475**, to contend that once a person has attained majority, he/she can live with whomsoever they like and their choice cannot be interfered with by anyone. It would be apposite to reproduce the relevant part of the judgment of Supreme Court in the case of Lata Singh (supra) for convenience and ready reference:

"17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter- religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of `honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

17. To contend the freedom of an individual who has attained the age of majority to live with anyone whom he/she likes, reliance is also placed by the learned Senior counsel for the petitioners

on the judgment of the Supreme Court in the case of **Shafin Jahan Vs. Asokan K.M. and Ors. reported in (2018) 16 SCC 368,** wherein the Supreme Court emphasized due importance to the right of choice of an adult person, which the Constitution accords to an adult person. The Hon'ble Apex Court has held that right to marry a person of own choice is integral part of Article 21 of the Constitution of India. There is a complete freedom to choose life partner of any faith, belief, religion, caste etc. Neither State, nor law, nor society can dictate the choice of partner. The right cannot be taken away except through law which is substantially and procedurally fair, just and reasonable. The relevant paragraphs of **Shafin Jahan (supra)** are reproduced as under:

"26. In Ummu Sabeena vs. State of Kerala and Others, (2011) 10 SCC 781, the Court further ruled that the principle of habeas corpus has been incorporated in our constitutional law and in a democratic republic like India where judges function under a written Constitution and which has a chapter of fundamental rights to protect individual liberty, the judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India; and the same exercise of power can be done in the most effective manner by issuing a writ of habeas corpus.

27 . Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right Under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. Once that aspect is clear, the enquiry and determination have to come to an end.

52. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person in intrinsic to his/he meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realisation of a right is more important than the conferment of the right. Such actualisation indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

53 . Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental

rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.

54. In the case at hand, the father in his own stand and perception may feel that there has been enormous transgression of his right to protect the interest of his daughter but his view point or position cannot be allowed to curtail the fundamental rights of his daughter who, out of her own volition, married the Appellant. Therefore, the High Court has completely erred by taking upon itself the burden of annulling the marriage between the Appellant and the Respondent No. 9 when both stood embedded to their vow of matrimony."

18. Learned Senior counsel for the petitioner has also placed reliance on the judgment of the Supreme Court in the case of **Nandkumar and another Vs. State of Kerala reported at (2018) 16 SCC 620** to contend that the live in relationship is now recognized by the legislature itself and it has found its place under the provisions of Protection of Women from Domestic Violence Act.

19. Reliance is also placed by the learned Senior counsel for the petitioner on the decision of the Division Bench of this Court in the case of **Kamini Devi Vs. State of U.P Writ C No. 11108 of 2020,** to contend that the live in relationship is no offence and the petitioners, if they are major, are legally entitled to live in live-in relationship.

20. In reply, it is stated by the learned counsel for the State that the judgment of the Hon'ble Supreme Court, relied upon by the learned Senior Counsel/amicus curiae, though grant the fundamental right of choice of an adult person while marrying within the same religion, however, these judgments will not come to the aid of the petitioners after the promulgation of the Act, 2021, which came into force on 27.11.2020. All the aforementioned judgments relied upon by the learned Senior Counsel were passed prior to the promulgation of the Act, 2021 and in none of the judgment, the Act of 2021 was considered.

21. According to the State Counsel, as per the Act, 2021, one cannot freely move with another except in accordance with the procedure prescribed in Section 8 and 9 of the Act, 2021, or by marriage under the Special Marriage Act. In the present cases, none of the petitioners claimed that they have moved application under Section 8 and 9 of the Act, 2021, rather they stated that they are residing in a live-in relationship. No one claimed that any application under the Special Marriage Act was preferred by them. Therefore, they have violated the law and no relief can be granted to a wrong doer.

22. In rebuttal, it is stated by learned Senior Counsel/amicus curiae, that the petitioners herein are only living in a relationship and as such, compliance of Section 8 and 9 of the Act, 2021, is not necessary for the petitioners. If a person intends to convert his/her religion, only then he/she will give a declaration in terms of Section 8 and 9 of the Act, 2021.

23. The above argument was strongly opposed by the learned Additional Chief Standing Counsel for the State of U.P. and he referred Section 3 and 5 of the Act, 2021 and stated that for the

purpose of living together in a live-in relationship, the Act, 2021, will apply and whoever contravenes the provisions of Section 3, will be punished with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than Rs. 50,000/-. Reference may be made to Section 3 and 5 of the Act, 2021 which run as under:

"Section 3. Prohibition of conversion from one religion to another religion by misrepresenta-tion, force, fraud, undue influence, coercion, allurement.-

(1) No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means. No person shall abet, convince or conspire such conversion.

Explanation:- For the purposes of this sub-section conversion by solemnization of marriage or relationship in the nature of marriage on account of factors enumerated in this sub-section shall be deemed included.

(2) If any person re-converts to his immediate previous religion, the same shall not be deemed to be a conversion under this Act.

Explanation:- For the purposes of this sub-section immediate previous religion means the religion in which the person had faith, belief or was practiced by the person voluntarily and freely.

Section 5. Punishment for contravention of provisions of section 3.*-(1) Whoever contravenes the provisions of section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than fifty thousand rupees:*

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a disabled or mentally challenged person, a soman or a person belonging to the Scheduled Castes or the Scheduled Tribes, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to fourteen years and shall also be liable to fine which shall not be less than one lakh rupees:

Provided further that whoever contravenes the provisions of section 3 in respect of mass conversion of religion shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to fourteen years and shall also be liable to fine which shall not be less than one lakh rupees.

(2) Whoever receives money from any foreign or illegal institutions in connection with unlawful religious conversion shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to fourteen years and shall also be liable to fine which shall not be less than ten lakh rupees.

(3) Wherever, with the intent to convert, puts any person in fear of his life or property, assaults or uses force or marries or promises to marry o induces or conspires for the same, or traffics a minor, a woman or a person by enticing them or otherwise selling them, or abets, attempts or conspires in this behalf, shall be punished with rigorous imprisonment for a term which shall not less than twenty years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person?s natual life, and shall also be liable to fine :

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim :

Provided further that any fine imposed under this section shall be paid to the victim.

(4) The Court shall also approve appropriate compensation payable by the accused to the victim of the said conversion, which may extend to five lakh rupees, in addition to the fine.

(5) Whoever, having previously been convicted of an offence under this Act, is again convicted of an offence punishable under this Act, shall, for every such subsequent offence, be liable to a punishment not exceeding twice the punishment provided in that behalf under this Act."

24. By referring the aforesaid provision, the learned Additional Chief Standing Counsel further stated that the explanation of Section 3 of the Act, 2021, goes to show that conversion is not only required for the purpose of marriage, but it is also required in all relationship in the nature of marriage, therefore, the Act, 2021, will also apply to relationship in the nature of marriage or staying together in a live-in relationship. None of the petitioners have applied for conversion as per provisions of Section 8 and 9 of the Act, 2021, hence the relationship of the petitioners cannot be protected in contraventions of the provisions of law. Such residing of the petitioners in relationship like marriage cannot get approval by the Court of law.

25. I have heard submissions of both the sides and perused the record.

26. In the case of **Kiran Rawat (supra),** the Division Bench of this Court has observed that no recognition can be given to sex outside the marriage in the Muslim Law. The relevant paragraph no. 21 of the **Kiran Rawat (supra)** is reproduced hereunder.

"21. However, in Muslim law no recognition can be given to sex outside marriage. "Zina" which has been defined as any sexual intercourse except that between husband and wife includes both extramarital sex and premarital sex and is often translated as fornication in English. Such premarital sex is not permissible in Islam. In fact any sexual, lustful, affectionate acts such as kissing, touching, staring etc. are "Haram" in Islam before marriage because these are considered parts of "Zina" which may lead to actual "Zina" itself. The punishment for such offence according to Quran (chapter 24) is hundred lashes for the unmarried male and female who commit fornication together with the punishment prescribed by the "Sunnah" for the married male and female that is stoning to death."

27. In the context of **Kiran Rawat's (supra)** judgment, there is no provisions in the Indian Penal Code or any other Act to punish a man or woman with **lashes or stoning** to death. Therefore, a person, cannot be punished according to Muslim Law/Islam, as quoted in **Kiran Rawat's (supra)** judgment.

28. In the opinion of this Court, for attracting the offence under Sections 3 and 5 of the Act, 2021, conversion from one religion to another religion is necessary and that conversion should be by practice of misrepresentation, force, undue influence, coercion or allurement or by any fraudulent means or by marriage or by relationship in the nature of marriage. Sub-section (1) of Section 3 mandates that no person shall convert or attempt to convert any other person from one religion to another religion. "Conversion' has been defined under Section 2(c) of the Act, 2021, which is reproduced hereunder:

"2(c). "Conversion" means renouncing one's own religion and adopting another religion."

29. In the present batch of cases, no petitioner claimed that any attempt, in any manner, was made by other petitioner for conversion of his/her religion. It is only claimed by the petitioners that they are living together in a live-in relationship and following their religion. Section 4 of the Act, 2021, gives power to any person to lodge F.I.R./complaint relating to the contravention of the provisions of the Act, 2021. In these cases, no F.I.R. or complaint has been lodged against any person that religion of one petitioner was converted or attempted to be converted. Therefore, it cannot be said under the facts and circumstances of these cases that any act in contravention of the provision of the Act, 2021, was made by the petitioners and a punishable offence was done by them.

30. Even the interfaith marriage, per se, is not prohibited under the Act, 2021. Provision has also been made under the Act, 2021, and according to which, if a person wishes to change/convert his or her religion, he/she is expected to follow the procedure prescribed under Section 8 & 9 of the Act, 2021. But one cannot be forced to convert his or her religion for the purposes of marriage or for living together in a live-in relationship. For ready reference, Sections 8 & 9 of the Act, 2021, are reproduced hereunder:

"Section 8. Declaration before conversion of religion and pre-report about conversion *(1) One who desires to convert his/her religion, shall give a declaration in the form prescribed in Schedule-I at least sixty days in advance, to the District Magistrate or the Additional District Magistrate specially authorized by the District Magistrate, that he wishes to convert his/her religion on his/her own and with his/her free consent and without any force, coercion, undue influence or allurement.*

(2) The religious convertor, who performs conversion ceremony for converting any person of one religion to another religion, shall give one month's advance notice in the form prescribed in Schedule-II of such conversion, to the District Magistrate or any other officer not below the rank of Additional District Magistrate appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed.

(3) The District Magistrate, after receiving the information under sub-section (1) and (2), shall get an enquiry conducted through police with regard to real intention, purpose and cause of the proposed religious conversion.

(4) Contravention of sub-section (1) and/or sub-section (2) shall have the effect of rendering the proposed conversion, illegal and void.

(5) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which shall not be less than six months but may extend to three years and shall also be liable to fine which shall not be less than rupees ten thousand.

(6) Whoever contravenes the provisions of sub-section (2) shall be punished with imprisonment for a term which shall not be less than one year but may extend to five years and shall also be liable to fine which shall not be less than rupees twenty five thousand.

Section 9. Declaration post conversion of religion *(1) The converted person shall send a declaration in the form prescribed in Schedule-III within sixty days of the date of conversion, to the District Magistrate of the District in which converted person resides ordinarily.*

(2) The District Magistrate shall exhibit a copy of the declaration on the notice board of the office till the date of confirmation.

(3) The said declaration shall contain the requisite details, i.e., the particulars of the convert such as date of birth, permanent address, and the present place of residence, father?s/husband?s name, the religion to which the convert originally belonged and the religion to which he has converted, the date and place of conversion and nature of process gone through for conversion.

(4) The converted individual shall appear before the District Magistrate within 21 days from the date of sending/filing the declaration to establish her/his identity and confirm the contents of the declaration.

(5) The District Magistrate shall record the factum of declaration and confirmation in a register maintained for this purpose. If any objections are notified, he may simply record them, i.e., the name and particulars of objectors and the nature of objection.

(6) Certified copies of declaration, confirmation and the extracts from the register shall be furnished to the parties, who gave the declaration to his/her authorized legal representative on his/her request.

(7) The contravention of sub-sections 1 to 4 shall have the effect of rendering the said conversion illegal and void."

31. This Court does not see the petitioners herein as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily

for a considerable time. The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India. Right to live with a person of his/her choice, irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals. This Court fails to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to hetrosexual relationship of two major individuals who out of their own free will are living together. Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India.

32. In a more recent decision of a three judge Bench in S**oni Gerry v Gerry Douglas, (2018) 2 SCC 197**, the Hon'ble Supreme Court dealt with a case where the daughter of the appellant and respondent, who was a major had expressed a desire to reside in Kuwait, where she was pursuing her education, with her father. This Court observed thus:

"9. She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.

10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

33. A perusal of the aforesaid judgment manifests that the Apex Court has respected the liberty of an individual who has attained the age of majority.

34. The Apex Court in **Shakti Vahini Vs. Union of India (2018) 7 SCC 192** came down heavily on the perpetrators of "honour killings", which the Court found not only horrific and barbaric but also interfering with the right to choose a life partner and the dignity of an individual. The Apex Court held as under:- "
44. The concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. It is the obligation of the Constitutional Courts as the sentinel on qui vive to zealously guard the right to liberty of an individual as the dignified existence of an individual has an inseparable association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the

living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The fundamental feature of dignified existence is to assert for dignity that has the spark of divinity and the realization of choice within the parameters of law without any kind of subjugation. The purpose of laying stress on the concepts of individual dignity and choice within the framework of liberty is of paramount importance. We may clearly and emphatically state that life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of identity of a person.

(emphasis supplied)

45. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation... "

35. Right to choose a partner irrespective of caste, creed or religion, is inhered under right to life and personal liberty, an integral part of the Fundamental Right under Article 21 of the Constitution of India. The Apex Court in **KS Puttaswamy vs Union of India (2017) 10 SCC 1** while deciding the issue of right to privacy, held as under:-

298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable

right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms Under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion Under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate Article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha suffixed right of privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination. (emphasis supplied)

299. Privacy represents the core of the human personality and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and, in turn are shaped by their social environment. The individual is not a hermit. The lives of individuals are as much a social phenomenon. In their interactions with others, individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of society. Equally, the life of the individual is being consistently shaped by cultural and social values imbibed from living in the community.

(emphasis supplied)

323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

(emphasis supplied)

36. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal

liberty, guaranteed under Article 21 of the Constitution of India. I say so for the reason that irrespective of the conversion being under clout, the mere fact that the couple were living together, the alleged relationship can very well be classified as a relationship in the nature of marriage distinct from the relationship arising out of marriage, in view of the provisions of Protection of Women from Domestic Violence Act, 2005. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown up individual but would also be a threat to the concept of unity in diversity.

37. Earlier, the Division Bench of this Court in the case of **Baby Aaliya (minor) vs. State of U.P. and Others, Writ-C No. 6408 of 2025,** granted protection to the interfaith live-in couple vide order dated 08.04.2025. The relevant part of the judgment of **Baby Aaliya (supra),** is reproduced as under:

"5. This is a writ petition under Article 226 of the Constitution of India filed by the petitioner, who is a child, through her biological parents.

6. It appears that the father and mother of the child are of different religion and have been living together since 2018. The child is presently one year and four months old. The parents of the child are apprehensive of certain threats from the private respondents who are the erstwhile in-laws of the biological mother.

7. It is to be noted that after the death of the erstwhile husband, biological mother started living with the biological father.

8. In our view, under the Constitutional scheme the parents, who are major, are entitled to live together, even if they have not undergone marriage (see: Gyan Devi vs. Superintendent, Nari Niketan, Delhi and others reported in (1976) 3 SCC 234; Lata Singh vs. State of U.P. and another reported in (2006) 5 SCC 475; and Bhagwan Das vs. State (NCT of Delhi) (2011) 6 SCC 396).

9. The parents of the child submits that the police authorities are not willing to register the first information report against the private respondents and the police authorities time and again are humiliating them when they approach the police station for lodging the first information report.

10 In light of the same, the Superintendent of Police, Sambhal is directed to ensure that the first information information report should be registered at Police Station Chandausi, District Sambhal, if the parents of the child approach the police station. The Superintendent of Police, Sambhal is also directed to look into the aspect whether any security is required to be provided to the child and the parents in accordance with law. The authorities are also directed to act in accordance with the judgements indicated above.

11. With the above directions, the writ petition is allowed."

38. The Delhi High Court in the case of **Mohammad Shahnoor Mansoori vs. State of Delhi through Commissioner of Police and Others, W.P. (CRL) No. 2305 of 2025,** decided on 08.08.2025, has granted protection to an interfaith couple. The relevant paragraph of aforesaid judgment is reproduced as under:

"6. Article 21 of the Constitution guarantees to every individual the right to life and personal liberty, a guarantee that has been judicially recognised to encompass the freedom to marry a person of one?s choice. The role of the State in this context is neither passive nor discretionary; it carries a positive obligation to safeguard the life and liberty of its citizens, even when such protection is sought against the wishes of their own families."

8. The Supreme Court has unequivocally recognised that the right of consenting adults to choose their life partner is a fundamental facet of personal liberty under Article 21. That right cannot be rendered illusory by fear, coercion, or social disapproval. It follows that the State?s protective machinery must be activated promptly and effectively, ensuring that the choice of an adult citizen, made freely and within the bounds of law, is preserved in substance and not merely in form.

9. In view of the above circumstances, and taking into consideration that the Couple have submitted their application for marriage under the Special Marriage Act, 1954, the petition is disposed of with the following directions:

The State shall ensure continued protection to the Petitioner and Ms.?X? until such time as they solemnize their marriage under the Special Marriage Act, 1954.

The Petitioners shall continue to be accommodated in a safe house for as long as deemed necessary to safeguard their life and liberty. The threat perception shall be assessed periodically and meaningfully by the concerned DCP, keeping in mind the principles and preventive measures outlined by the Supreme Court in ***Shakti Vahini (supra).***

In the event of any coercive, intimidating, or threatening act, whether direct or indirect, by any person, including family members of Ms. ?X?, such incident, upon being reported to the police, shall be promptly recorded in the DD, and appropriate preventive and penal measures shall be taken forthwith in accordance with law. The police shall also keep the petitioners informed of any action taken, so as to ensure their confidence in the protective process.

10. Before parting, it must be emphasised that the constitutional guarantee under Article 21 enables every adult citizen may shape the course of their own life, free from fear, coercion, or unlawful restraint. The choice to marry, especially across lines of faith, may test the resilience of social norms and familial expectations, yet in law, it remains a matter of personal liberty and individual autonomy, immune from any external veto. While the anguish of a parent is understandable, it cannot eclipse the rights of a major to select their life partner. The State?s role, therefore, is not confined to the passive avoidance of harm, but extends to the creation of conditions in which such rights can be safely and meaningfully exercised. The directions issued herein are thus intended to ensure that this freedom remains both real and protected.

39. Earlier the Hon'ble Apex Court in the case of **Supriyo @ Supriya Chakraborty and Another vs. Union of India, AIR 2023 SC 5823,** has discussed the law relating to inter-caste and interfaith marriage. It was observed by the Hon'ble Apex Court that couples in interfaith relationship have historically been forced to contend with and continue to contend that enormous difficulty while solemnizing their unions. It was further observed that the Constitution does not require individuals to first convince others of the legitimacy of the exercise of the constitutional rights before they exercise them. The relevant paragraphs of **Supriyo (supra)** are reproduced hereunder:

"116. Inter-caste and interfaith marriages were uncommon in the colonial era and established customs or usages did not govern such marriages. Then, as now, society subjected those who entered into inter-caste and interfaith marriages to discrimination and lence. There was initially no legal framework in place which governed such marriages. The Special Marriage Act 1872 was enacted to enable the solemnisation of marriages independent of personal law. If two people be-longing to different religions wished to marry, they were each required to renounce their respective religion in order to avail of its pro-visions. The law at the time did not supply a framework in terms of which two persons belonging to different religions could retain their association or spiritual connection to their respective religions and still marry one another.

117. Parliament was conscious of the limiting and restrictive character of the Special Marriage Act 1872 and enacted the SMA in 1954, which was a more permissive legislation in that any two persons could marry, with out having to repudiate their respective religions. By stipulating that "a marriage between any two persons may be solemnized under this Act," 106 the SMA also set out a mechanism for inter-caste marriages to be solemnized independent of personal law.

118. The families or relatives of couples who entered into inter-caste or interfaith marriages would frequently inflict violence upon them, even to the extent of brutally murdering them. Their communities would either ordain or participate in these atrocities. Such murders are colloquially referred to as "honour killings" and are more accurately termed as caste-based murders. It is a most unfortunate truth that this culture of violence persists to date. Couples who face this violence against couples in inter-caste and inter-opprobrium have knocked on the doors of this Court inter alia seeking protection from their families and others who oppose their relationship and this Court has otherwise been seized of cases arising from violence in this context. In Shakti Vahini v. Union of India, this Court took note of the viofaith marriages. It directed the state machinery to take preventive as well as remedial measures to protect such couples who wished to marry or who were recently married.

119. It is beyond dispute that couples in inter-caste and interfaith relationships have historically been forced to contend with and continue to contend with enormous difficulty while solemnizing their unions. As evident from the discussion in the preceding para-graph, large sections of society were and are fiercely opposed to such marriages. The op-position stems, at least in part, from a belief that a marriage ought to consist of two indi-viduals from the same religion or caste. Par-liament chose to enact the SMA despite the opposition to atypical marriages and has not chosen to repeal the SMA or otherwise ex-clude the celebration of inter-caste marriages under personal laws despite continuing hostility from the communities of such couples. Parliament has

presumably done so because it is cognizant of the fact that the exercise of fundamental rights is not contingent upon the approval of the community. Similarly, this Court has carried out the constitutional man-date by protecting the rights of individuals and couples in the face of considerable opposition from their families. In a democracy, certain rights inhere in all individuals. If the exercise of rights was contingent upon everyone else or, at least a substantial portion of the commu-nity approving of such exercise, we would be doing a disservice to a constitutional democ-racy. The Constitution does not require indi-viduals to first convince others of the legiti-macy of the exercise of constitutional rights before they exercise them."

40. This Court has already dealt with interfaith marriage contracted by the petitioners and total 17 petitions pertain to interfaith marriage were heard and allowed by this Court in case of **Mayra @ Vaishnvi Vilas Shirshikar and Another vs. State of U.P. and Others, Writ- C No. 14806 of 2021, decided on 18.11.2021** and it was observed that the choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. It was further observed that the Act, 2021, per se does not prohibit interfaith marriage. The relevant paragraph of Mayra (Supra), are reproduced hereunder:

"I. Analysis and Conclusions

100. The Supreme Court, as well as, other Constitutional Courts have time and again realized that in a society undergoing rapid social and economic change, static judicial interpretation of the Constitution would stultify the spirit of the Constitution.

101. The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.

102. The consent of the family or the community or the clan or the State or Executive is not necessary, once the two adult individuals agree to enter into a wedlock which is lawful and legal. Their consent has to be piously given primacy, with grace and dignity. The Marriage Officer/Registrar cannot refuse to register a duly solemnized marriage, and/or, insist of a conversion approval of the district authority.

103. The factum of marriage and the registration of marriage are entirely distinct and different. The registration merely evidences the factum of marriage between the parties, whereas, legality of the marriage, whether void or voidable, is for the aggrieved party to settle in accordance with the law before the designated forum/court.

104. The duty of the court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. The choice of a partner, whether within or outside marriage, lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith.

105. The Constitution as a living instrument, which enunciates eternal values for Indian society, possesses the resilience necessary to ensure its continued relevance. Constitution is not cast in stone to make it rigid beyond change. The features that is basic to the Constitution is fluid adapting and precisely responding to the changing social-cultural milieux in its ability to allow succeeding generations to apply the principles on which it has been founded, to find innovative solutions to intractable problems of their times. In doing so, we must equally understand that our solutions must continuously undergo a process of re-engineering. The Constitution is in the realm of philosophy than grammar. The Constitution has undergone change (over 100 amendments) in 70 years since 1950, in conformity with the changing social milieu reflecting the aspiration of the Indian people.

106. The law would be assessed not with reference to its object but on the basis of its effect and impact on the fundamental rights based on the test of fairness and reasonableness. The Unlawful Conversion Act, 2021, per se, does not prohibit interfaith marriage. The Marriage Registrar/Officer, however, lacks power to withhold the registration of marriage, merely for the reason that the parties have not obtained the necessary approval of conversion from the district authority. Such an approval is directory and not mandatory. If interpreted otherwise the Act would not satisfy the test of reasonableness and fairness, and would fail to pass the muster of Article 14 and Article 21.

J. Relief

107. The writ petitions are allowed by passing the following orders:

(i) The State respondents and the private respondents are restrained from interfering with the life, liberty and privacy of the petitioners to live as man and woman;

(ii) The police authorities of the respective districts shall ensure the safety of the petitioners and provide protection to them, if demanded or needed;

(iii) The Marriage Registrar/Officer of respective districts are directed to forthwith register the marriage of the petitioners, without, insisting/awaiting approval of the competent district authority with regard to conversion of faith;

(iv) It will be open to the aggrieved party, in the event of fraud and misrepresentation, to take recourse of law, both - criminal and civil, including, annulment of marriage before the competent forum;

(v) The Government of India to consider the constitution of a Committee/Commission for implementing the mandate of Article 44, as directed by the Supreme Court;

(vi) The State Government to issue appropriate Government Order to the Marriage Registrar/Officer, District Authority, to comply and implement this order;

(vii) It will be open to the private respondents to seek modification/recall of this order in the event of being affected by the order;

(ix) The Registrar General of this Court is directed to supply copy of this order to -

(a) Department of Justice, Ministry of Law and Justice, Government of India, New Delhi.

(b) The Chief Secretary, Government of Uttar Pradesh, Lucknow."

41. This Court in the case of **Akanksha and Another vs. State of U.P. and Three Others, Writ- C No. 35171 of 2025,** decided on 17.12.2025, granted protection to the petitioners, of same religion, who were major and had taken a decision to reside together without the sanctity of the marriage. The relevant paragraphs of **Akanksha (supra)** are reproduced hereunder:

"46. Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is the bounden duty of the State, as per the Constitutional obligations casted upon it, to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or major, married or unmarried. Mere fact that the petitioners have not solemnized marriage, would not deprive them of their fundamental right as envisaged in the Constitution of India being citizens of India. This Court has no hesitation to hold that the Constitutional's fundamental right under Article 21 of the Constitution of India stands on a much higher pedestal. Being sacrosanct, under the Constitutional scheme it must be protected, regardless of the solemnization of marriage or even the absence of any marriage between the parties.

47. The petitioners herein, who are major, have taken a decision to reside together without the sanctity of the marriage and it is not for the Courts to judge them on their decision. If the petitioners herein have not committed any offence, this Court sees no reason as to why their prayer for grant of protection cannot be acceded to. Therefore, with due respect to the judgments rendered by the co-ordinate Benches, who have denied protection to couples, who were in a live-in relationship, this Court is unable to adopt the same view.

48. It is well settled legal position as expounded by the Hon'ble Supreme court in the case of Lata Singh (supra), S. Khushboo (supra), Indra Sarma (supra) and Shafin Jahan (supra) and other judgments passed by various High Courts including ours, that the life and liberty of the individuals has to be protected, except according to procedure established by law, as mandated by Article 21 of the Constitution of India.

49. In the opinion of the Court, a person, who has attained the age of majority as per Section 3 of the Majority Act, is able to understand his/her welfare and, therefore, he/she could not be restricted to go wherever he/she likes. He/she is free to live with anybody and could not be restrained from doing so.

.....

51. Having regard to the facts and circumstances of the case, this Court is of the view that the petitioners are at liberty to live together peacefully and no person shall be permitted to interfere in their peaceful living. As right to life is a fundamental life ensured under Article 21 of the Constitution wherein it is provided that no person shall be deprived of his right to life and personal liberty except according to procedure established by law.

52. In case, any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the Commissioner of Police/SSP/SP concerned with certified copy of this order and the Police Officer after being satisfied that the petitioners are major and willingly living together, will provide immediate protection to the petitioners. If the petitioners are educated and they produce their educational certificates and other certificates admissible under law, from which it is evident that they have attained the majority and they are living with their free will then no Police Officer shall take any coercive action against them unless an F.I.R. is registered against them in respect of any offence whatsoever. If they do not have any documentary proof regarding age and they come from rural background and or illiterate/semi-literate, the Police Officer can subject such boy or girl to ossification test to verify their correct age and he can also follow the other procedure permissible under the law.

53. Accordingly, aforesaid writ petitions are allowed."

42. This Court sees no reason to take a different view in this matter also since the law is equal for all as per Article 14 and 15 of the Constitution of India and if two persons of same religion may reside together in a live-in relationship, the other persons having different religion may also live together in a live-in relationship.

43. The Article 14 and 15 of the Constitution of India ensure equal treatment of all individual. It does not discriminate against citizens based on religion, race, caste, sex or place of birth. For reference Article 14 & 15 of the Constitution of India are reproduced hereunder:

*"**14. Equality before law.-**The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

***15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-**(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to?

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,?

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.?For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage."

44. Justice D.Y. Chandrachud, while delivering the judgment of **Shafin Jahan (supra)** has held that right to marry a person of one's choice is integral to Article 21 of the Constitution. It guarantees the right of life and personal liberty. The Constitution protects the ability of each individual to pursue a way of life or faith to which he or she seeks to adhere. The relevant paragraphs of **Shafin Jhana (supra)**, are reproduced as hereunder:

"17. The exercise of the jurisdiction to declare the marriage null and void, while entertaining a petition for habeas corpus, is plainly in excess of judicial power. The High Court has transgressed the limits on its jurisdiction in a habeas corpus petition. In the process, there has been a serious transgression of constitutional rights. That is the second facet to which we now turn.

18. Hadiya and Shafin Jahan are adults. Under Muslim law, marriage or Nikah is a contract. Muslim law recognises the right of adults to marry by their own free will. The conditions for a valid Muslim marriage are:

(i) Both the individuals must profess Islam;

(ii) Both should be of the age of puberty;

(iii) There has to be an offer and acceptance and two witnesses must be present;

(iv) Dower and Mehar; and

(v) Absence of a prohibited degree of relationship.

19. A marriage can be dissolved at the behest of parties to it, by a competent court of law. Marital status is conferred through legislation or, as the case may be, custom. Deprivation of marital status is a matter of serious import and must be strictly in accordance with law. The High Court in the exercise of its jurisdiction Under Article 226 ought not to have embarked on the course of annulling the marriage. The Constitution recognises the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which define one's personhood and identity. The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith. The Constitution guarantees to each individual the right freely to practise, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme. The law prescribes conditions for a valid marriage. It provides remedies when relationships run aground. Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution. In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences.

20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty:

"Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

21. The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they 06-12-2024 (Page 25 of 27) www.manupatra.com Legal Observer Trust should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners.

22. In Justice ***K.S. Puttaswamy v. Union of India MANU/SC/1044/2017 : 2017 (10) SCC 1****, this Court in a decision of nine judges held that the ability to make decisions on matters close to one's life is an inviolable aspect of the human personality:*

"The autonomy of the individual is the ability to make decisions on vital matters of concern to life The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual."

A Constitution Bench of this Court, in ***Common Cause (A Regd. Society) v. Union of India, Writ Petition (Civil) No. 215 of 2025****, held:*

"Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives."

The strength of the Constitution, therefore, lies in the guarantee which it affords that each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage.

23. The High Court, in the present case, has treaded on an area which must be out of bounds for a constitutional court. The views of the High Court have encroached into a private space reserved for women and men in which neither law nor the judges can intrude. The High Court was of the view that at twenty four, Hadiya "is weak and vulnerable, capable of being exploited in many ways". The High Court has lost sight of the fact that she is a major, capable of taking her own decisions and is entitled to the right recognised by the Constitution to lead her life exactly as she pleases. The concern of this Court in intervening in this matter is as much about the miscarriage of justice that has resulted in the High Court as much as about the paternalism which

underlies the approach to constitutional interpretation reflected in the judgment in appeal. The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms. The cohesion and stability of our society depend on our syncretic culture. The Constitution protects it. Courts are duty bound not to swerve from the path of upholding our pluralism and diversity as a nation.

24. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty. Fear silences freedom."

45. This Court notes that in view of the large number of young couples approaching this Court seeking protection of their life and liberty, this Court, in Writ-C No. 24328 of 2019 (Suman Ahirwar and others vs. State of U.P. and others), after taking note of the judgment of the Hon?ble Supreme Court in **Shakti Vahini vs. Union of India, 2018 (7) SCC 192**, directed the State authorities to evolve an effective mechanism and frame guidelines to address such cases at the district level. Pursuant to the said directions, the State Government issued Government Order No. 1/2019/591WRIT/Chh-Pu.-3-2019-2(344)P/2019 (संख्या -1/2019/591 ि◌रट/छ-पु-3-2019-2(344)पी/2019) dated 31.08.2019, laying down mandatory preventive, remedial and punitive measures for protection of couples facing threats on account of marriage or any consensual relationship.

46. The said Government Order mandates that the police authorities shall assess threat perception in each case, extend necessary protection, including safe accommodation and security shall be provided depending upon the gravity of the situation. It further provides that cases involving Khap Panchayats or honour-based threats are to be treated as serious matters, however even in other cases of familial opposition, the authorities are duty-bound to evaluate risk and grant appropriate relief. Failure to comply with these directions has been made punishable by departmental action. The relevant extract of the aforesaid Government Order dated 31.8.2019 reads as under:

(3) 2- उपचारात्म क उपायः-

(ए) ...

(बी) ...

(सी) इसके अितिरक्त कपुल/पाि◌रवाि◌रक सदस्यों को सुरक्षा उपलब्ध करायी जाये तथाआवश् य कतानुसार उन्हें उसी ि◌जले में उनकी सुरक्षा व भय को दृ ि◌ष्ट गत रखते हु ए सुरिक्ष त स् था न
पर रखा जाये।

(i) ऐसे युवा अिववाि◌हत कपुल (जोड़े) ि◌जनके सम्बन् धों को पिरवार द्व ◌ा रा अथवा स्था नीय खाप द्व ◌ा रा ि◌वरोध ि◌कया जाता है।

(ii) ऐसे युवक ि◌ववाि◌हत (युवक/युवितयाँ) जो अन् त जार्तीय व अन्त धर्गीय ि◌ववाहसे सम्ब ि◌न्ध त है उन्हें सुरिक्ष त रखने हेतु क्षेत्र ◌ा ि◌धकारी वाले मिजस्ट्रे ट व पु◌ि◌लसअधीक्ष क के ि◌नदेर्श से सुरिक्ष त घरों में रखने की व्य वस्था की जाये।

(डी) ि◌जला मिजस्ट्रे ट/पु◌ि◌लस अधीक्ष क द्व ◌ा रा ऐसे युगल अथवा पिरवार के सदस्यों की जीवनभय के सम्बन् ध में की गयी ि◌शकायतों पर संवेदनशीलता बरती जाये। पहले यह सु◌ि◌निश्च त ि◌कयाजाये ि◌क ऐसे अिववाि◌हत युवक/युवितयाँ जो यिद व्यस् क हो तो उन्हें ि◌ववाह हेतु सहयोग प्र दानकरते हु ए ि◌ववाह पंजीकरण में सहयोग प्र दान ि◌कया जाये। ि◌ववाह के पश्चा त यिद वे इच्छा व्यक्तकरते है तो उन्हें न् यू नतम दर पर 01 माह के ि◌लये सुरिक्ष त घर उपलब्ध कराया जाये, ि◌कन्तु यह01 वर्ष् से अिधक की अविध से अिधक नहीं होगी जी उनके जीवन भय की समय सीमा परआधाि◌रत होगी।

(ई) ऐसे अिववाि◌हत युवक/युवितयाँ अथवा युवा ि◌ववाि◌हत जोडों अथवा स् व तंत्र श्र ◌ो त से ि◌शकायत प्र ◌ाप् त होने पर उसकी जाँच करायी जाय ि◌क क् या उनके द्व ◌ा रा या स् था नीय समुदाय या खा द्व ◌ा रा उनका ि◌वरोध ि◌कया जा रहा है. तब ि◌जला मिजस्ट्रे ट व पु◌ि◌लस अधीक्ष क अथवाअितिरक्त पु◌ि◌लस अधीक्ष क द्व ◌ा रा प्र करण की गंभीरता एवं जीवन भय की समस्या के सम्बन् ध में प्रा रं◌िभक जाँच करायी जायेगी और जाँच ि◌रपोट् विरष्ठ पु◌ि◌लस अधीक्ष क को 01 समा ह के अंदर प्रस्तु त की जायेगी।"

47. For convenience, the english translated version of the above quoted extract of the Government Order dated 31.8.2019, is reproduced below:-

"3(2) Remedial Measures

(a) ...

(b) ...

(c) Additionally, the security should be provided to the couple/family members and, if necessary, they should be kept at a safe house within the same district keeping in mind their safety and threat perception.

(i) young unmarried couples whose relationship is being opposed by their families or local khap.

(ii) such young married (girls/boys) who relate to an inter-caste or inter-religious marriage, arrangement should be made to keep them safe in secure houses under the supervision and instructions of the jurisdictional Magistrate and Superintendent of Police.

(d) The District Magistrate/Superintendent of Police must deal with the complaint regarding threats administered to such a couple/family with utmost sensitivity. It should be first

ascertained that such unmarried couples, if they are adults, should be provided support in the registration process of their marriage. After the marriage, if the couple so desire, they should be provided accommodation on payment of nominal charges in a secure house for a period of one month but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

(e) The inquiry regarding the complaint received from the unmarried couple or a young married couple or upon receiving information from an independent source that they are being opposed by them/local community/Khap, shall be conducted. The District Magistrate/Superintendent of Police or Additional Superintendent of Police shall conduct a preliminary inquiry in relation to the gravity of the case and threat perception and he shall submit a report to the Senior Superintendent of Police within one week?"

48. The Hon'ble Apex Court as well as this Court in a catena of decision have held that live-in relation is neither prohibited nor punishable under any law. Therefore, considering Article 14, 15 and 21 of the Constitution of India and the Act, 2021, it cannot be said that live-in relationship of interfaith couple is an offence. If an offence had been committed, it would have been reported by any person in terms of Section 4 of the Act, 2021. No F.I.R. or complaint has been registered till date in respect of live-in relationship of the petitioners. Secondly, this Court is not a trial court to find out as to whether any offence has been committed by the petitioners by putting themselves in a live-in relationship. This Court at this stage is only examining the issue of apprehension of the petitioners based on threat to their life and liberty for the reasons/circumstances as narrated in the petition. If the petitioners have not committed any offence, this Court sees no reason as to why their prayer for grant of protection cannot be acceded to.

49. The issue in hand, is the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

50. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen's religious belief. The mere fact that the petitioners are living in an interfaith relationship, would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India. No discrimination can be made on the basis of caste, creed, sex or religion.

51. Accordingly, the writ petitions filed by the petitioners stand allowed with the following observations:

(i) The petitioners herein are at liberty to approach the police authorities for reddressal of their grievances, in case any harm is caused by private respondents or their associates. Upon receipt of such application, the police authorities shall examine the matter and age of the petitioners and if

they find any substance in the allegations of the petitioners, they will act in accordance with law for protection of life, limb and liberty of the petitioners.

(ii) The petitioners may lodge a report/complaint if anybody attempts to convert their religion against their wishes, or by any fraudulent means, force, coercion, allurement, undue influence or practice of misrepresentation.

(iii) The directions contained in the above Government Order dated 31.08.2019 are binding upon all concerned authorities and shall be strictly complied with.

(iv) This order would not come in way of investigation, if any, pending before the Police Authorities.

52. No order as to cost.

53. Before parting with these cases, I would render my gratitude and appreciation for the invaluable assistance provided to the Court by Mr. Swetashwa Agarwal, learned Senior Advocate, as Amicus Curiae, ably assisted by Sri Subir Lal and Sri Sausthav Guha, learned counsels for the petitioners.

54. The hard work as well as arguments advanced by above named State Counsels, are also appreciable.

55. I would like to put in a word of appreciation for my Research Associate Ms. Priyanshi Hirwani, for her dexterity in research and superlative assistance in drafting of this judgment.

56. However, it is made clear that this Court has not adjudicated the correct age of the petitioners. It is further clarified, this order has not been passed to protect the petitioners against any action or proceedings instituted in accordance with law.

57. Since the petition is being disposed of in limine, any person aggrieved by it is at liberty to apply for its recall, if the order has been obtained by suppression or concealment of facts or on false averments.

(2026) 2 ILRA 1619
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.02.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 42092 of 2025

Pramod Kumar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether rejection of the petitioner's claim under the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020 on the ground that the deceased was not travelling by train at the time of the incident and that it could not be confirmed whether the death was accidental or suicidal, in absence of any evidence of suicide, was legally sustainable.

HEADNOTE

Constitution of India – Art. 226 – Mukhyamantri Krishak Durghatna Kalyan Yojana – Welfare scheme – Claim for compensation on death of farmer in train accident – Rejection of claim by authority – Claim rejected on ground that deceased was not travelling by train and that it could not be confirmed whether death was accidental or suicidal and no evidence available to ascertain nature of death – Reliance placed on report stating no information could be obtained to determine suicide – Justification:

Held: Petitioner's father, a farmer, died after being hit by a moving train near a railway track and the petitioner, being his legal heir, applied for compensation under the Mukhyamantri Krishak Durghatna Kalyan Yojna, 2020, but the claim was rejected on the ground that it could not be confirmed whether the death was accidental or suicidal and that the deceased was not travelling by train – Purpose of the welfare scheme is to advance the object of the policy – Where the report does not conclusively establish the probability of suicide, denial of benefit amounts to an arbitrary exercise of discretion – There was absolutely no evidence to show that the death of the deceased falls under the exception of suicide - Rejection of claim unsustainable – Impugned order quashed and matter remanded for fresh consideration. (Paras 14, 15) **(E-5)**

CASE LAW CITED

Gayatri Devi v. State of U.P., 2025 SCC OnLine All 8086;
Union of India v. Prabhakaran Vijaya Kumar (2008) 9 SCC 527

List of Acts

Constitution of India.

List of Keyword

Mukhyamantri Krishak Durghatna Kalyan Yojana; Welfare scheme; Accidental death; Farmer compensation; Burden of proof; Absence of suicide; Arbitrary rejection; Mechanical order; Social security; Liberal interpretation; Remand.

CASE ARISING FROM

Order dated 24.06.2022 passed by Sub-Divisional Magistrate, Bidhuna, District Auraiya.

Appearances for Parties

Advs For Petitioner: Shams Uz Zaman

Advs For Respondents: C.S.C.

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Sri Shams Uz Zaman, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking issuance of an appropriate writ, or direction in the nature of certiorari quashing the impugned order dated 24.06.2022 passed by the respondent no. 3, Sub-Divisional Magistrate, Bidhuna, District Auraiya, whereby the claim of the petitioner under the 'Mukhyamantri Krishak Durghatna Kalyan Yojana' has been rejected, and further praying for a direction in the nature of mandamus to the respondent no. 2 to forthwith process and grant the admissible financial assistance/compensation to the petitioner under the aforesaid scheme along with statutory interest.

3. Brief facts of the case are that on 21.02.2022, the father of the petitioner, namely Late Ajay Kumar Singh met with a tragic accident near Rambharna Railway Track and died on the spot after being hit by a moving train, resulting in multiple grievous injuries. The incident was duly reported to the local police and the concerned railway authorities.

4. It is a matter of fact that the State Government has brought a welfare scheme known as 'Mukhyamantri Krishak Durghatna Kalyan Yojana' to provide financial assistance to the families of farmers who die in accidents. In this regard, the Additional Chief Secretary, Government of Uttar Pradesh, issued a Government Order dated 28.02.2020 laying down the guidelines for extending benefits under the said scheme. Accordingly, after the death of his father, the petitioner submitted a claim under the aforesaid scheme after completing all required formalities.

5. Learned counsel for the petitioner contends that the petitioner submitted an application before the Tehsil Office, Bidhuna under the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020, enclosing all necessary documents stating that his father Ajay Kumar Singh died accidentally after being hit by a train near Rambharna Railway Track. It is stated that the Death Certificate of the deceased Ajay Kumar Singh, issued by the competent authority on 23.03.2022, confirms that the death occurred due to accidental injuries.

6. It was further submitted that the Family Register (Parivar Register) issued by the competent revenue authority on 26.03.2022 recorded the names of the deceased Ajay Kumar Singh and his legal heirs, including the petitioner Pramod Kumar Singh, thereby establishing the petitioner's status as the lawful heir entitled to claim benefits under the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020. As per the Station Master's memo and subsequent investigation conducted by the concerned police authorities, it has been clearly recorded that the deceased Ajay Kumar Singh died due to grievous injuries sustained in a train accident and pursuant thereto, a Panchnama was prepared and Post-Mortem Examination conducted on 22.02.2022, which establishes that the cause of death was accidental in nature resulting from multiple injuries for being hit by a moving train. There is no finding of suicide or any other foul play by a third party, thereby substantiating that the death squarely falls within the ambit of an "accidental death" as defined under Clause 2 of the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020.

7. It was also contended on behalf of the petitioner that the Khasra-Khatauni of the agricultural holding standing in the name of the deceased Ajay Kumar Singh clearly demonstrated that he was a recorded tenure holder and an active cultivator of agricultural land. The said revenue record established beyond doubt that the deceased was a "Krishak" (farmer) within the meaning of the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020 and, therefore, fully eligible to claim the benefits under the said welfare scheme.

8. It was further contended that the Lekhpal's Report dated 05.04.2022, prepared after local inquiry, further corroborated accidental death of the deceased, Ajay Kumar Singh, which occurred due to he being hit by a train. The report of the Lekhpal recorded that it could not be ascertained as to whether the incident was a case of accident, suicide, or homicide. Such a speculative remark, without any cogent evidence or investigation, was wholly arbitrary and of casual nature. It is pertinent to mention that no criminal case, FIR, or police report has ever suggested suicide or foul play.

9. Larned counsel appearing for the petitioner submitted that the Sub-Divisional Magistrate (SDM), Bidhuna vide letter dated 02.05.2022, recommended that petitioner be treated as ineligible without any concrete basis or cogent evidence. Subsequently, the Sub-Divisional Magistrate passed impugned order dated 24.06.2022, whereby the petitioner's claim under the Mukhya Mantri Krishak Durghatna Kalyan Yojna, 2020 was rejected, declaring him "ineligible" on the ground that the deceased was not travelling by train at the time of the incident and that it could not be confirmed whether the death was accidental or suicidal. The SDM's conclusion, based on conjecture and without any evidence, amounted to an arbitrary and mechanical denial of welfare benefits envisaged by the scheme and hence, the impugned order deserved to be quashed.

10. Learned counsel representing state authorities attempted to defend the impugned order and submitted that the case of suicide was outside the scope of the benefits provided under the scheme but he could not demonstrate any document or evidence which led to the conclusion that the death was suicide and not the accidental death.

11. As appeared from the records that the death of the deceased Ajay Kumar Singh was not under dispute and it was also not disputed that he was depending upon farming for his livelihood and that he was sole bread earner of his family. The death certificate annexed with the petition demonstrated the accidental injuries that could have been considered as conclusive evidence of the accidental death.

12. After perusal of records, it also appears that the order dated 24.06.2022 was passed along with several pending applications and disposed of in a cursory manner through a tabular chart, where the outcome of each application was written in a line or two. In the present case, it was written that relying on the report of the Sub-Divisional Magistrate, Bidhuna, District Auraiya, it was decided that the deceased was not travelling by train and that there was no evidence to ascertain whether the death was accidental or suicidal. The report further noted that agricultural land stood in the name of the deceased's father in Village Kaithna and that no information was received from anyone in the village regarding the suicide of the deceased, and thereafter it was

written that the death was not to be treated as accidental, and consequently, the dependents were ineligible for benefits under the Mukhyamantri Krishak Durghatna Kalyan Yojana.

13. Learned counsel for the petitioner further submitted that the Additional Chief Secretary U.P. Government has issued Government Order dated 28.02.2020 for determination of the guidelines for providing benefits under the scheme of "Mukhyamantri Krishak Durghatna Kalyan Yojana" and present case is fully covered under Clause 2 of the Government Order dated 28.02.2020. Relevant part of the guideline is reproduced below for ready reference:

"Subject: Guidelines for the implementation of the "Chief Minister's Farmer Accident Welfare Scheme" in case of accidental death/disability of farmers in Uttar Pradesh.

The State Government has decided to implement the "Chief Minister's Farmer Accident Welfare Scheme" with the objective of providing social security to the families of farmers in case of accidental death or disability. The following guidelines are being issued for this purpose:

1. This scheme will be effective from September 14, 2019.

2. Eligibility (Definition of Farmer):

This scheme is for farmers residing in Uttar Pradesh who suffer accidental death or disability. A farmer is defined as follows:

(1) Account holder/co-account holder recorded in the revenue records, i.e., the land register (Khatauni).

OR

(2) Earning members of the account holder/co-account holder's family whose primary source of livelihood is agricultural income from the land registered in the name of the account holder/co-account holder.

OR

(3) Landless individuals who cultivate land obtained on lease or on a sharecropping basis, and whose main source of livelihood is agriculture on such leased or sharecropped land. Lessees include tenant farmers, government lessees, and private lessees.

4. Age:

The farmer's age should be between 18 and 70 years on the date of death/disability.

5. Coverage of the Scheme:

(1) If a farmer suffers accidental death/disability due to fire, flood, lightning, electric shock, snakebite, attack/injury by animals/creatures, drowning in the sea, river, lake, pond, or well, storm, falling from or being crushed by a tree, house collapse, accident involving train/road/aircraft/other vehicles, landslide, earthquake, gas leak, explosion, falling into a sewer chamber, or any other cause, then financial assistance will be provided to the farmer/legal heir(s) under this scheme."

14. After reading relevant provisions in the policy and the clause explaining coverage of the scheme, it is clear that in case of death or disability also, the benefits would not be given if the same has not occurred due to suicide or it is not the outcome of any crime. In the facts of the case, there is absolutely no evidence to show that the death of the deceased falls under any of these exceptions and it is just a statement made by authorities which also states that they could not find any evidence to prove that the death was a suicide, which cannot be the justified reason to deny benefits of the scheme to the petitioner.

15. It appears that the impugned order dated 24.06.2022 relies on the report of the Sub-Divisional Magistrate, Bidhuna, District Auraiya, which states that no information could be obtained from the villagers or elsewhere to determine whether the death was a suicide. The purpose of the welfare scheme is to advance the object of the policy. Where the report does not conclusively establish the probability of suicide, denial of the benefit amounts to an arbitrary exercise of discretion, based on a purely mechanical presumption against the petitioner, in deciding entitlement under a state welfare scheme.

16. This Court in case of ***Gayatri Devi vs. State of U.P. and Others, 2025 SCC OnLine All 8086,*** has considered similar issue and held as under:-

"17. From a perusal of the Government Order dated 28.02.2020, it is evident that the object of the 'Mukhyamantri Krishak Durghatna Kalyan Yojana' is to provide financial assistance to the dependents of farmers who die in accidents. The scheme does not make it mandatory that the agricultural land must be recorded in the name of the deceased farmer alone. What is required to be examined is whether the deceased was primarily engaged in agricultural work and whether agriculture was the main source of livelihood for him and his family. In rural set-ups, it is a common practice that land continues to remain recorded in the name of the elder family member, while other members of the family carry on agricultural activities jointly."

17. In ***Smt. Gayatri Devi (supra)*** has also relied upon judgement of the Supreme Court in ***Union of India Vs Prabhakaran Vijaya Kumar, (2008) 9 SCC 527***, and thereafter held that:

"21. Applying the principle laid down by the Hon'ble Supreme Court that beneficial and welfare schemes must receive a liberal and purposive interpretation so as to advance their object and not defeat it on technical grounds, the petitioner's claim could not have been rejected in casual manner because from a bare perusal of the guidelines, it is evident that the scheme is intended to protect persons and families who are engaged in farming activities and have agriculture as their main source of livelihood. In the facts of the present case, the land stands recorded in the name of the deceased's grandfather in the Khatauni, and there is no material on record to show that the deceased, his father, or his wife had any other source of income. The family was dependent upon

farming for its survival, particularly in view of the submission made by the petitioner in the rejoinder that the same land was mortgaged with the Bank of India by the deceased at the time of purchasing a tractor in the year 2011. This fact ought to have been properly examined by the authorities instead of rejecting the petitioner's claim in a casual manner. 22. In view of the above discussion, this Court is of the considered view that the rejection of the petitioner's claim is based on an unduly drawn narrow interpretation of the scheme and merely based on assumptions not supported by proper enquiry, and therefore, the writ petition deserves to be allowed and is hereby allowed. The impugned order dated 25.08.2021 passed by the respondent no. 2, District Magistrate, Kannauj, rejecting the petitioner's claim under the 'Mukhyamantri Krishak Durghatna Kalyan Yojana' and the information order dated 31.07.2021 issued by respondent no. 3 are hereby quashed. The matter is remanded to the District Magistrate, Kannauj, to reconsider the petitioner's claim afresh in accordance with law and in the light of the observations made hereinabove, after affording an opportunity of hearing to the petitioner and after conducting a proper enquiry, if required. The said exercise shall be completed expeditiously, preferably within a period of eight weeks from the date of production of a certified copy of this order. No order as to costs."

18. In view of the above legal proposition which is fully applicable to the facts of this case, in our considered view, the writ petition deserves to be allowed. Thus the writ petition is allowed and the impugned order dated 24.06.2022 passed by respondent no. 2, District Magistrate, Auraiya, is accordingly quashed insofar as it relates to the petitioner's application regarding deceased Ajay Kumar Singh. The matter is remanded to the District Magistrate, Auraiya, for fresh consideration of the petitioner's claim in accordance with law. The petitioner may file a fresh representation within four weeks from the date of receipt of a certified copy of this order, which shall be decided by the competent authority by a reasoned and speaking order within a further period of eight weeks. No order as to costs.

(2026) 2 ILRA 1625
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 43641 of 2007

Surendra Kumar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for consideration

The main issue before the court was whether recovery proceedings under general recovery statutes are maintainable for large dues in presence of special recovery laws governing financial institutions.

Headnotes

A. Civil law-Constitution of India,1950-Article 226-SARFAESI Act,2002- Section 13(4)-Recovery of Debts Due to Banks and Financial Institutions Act,1993-U.P. Public Moneys (Recovery of Dues) Act,1972-Revenue Recovery Act,1890- State Financial Corporations Act,1951-Maintainability of recovery-Recourse to U.P. Public Moneys (Recovery of Dues) Act,1972-Revenue Recovery Act,1890-Amount exceeding Rs. 10 lac-Overriding effect of special statutes-Applicability of SARFAESI Act,2002 and Recovery of Debts Due to Banks and Financial Institutions Act,1993-Jurisdictional error-Improper exercise of recovery powers-Recovery certificate liable to be quashed.(Para 11 to 23)

Held

The court held that the recovery proceedings initiated under general laws were without jurisdiction. The field of recovery for financial institutions is governed by special enactments which have overriding effect. The State Financial Corporation, being covered under the definition of financial institution, was required to adopt measure under the SARFAESI Act. Consequently the recovery certificate and consequential orders were quashed. (E-6)

Case law Cited

Man Mohan Rai Vs Financial Corporation & Ors, 2014 (8) ADJ 25 (DB)-referred to.

List of Acts

Constitution of India,1950
SARFAESI Act,2002
Recovery of Debts Due to Banks and Financial Institutions Act,1993
U.P. Public Moneys (Recovery of Dues) Act,1972
Revenue Recovery Act,1890
State Financial Corporations Act,1951

List of Keywords

Recovery, Financial Institution, SARFAESI Act, RDB Act, Arrears of land revenue, Jurisdictional error, Recovery certificate, Quashing.

Case Arising from

CIVIL JURISDICTION: WRIT-C No.- 43641 of 2007
Surendra Kumar Vs. State of U.P. & Ors
From the judgment and order dated 17.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner(s):-
J.P. Pandey
Advs. for Respondent(s):-
C.S.C., D. Awasthi, Mohd. Saleem Khan

(Delivered by Hon'ble Ajit Kumar, J.
&
Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Sri J.P. Pandey, learned counsel for the petitioner, Sri Utkarsh Kharwar, learned Advocate holding brief of Mohd. Saleem Khan, learned counsel for the State Financial Corporation, Sri Mukul Tripathi, learned Standing Counsel for the State and perused the record.

2. Petitioner before this Court claims to be a third party to the advance made by the State Financial Corporation to the erstwhile proprietor of the proprietorship firm namely, M/s N.B. Industries, which of course been run by his father.

3. It is stated that in order to realize the dues and clear the debts, the State Financial Corporation had already auctioned the industrial unit of the firm and now has sought to per se recovery of the interest part from the petitioner for seven years since death of his father. Two fold arguments have been advanced by learned counsel appearing for the petitioner which is as under:-

(i) Firstly, the amount of recovery admittedly being more than Rs. 10 lakh is not recoverable by the State Financial Corporation taking recourse to the provisions as contained under the Revenue Recovery Act, 1890 or U.P. Public Moneys (Recovery of Dues) Act, 1972 as has been admitted in the counter affidavit, by way of arrears of land revenue.

(ii) Secondly, the petitioner having not succeeded the proprietorship of his father, he could not have been saddled with the liability to clear the dues of the proprietorship firm inasmuch as the industrial unit having been auctioned and sold away, no liability would be upon a third party who was not connected with the proprietorship firm.

4. In support of his first submission, learned counsel has placed reliance upon judgment of Division Bench of this Court in the matter of ***Man Mohan Rai vs. U.P. Financial Corporation And Others, 2014 (8) ADJ 25 (DB),*** and has placed before the Court paragraph nos. 2, 5, 7, 8, 10, 11, 12, 15, 16 and 17 of the said judgment.

5. It is contended that the legal issue was raised in the said case as to the maintainability of the recovery proceedings under the U.P. Public Moneys (Recovery of Dues) Act, 1972 in the face of the emergence of the new law in which name of Recovery of Debts and Bankruptcy Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. Sri Pandey has placed relevant provisions of two Acts to buttress his arguments on point no. (i) and also reliance has been placed on paragraph no. 44 of the counter affidavit.

7. Meeting the submissions, learned counsel for the State Financial Corporation though tried to defend the recovery for the reasons assigned in the counter affidavit, but could not cite any judgment to the contrary, nor could place any other judgment to draw any inference there from that the ratio of the judgment in case of ***Man Mohan Rai (supra),*** stood diluted subsequently.

8. Having heard learned counsel for the respective parties and having perused the record, we first proceed to dealt with the argument raised as point no. (i) and if, as we are of the considered view, this argument is upheld, the recovery would stand vitiated in law and there may not be necessity to dealt with point no. (ii).

9. From the recovery certificate which has been issued in the matter and which has been brought on record at page no. 37 of the paper book, we find that it was issued under the Revenue

Recovery Act, 1890 (as amended in the year 1966) by the Managing Director, U.P. Financial Corporation and addressed to the Deputy Commissioner, Delhi (West), to issue a consequential recovery order. It transpires from the record that he petitioned against the recovery certificate before the authority but the Managing Director rejected the same vide order dated 28.08.2007 which has been challenged before this Court and therefore, it appears that before the consequential action could have been taken by the Commissioner of Delhi, petitioner had approached this Court and got the order for interim protection on 12.09.2007.

10. We have perused the recovery certificate and it transpires that the principal amount is found to be nil whereas the interest has been charged for back seven years @ Rs. 7,340.06/- per day w.e.f. 21.06.2005. It, therefore, clearly comes out that the State Financial Corporation has sold away the entire assets of the firm to clear its debts and now for the interest part recovery has been issued.

11. Upon reading the recitals contained in the recovery certificate, we find that the recourse has been taken to the Revenue Recovery Act, 1890 to pursue the recovery of dues of the State Financial Corporation under Section 32G of the State Financial Corporation Act, 1951. Relevant provisions as contained under Section 32G of the Act, 1951 is reproduced hereunder:-

"Section 32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.?Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

12. A bare reading of the aforesaid provisions clearly demonstrate that the power is vested with the State Financial Corporation to recover the dues from the industrial concerned by pursuing it through the Collector of the District who would consequentially act as a recovery officer to recover the dues by way of arrears of land revenue. Naturally, therefore, the Revenue Recovery Act, 1890 would come into play for the purposes of initiation of action of recovery pursuant to the recommendation made by the State Financial Corporation. However, upon perusal of para no. 33 of the counter affidavit sworn by one Sri K.S. Sonkar, Deputy Senior Manager (Law), U.P. Financial Corporation, the recovery certificate is claimed to have been issued under the U.P. Public Moneys (Recovery of Dues) Act, 1972. Thus, in view of this admission made in para no. 33 of the counter affidavit, there would be no quarrel about the status of the recovery as a land revenue and the modus operandi is the U.P. Land Revenue Act.

13. Admittedly, the recovery is of more than one crore, may be by way of dues towards the interest as against the loan advanced to the industrial concerned and, therefore, the question rightly framed is, as to whether such recovery could have been pursued whereas the recovery under the U.P. Public Moneys (Recovery of Dues) Act, 1972 could not be of an amount more than 10 lakhs

in view of the provisions contained under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'Act of 1993') and more especially in the circumstances when the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 had already come into existence prior to the recovery in question being pursued by the State Financial Corporation.

14. The controversy as to the legal issue may not detain us any longer in view of the judgment of the Division Bench which has remained unreplied to in the sense that no contrary judgment has been cited before us. Division bench in **Man Mohan Rai (supra)**, has dealt with this specific issue and overriding effect of Section 34 of Act of 1993.

15. Although the question no. (i) as framed above would stand answered in favour of the petitioner but we would like here to also notice the Act of 2002 which in view of the judgment of Supreme Court can equally be invoked by way of measures to recover the dues by the Banking as well as Non-Banking Financial Institution.

16. Section 2(1)(m) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 defines 'financial institution' as under:-

"Section 2(1)(m) : ?financial institution? means?(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956);

(ii) any institution specified by the Central Government under sub-clause

(ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);

(iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);

(iiia) a debenture trustee registered with the Board and appointed for secured debt securities;

(iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;

(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act."

17. Section 2(1)(ma) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 defines 'financial lease' as under:-

"Section 2(1)(ma) ?financial lease? means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be."

18. The State Financial Corporation of the State of U.P. is a creation of statutes to advance loan and grant financial lease to raise an industrial concerned for any amount and comprehensive Act namely, State Financial Corporation Act, 1951 was enacted by the State Legislature. Since it is a body corporate, created under the statute without any financial limits, this Non-Banking Financial Institution would not land into any of the exception clauses of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to hold it back from issuing any recovery for recovering its dues to get cleared its debts.

19. In the circumstances, therefore, in our considered view the measures as prescribed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would have been also adopted by the State Financial Corporation.

20. Upon a pointed query being made, learned respondent Corporation could not bring to our notice any provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which may otherwise operate as a bar from any action under this Act by the State Financial Corporation more especially in the circumstances when it is Non-Banking Financial Institution falling within the meaning of ' financial institution' as prescribed under the Act of 2002 which is reproduced herein above.

21. So we are also of this view that in view of the provisions contained under the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the measures ought to have been adopted under Section 13(4) by the State Financial Corporation instead of taking recourse to the Revenue Recovery Act, 1890 or U.P. Public Moneys (Recovery of Dues) Act, 1972.

22. Thus, in view of the above, the recovery certificate deserves to be quashed and the petition deserves to be allowed on this score alone. So far as second question is concerned regarding liability, that stage has yet not arisen because we are holding the recovery as untenable. This question would be decided in an appropriate case when it comes for consideration of this Court in a matter of recovery, though legally but whether reasonable.

23. Accordingly, the writ petition succeeds and is allowed. The order recovery certificate dated 30.09.2005 is hereby quashed, so also the decision taken by the competent authority of the State Financial Corporation to uphold the recovery certificate vide order dated 09.07.2007, the same is also quashed. It is left open for the respondents to pursue the

recovery otherwise if tenable by taking recourse to such provisions as may be available in law.

(2026) 2 ILRA 1631
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.02.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ C No. 44707 of 2025

Sughar Singh **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

Whether a person who does not fall within the expression "person aggrieved" under Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, can maintain proceedings for cancellation of lease and invoke writ jurisdiction under Article 226 of the Constitution challenging orders passed therein; and what is the scope and meaning of the term "person aggrieved".

HEADNOTE

U.P. Zamindari Abolition and Land Reforms Act, 1950 – ss.198(4), 333 – Constitution of India – Art.226 – Petition for cancellation of lease alleging that land was not vacant and allotment in favour of private respondents was illegal – Proceedings initiated under Section 198(4) – Dismissed by Collector – Revision dismissed – Writ petition filed – Maintainability.

Held: Proceedings under Section 198(4) can be initiated either suo motu or by a "person aggrieved" – A "person aggrieved" must be a person who has suffered a legal grievance, i.e., a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title – The expression does not include a person who suffers from a psychological or imaginary injury or mere disappointment or personal inconvenience.

A stranger who is not an aggrieved person cannot maintain a writ for certiorari or mandamus – A stranger cannot be permitted to meddle in proceedings unless he satisfies that he falls within the category of aggrieved persons – Existence of a legal right is a condition precedent for invoking writ jurisdiction under Article 226 – A person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his rights have neither been directly nor substantially invaded – Only a person who has suffered a legal injury can challenge the action.

In the instant case, aggrieved by the allotment of Plot No. 1560M in favour of Respondent Nos. 5 and 6, the petitioner instituted proceedings for cancellation of the lease, asserting possession over the land, though admittedly no formal allotment had ever been made in his favour – The petitioner had no legal allotment in his favour at any point of time and thus had no enforceable right over the land in question – The petitioner does not fall within the definition of "person aggrieved".

In absence of any legal injury or enforceable right, the writ petition is not maintainable. **[Paras 10, 11, 13, 14, 15, 17]** (E-5)

CASE LAW CITED

Munshi v. State of U.P., R.D. (117) 615;
M.S. Jayaraj v. Commissioner of Excise, Kerala, (2000) 7 SCC 552;
Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988;
Vinoy Kumar v. State of U.P., (2001) 4 SCC 734;
Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, (2013) 4 SCC 465;
Jasbhai Motibhai Desai v. Roshan Kumar, (1976) 1 SCC 671;
Pyare Lal v. Deputy Director of Consolidation, 2005 ALL L.J. 1966

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950;
Constitution of India.

List of Keyword

Person aggrieved; Locus standi; Legal grievance; Legal injury; Maintainability of writ petition; Cancellation of lease; Section 198(4) proceedings; Stranger to proceedings; Enforceable right; Article 226 jurisdiction.

CASE ARISING FROM

From the order dated 08.10.2024 passed by Additional District Magistrate (Finance and Revenue), Kannauj and 16.10.2024 passed by Additional Commissioner (Judicial), Kanpur Division under Sections 198(4) and 333 of U.P. Zamindari Abolition and Land Reforms Act, 1950 respectively.

Appearances for Parties

Advs For Petitioner: Girish Chandra Maurya, Omraj Singh

Advs For Respondents: C.S.C., Hari Narayan Singh, Vimal Kumar

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

1. Heard counsel for the petitioner, learned Standing Counsel appearing on behalf of Respondent Nos.1, 2 & 3, Shri Hari Narayan Singh, learned Counsel appearing on behalf of Respondent No.4 and Shri Vimal Kumar, learned counsel appearing on behalf of Respondent Nos.5 & 6 and perused the record.

2. The present writ petition has been filed inter-alia with the following prayers:-

"a) issue a writ, order or direction in the nature of writ of Certiorari quashing the judgment and order dated 06.10.2025 passed by the respondent no.2/Additional Commissioner Judicial 1st Kanpur, Division Kanpur in Revision No.3421 of 2024 (Computerized Case No.C20240300003421) (Sughar Singh Vs. Indrapal and others) under Section 333 of U.P. Zamindari Abolition and Land Reforms Act 1950 as well as judgment and order dated 8.10.2024 passed by the respondent no.3/Additional District Magistrate Finance and Revenue/Additional Collector Kannauj in case no.1176 of 2018 (Computerized Case No.D201803390001176 (Sughar

Singh Vs. Land Management Committee and others) under section 198(4) U.P. Zamindari Abolition and Land Reforms Act, 1950."

3. Facts in brief as contained in the writ petition are that the plot no.1560M area 0.121 hectare situated in village Ummedpurwa Mauza Anaugi, Pargana & Tehsil & District Kannauj recorded in revenue record as Banzar land. It is stated in paragraph-7 of the writ petition that Respondent Nos.5 & 6 are not eligible to be allotted agricultural lease over the said plot having sufficient agricultural land. Petitioner is still in possession over the plot in question from his ancestral period and during the course of the allotment of agricultural lease in favour of the Respondent Nos. 5 & 6 dated 04.01.2014, such land was not vacant because the land of the petitioner i.e., plot no.1562 and 1563 is situated adjacent to the plot no.1560 and the petitioner has constructed house over the plot no.1560 and installed tube-well over it for irrigation of his agricultural land and some trees are also grown over it.

4. It is argued that since at the time of allotment the plot in question was not vacant, the same should not be allotted in favour of the private-respondents.

5. In this view of the matter, after the allotment was made in favour of the private-respondents on 04.01.2014, suit for cancellation of lease under Section 198(4) of the U.P.Z.A. & L.R. Act was filed by the petitioner in the court of District Magistrate (Finance and Revenue), District Kannauj. The said suit was dismissed by the Respondent No.3 namely Additional District Magistrate Finance and Revenue/Additional Collector Kannauj vide order dated 08.10.2024.

6. Aggrieved against the aforesaid, statutory revision as provided under Section 333 of the U.P.Z.A. & L.R. Act, 1950 was filed by the petitioner before the Respondent No.2 namely Additional Commissioner Judicial Ist Kanpur Division Kanpur which was numbered as Case No.3421 of 2024. The aforesaid revision was also dismissed by the Respondent No.2 vide order dated 16.10.2024. Aggrieved against the aforesaid, the petitioner has preferred the present writ petition.

7. It is argued that the petitioner is in possession over the land in question which was allotted in favour of the private-respondents in the year 2014. When a query was raised by the Court that whether any legal allotment by any competent authority was ever made in favour of the petitioner or at any point of time by the revenue authorities, it is very fairly argued that at no point of time the land in question was allotted in favour of the petitioner.

8. Heard counsel for the parties and perused the record.

9. A complete procedure for cancellation of lease has been provided under Section 198 of the U.P.Z.A. & L.R. Act, 1950. Sub-section (4) of Section 198 of the Act, 1950 reads as follows:-

"(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."

10. From perusal of the averments made in the writ petition as well as order passed which are under challenge in the present writ petition, it is clear that proceedings under sub-section (4) of Section 198 of the Act, 1950 was initiated by the petitioner. **The proceedings under Section 198(4) should be initiated under suo motu or by a person aggrieved.**

11. From perusal of the record it is clear that the petitioner does not fall within the definition of person aggrieved.

12. In **Munshi vs. State of U.P. and others reported in R.D. (117) page 615,** it was held by this Court that a person aggrieved must be a man who had suffered a legal grievance. Paragraph-16 of the judgment of this Court in the case of Munshi (Supra) is relevant for the purpose and is reproduced below:

"*Point No. 2:- Though I have already held that the order passed by the learned Member of Board of Revenue is without jurisdiction but assuming for a moment that it was within his competence to maintain the revision and decide the same, even then learned Member has erred in cancelling the lease without assigning any reason. So far as the view taken by the learned Member of Board of Revenue that the respondent no. 6 is an aggrieved person is concerned, controversy in this regard is no more res integra as the Apex Court as well as this Court in a catena of decisions, while considering as to who could be said to be the "person aggrieved", held that although the meaning of expression "person aggrieved" may vary according to the context of the Statute and facts of the case nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance; a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused something, or wrongfully affected his title to someone.*

*In **M.S. Jayaraj Vs. Commissioner of Excise, Kerala & Ors., (2000) 7 SCC 552**, the Supreme Court considered the matter at length and placing reliance upon a large number of its earlier judgments including the Chairman, Railway Board & Ors., Vs. Chandrima Das (Mrs.) & Ors., AIR 2000 SC 988; held that the Court must examine the issue of locus standi from all angles and the petitioner should be asked to disclose as what is the legal injury suffered by him.*

*The term "person aggrieved" was also considered and defined in **Re: Sidebotham, (1880) 14 Ch. D. 458,** wherein it has been observed as under :-*

"The words "person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

.....

.....

*The "person aggrieved" means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or he is adversely affected in a legal sense. (**Vide K.N. Lakshminarasimaiah Vs. Secretary, Mysore S.T.A.T., (1966) 2 Mys. L.J. 199).***

Whether a person is injured in strict legal sense, must be determined by the nature of the injury considering the facts and circumstances involving in each case. A fanciful or sentimental grievance may not be sufficient to confer a standi to sue upon the individual. There must be injuria or a legal grievance, as the law can appreciate and not a stat pro ratione valuntas reasons.

13. The existence of a right in favour of an aggrieved party furnishes the locus standi to maintain a writ petition as held in **Vinoy Kumar Vs. State of U.P. and others reported in (2001) 4 SCC 734** thus:

"2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas - corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantages position, unable to approach the court for relief."

14. Similarly in **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others** reported in **(2013) 4 SCC 465,** the Supreme Court emphasized that existence of enforceable rights of aggrieved parties form the pre-condition to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India vested in this Court:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a

person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta [AIR 1952 SC 12] , Saghir Ahmad v. State of U.P. [AIR 1954 SC 728] , Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044] , Rajendra Singh v. State of M.P. [(1996) 5 SCC 460 : AIR 1996 SC 2736] and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [(2009) 2 SCC 784].]

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387 : AIR 1974 SC 1719] and State of Rajasthan v. Union of India [(1977) 3 SCC 592 : AIR 1977 SC 1361] .)

11. In ***Anand Sharadchandra Oka v. University of Mumbai [(2008) 5 SCC 217 : AIR 2008 SC 1289]*** *, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons."*

15. The Hon'ble Supreme Court in case of J**asbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahme**d reported in **1976 (1) SCC 671** held that a stranger who is not an aggrieved person cannot maintain a Writ for either Certiorari or Mandamus. The relevant paragraph of the aforesaid judgment is reproduced hereunder:-

"50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a "stranger" unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a "stranger", and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of Respondents Nos. 1 and 2, which they have under Article 19(1)(g) of the Constitution, to carry on trade or business subject "reasonable restrictions imposed by law".

16. In the case of **Pyare Lal and others Vs. The Deputy Director of Consolidation Mainpuri and others** reported in **2005 ALL L. J. 1966** it has been held in paragraph-7 that :-

"Dictionary meaning of word aggrieved is "having suffered loss or injury. "According to the Black's Law Dictionary aggrieved party/person is "one whose legal right is invaded by an act complained of, or whose pecuniary interest is directing affected by a decree or judgment. The word aggrieved refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation". According to Corpus Juris Secundum volume IV 356 (1st edition) a party or a person can be said to be aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights."

17. In this view of the matter, since petitioner does not fall within the definition "aggrieved person" present writ petition filed on his behalf is not maintainable and liable to be dismissed.

18. Accordingly, the present writ petition is **dismissed**. No order as to costs.

(2026) 2 ILRA 1637
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.02.2026

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ C No. 56747 of 2016

Satish & Ors. ...Petitioners
Versus
Addl. Commissioner Meerut Division Meerut & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether a complaint under Section 198(4) of the U.P. Z.A. & L.R. Act, 1950 can be maintained by persons who are merely residents of the village and do not fall within the ambit of "person aggrieved"; and
Whether cancellation of allotment at the instance of such persons is legally sustainable.

HEADNOTE

U.P. Zamindari Abolition and Land Reforms Act, 1950 – s.198(4) – Cancellation of patta – Residents of village – "Person aggrieved" – Locus standi – Preferential right – Justification:
Held: The complaint filed under sub-section (4) of Section 198 of the Act, 1950 could only be decided either suo motu by the Collector or on the complaint made by the "person aggrieved" – The expression "person aggrieved" does not include a person who suffers from a psychological or imaginary injury; a person aggrieved must be one whose right or interest has been adversely affected or jeopardised – If any person moves an application for cancellation of patta granted in favour of another person, he has to satisfy that he falls within the ambit and scope of "person aggrieved" in order to initiate such proceedings – A person who seeks to question the allotment has to show that he has a preferential right for the said allotment and seeking cancellation of allotment without showing such preference cannot be questioned except on the intervention of the Gaon Sabha – It is a settled legal proposition that a stranger cannot be permitted to meddle

in any proceeding unless he satisfies that he falls within the category of aggrieved person, and merely by virtue of being a resident of the village one cannot be said to fall within the scope of "person aggrieved" – The Court found that nothing was stated nor any argument raised that the complainant stood on a higher preferential category in respect of the petitioners, which was sine qua non for maintaining the application under Section 198(4), and in absence thereof the application was liable to be rejected – The private respondents, being merely residents of the village, did not fall within the ambit of "person aggrieved" and were strangers – Accordingly, the impugned orders dated 03.10.2016 and 30.06.2016 were set aside and quashed and the writ petition was allowed. (E-5)

CASE LAW CITED

Ram Kumar v. State of U.P., 2017 (134) RD 428;
Kanhai v. State of U.P., 2012 (4) ADJ 767;
Hari Shankar Kushwaha v. State of U.P., 2018 (139) RD 521;
Adi Pheroz Shah Gandhi v. H.M. Seervai AIR 1971 SC 385;
Jasbhai Motibhai Desai v. Roshan Kumar AIR 1976 SC 578;
Utkal University v. Dr. Nrusingha Charan Sarangi AIR 1999 SC 943;
Laxminarayan R. Bhattad v. State of Maharashtra (2003) 5 SCC 413;
Shanti Kumar R. Canji vs. Home Insurance Co. of New York AIR 1974 SC 1719;
State of Rajasthan v. Union of India and others AIR 1977 SC 1361

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keyword

Cancellation of patta; Person aggrieved; Locus standi; Preferential right; Village resident; Stranger; Legal injury; Section 198(4); Gaon Sabha land; Allotment dispute.

CASE ARISING FROM

From judgment and order dated 03.10.2016 passed by Additional Commissioner, Meerut Division, Meerut and order dated 30.06.2016 passed by Additional Collector/ADM (Administration), Bulandshahar.

Appearances for Parties

Advs For Petitioner: Manish Dev Singh, Nipun Singh

Advs For Respondents: A.B. Singhal, Aditya Bhushan Singhal, Akhilesh Kumar Ojha, C.S.C., Mahesh Narain Singh, Santosh Kumar Upadhyay, Sharad Kumar Srivastava, Vinod Kumar Upadhyay.

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

1. Heard Shri Nipun Singh, learned Senior Counsel assisted by Shri Abhijit Mishra, learned counsel for the petitioners, learned Standing Counsel appearing on behalf of Respondent Nos.1 & 2 and Shri Sunil Kumar Singh, learned counsel appearing on behalf of Respondent No.3/Land

Management Committee and Shri Vinod Kumar Upadhyay, learned counsel appearing on behalf of private-respondents.

2. Pleadings have already been exchanged between the parties, hence with the consent of the counsel for the parties, the present writ petition is decided at the admission stage itself.

3. The present writ petition has been filed by the petitioners inter-alia with the following prayers-

"i. Issue an order, direction, or writ in the nature of the certiorari quashing the impugned judgment and order dated 03-10-2016 passed by the respondent no. 1 herein ie Additional Commissioner, Meerut Division, Meerut in revision no. 125/2015-15 Satish and others Vs. Jaipal and others, and revision no 126/2015-15 Harbhajan and others Vs. Ramgopal and others, and revision no. 117/2015-15 Ikram and others Vs Ravindra and others and in Revision no 116/2015-15 Kanwal Singh and others Vs. Raghuraj and others u/s 198(4) of U.P.Z.A. and L.R. Act (Annexure no.10 to the writ petition) and judgment and order dated 30-06-2016 passed by the respondent no. 2 herein ie Additional Collector/ADM (Administration), Bulandshahar in case no 17/2013 Brahm Singh and others Vs. Kanwal Singh and others, and in case no. 21/2013 Ravindra Singh and others Vs. Harbhajan Singh and others U/s 198(4) of U.P.ZA. and L.R. Act 1950 (Annexure No.7 to the writ petition) whereby and whereunder the agricultural leases as executed in favour of petitioners herein has been determined/cancelled u/s 198(4) of U.P.Z.A. and L.R. Act on wholly erroneous exercise of jurisdiction.

ii. Issue an appropriate order or direction against the res. no. 1 and 2 herein not to dispossess the petitioners herein concerning the leased land in pursuance of judgment and order dated 03-10-2016 passed by the respondent no 1 herein ie. Additional Commissioner, Meerut Division, Meerut in revision no. 125/2015-15 Satish and others Vs. Jaipal and others, and revision no. 126/2015-15 Harbhajan and others Vs. Ramgopal and others, and revision no. 117/2015-15 Ikram and others Vs. Ravindra and others and Revision no. 116/2015-15 Kanwal Singh and others Vs. Raghuraj and others u/s 198(4) of U.P.ZA. and L.R. Act (Annexure no.10 to the writ petition) and judgment and order dated 30-06-2016 passed by the respondent no. 2 herein i.e. Additional Collector/ADM (Administration), Bulandshahar in case no. 17/2013 Brahm Singh and others Vs. Kanwal Singh and others, and in case no. 21/2013 Ravindra Singh and others Vs. Harbhajan Singh and others U/s 198(4) of U.P.Z.A. and L.R. Act 1950 (Annexure No.7 to the writ petition)."

4. Facts in brief as contained in the writ petition are that the Land Management Committee of the Gaon Sabha namely Biraudi Tajpur Tehsil Sikandarabad, District Bulandshahar passed a unanimous resolution on 20-04-1994, whereby an agricultural lease was granted in favour of various persons including the present petitioners. The aforesaid resolution was duly approved by the then Deputy Collector/Sub Divisional Officer vide order dated 12-5-1994. The private respondents namely Respondents Nos. 4 to 33 moved an application dated 29-06-1994 under sub section (4) of Section 198 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter to be referred as "Act 1950"), before the Collector, Bulandshahar.

5. On the basis of the aforesaid application, 2 cases were registered under Sub section (4) of Section 198 of the Act 1950, being Case No.17 of 2013, Computer Case No.D2013111700177, (Brahm Singh and Another vs. Kamal Singh and Others) and Case No. 21 of 2013, Computer Case No. D20131117001146, (Ravindra Singh and Another vs. Harbhajan Singh and Others).

6. In the aforesaid proceedings, a report was submitted by the concerned Sub Divisional Officer before the District Collector, Bulandshahar on 15-07-1994. In the aforesaid report the allegations were made to the effect that so called resolution was not carried out properly. In the aforesaid cases Petitioners submitted their Written Statements on 23-03-1995 whereby and whereunder they vehemently refuted the allegation as contained in the application in question. The aforesaid application was allowed by the Additional District Magistrate (Administration) vide its order dated 18-07-1995.

7. Aggrieved against the aforesaid, some of the petitioners filed a Revision before the Commissioner, Bulandshahar which was allowed vide order dated 9-12-1997. The aforesaid order was challenged by the complainant/Private respondents before the Board of Revenue and ultimately the Revision of the complainant was dismissed vide order dated 19-10-2001 passed by the Board of Revenue U.P. at Allahabad.

8. Aggrieved against the aforesaid, the private respondents approached this Court by filing two writ petitions namely Writ B No.40986 of 2001 (Brahm singh v Board of Revenue, UP Alld. and others) and Writ B No.40983 of 2001 (Fateh Mohd. vs. Board of Revenue U.P. at Alld. and Others). Both the writ petitions were clubbed together and finally decided by the Coordinate Bench of this court vide judgement and order dated 03-09-2012. Order reads as follows:

"Heard Sri R.B. Singhal learned Senior Counsel assisted by Sri A.B. Singhal learned counsel for the petitioner Sri M.C. Singh for respondent nos. 5, 29 and 30 and learned Standing Counsel for respondent nos. 1 and 2 as also learned counsel for the Gaon Sabha.

According to Sri R.B. Singhal learned counsel for the petitioner under the order dated 9.12.1997 in Revision no. 126 of 1995 (Harbhajan Singh and others Vs Ravindra Singh and others) connected with Revision no. 127 of 1997 (Kanwal Singh Vs Brahm Singh and others) the Additional Commissioner has set aside the order dated 18.7.1995 of the Additional Collector solely on the ground that the principles of natural justice were violated and that the Gaon Sabha which is a necessary party was not impleaded in proceedings under Section 198 (4) of the U.P. Zamindari Abolition & Land Reforms Act (herein after referred to as the Act).

Learned counsel states that the petitioner feeling aggrieved filed Revision no. 22 of 1997-98 and 23 of 1997-98 (Brahm Singh Vs Kanwal Singh) before the Board of Revenue wherein by the impugned order dated 19.10.2001 the revision of the petitioner has been rejected on two grounds. According to Sri Singhal the first ground taken by the Board of Revenue was that the Additional Collector cannot exercise the power or jurisdiction of a Collector in proceedings under Section 198 (4) of the Act and the second was that the Board of Revenue has affirmed the order passed by the Additional Commissioner on the question of violation of principles of natural justice.

According to Sri Singhal in case there is violation of principles of natural justice and such an order is set aside then the matter ought to have been remanded to the authority to reconsider the matter under Section 198 (4) of the Act.

Learned Standing Counsel and learned counsel for the Gaon Sabha and Sri M.C. Singh learned counsel for the contesting respondents have justified the impugned order and state that there was gross violation of principles of natural justice and hence the order of the Additional Collector was rightly set aside by the Additional Commissioner and revision filed by the petitioner was rightly rejected by the Board of Revenue. He states that insofar as the merits of the matter is concerned a concurrent finding of fact has been recorded that there was violation of principles of natural justice and hence the impugned order should not be interfered with.

Having considered the submission of learned counsel for the parties and perused the record clearly the observation of the Board of Revenue that the Additional Collector cannot exercise the power and jurisdiction of the Collector in proceedings under Section 198 (4) of the Act is erroneous in view of the Full Bench decision dated 29.04.2008 passed on a reference made in this writ petition reported in 2008 (105) RD 1 as such the aforesaid view taken by the Board of Revenue being illegal is set aside.

Insofar as the concurrent findings of fact recorded by the Additional Commissioner and the Board of Revenue on the issue of violation of principles of natural justice is concerned they are concurrent findings of fact and there is nothing on record of this writ petition to indicate that the principles of natural justice were not violated by the Additional Collector. Clearly the Gaon Sabha was a necessary party which was not made a party and the respondents before the Additional Collector were not heard. As such the order was exparte.

However while not interfering in the concurrent findings of fact recorded therein it appears that when there was violation of principles of natural justice and the order of the Additional Collector required to be set aside the matter ought to have been remanded by the Additional Commissioner and the Board of Revenue to the Additional Collector for re-deciding the matter in accordance with law after giving opportunity of hearing to the parties. As such no interference is required in the impugned orders where findings of fact have been recorded regarding violation of principles of natural justice.

However, this writ petition is finally disposed of by providing that the matter stands remanded to the Additional Collector to proceed in the application under Section 198 (4) of the Act in accordance with law.

No order is passed as to costs. "

9. By the aforesaid order the matter was remanded to the Additional Collector to proceed in the application under sub section (4) of section 198 of the Act, 1950 in accordance with Law. After remand of the matter, the concerned Gaon Sabha submitted its Written statement on 27-03-2015. In the aforesaid Written Statement the Gaon Sabha clearly refuted the allegations contained in the complaint.

10. Subsequently an order dated 30-06-2016 was passed by the Respondent no. 2/ Additional Collector (Administration), Bulandshahar, by which land which was allotted in favour of the petitioners dated 20-04-1994 as well as its approval order passed by the Deputy Collector/SDO dated 12-05-1994 were cancelled.

11. Aggrieved against the aforesaid, the Petitioners have preferred as many as 4 Revisions before the Commissioner, Meerut Division, Meerut, which was subsequently transferred to the Court of Additional Commissioner (Judicial-Ist), Meerut Division, Meerut under Section 333 of the Act, 1950, which was numbered as Revision No.125 of 2015 (Satish and Others vs. Jaipal and Others), Revision No.126 of 2015 (Harbhajan and Others vs Ramgopal and Others), Revision No.117 of 2015 (Ikram and Others vs. Ravindra and Others) and Revision No.116 of 2015 (Kanwal Singh and Others vs. Raghuraj and Others). The aforesaid Revisions were clubbed together and Revision No.125 of 2015 (Satish and Others vs. Jaipal and Others) was treated as a leading Revision. The aforesaid revisions were dismissed by the Respondent no. 1 namely Additional Commissioner, Meerut Division, Meerut vide its order dated 3-10-2016.

12. Aggrieved against the aforesaid, the petitioners have preferred the present writ petition. The Writ Petition was duly entertained and interim order of status quo has been passed by this Court in favour of the Petitioners on 23-12-2016.

13. It is argued by the counsel for the Petitioners that the allotment of the land was made in favour of near and dear of the Pradhan of the Gaon sabha is absolutely false and incorrect and in this regard Written statement filed by the Gaon Sabha dated 27-03-2015 has not at all been taken into consideration. It is further argued that though various grounds were taken in the memo of Revision but not a single ground was taken into consideration by the Respondent no.1 while dismissing the aforesaid Revision. Hence, the Revisional Court clearly committed an error of law in proceedings with the matter and dismissing the Revisions by non-speaking order. It is further argued that complainant has not stated anywhere in their complaint that they stood on higher preferential category in respect to the Petitioners and this was sine qua non for maintaining the application under section 198(4) of the Act 1950 and as such in the absence of the same application was liable to be rejected but this aspect of the matter has not been taken into consideration by the court below.

14. It is further argued that the court below relied upon the report dated 15-07-1994 submitted by the concerned Sub Divisional Officer, Sikandarabad but copy of the aforesaid report has never been provided to the petitioners. It is further argued that the entire matter was remanded back vide order dated 03-09-2012 by this Court in Writ B No.40986 of 2001 (Brahm Singh vs. Board of Revenue U.P. at Allahabad and Others), and in such contingencies it was incumbent upon the respondent no.2 to have record a fresh finding qua denovo enquiry as the earlier orders were already set aside by the concerned Commissioner and which has also been affirmed by the Board of Revenue U.P. at Allahabad and those findings of concerned Revisional Court qua court of Additional Commissioner as well as Board of Revenue U.P. at Allahabad was not entirely upset by the Hon'ble court in Writ B No.40986 of 2001 (Brahm Singh vs. Board of Revenue U.P. at Allahabad and Others), and such being the position then it was legally mandatory for the Respondent No.2 to have carried out fresh exercise for proceeding further and admissible evidence

but this salutary exercise was not adhered by the respondent no.2 and accordingly it manifested grave error of law apparent on record.

15. It is further argued that as per sub Section (4) of Section 198 of the Act, 1950 proceedings could only be initiated either suo motu by the Collector or on the application of any "Aggrieved Person" by a allotment of land. It is further argued that insofar as the present case is concerned nothing has been stated in the complaint made by the private respondents that they are the 'aggrieved person'. It is further argued that though this aspect of the matter has been duly raised by the petitioners before the Revisional Authority and though the same was also duly taken note, but the same was not decided in a proper manner. Hence, the orders which are under challenged are liable to be quashed.

behalf of Gaon Sabha as well as counsel for the private-respondents that after looking into the entire aspect of the matter and going through the records, impugned orders were passed by the Authorities which does not call for any interference by this court under Article 226 of the Constitution of the India. It is further argued that since large number of irregularities were committed at the time of allotment of land, the resolution of allotment of Land dated 20.04.1994 and approval order dated 12.05.1994 were rightly cancelled.

17. Heard counsel for the parties and perused the record.

18. From perusal of the record, it transpires that the complaint was made by the Private Respondents against the Petitioners under Sub Section (4) of Section 198 of the Act, 1950. A complete procedure has been provided under the aforesaid Section which reads as follows:-

Section 198(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."*

19. From the bare reading of the said provisions, the position which emerged out that the Collector may of his own motion or on an application of any person aggrieved initiate a proceeding in respect to grant of patta, thus, if any person who moves an application for cancellation of patta which is granted in favour of another person then he has to satisfy that whether he comes within the ambit and scope of person aggrieved in order to enable him to initiate the proceedings for cancellation of patta.

20. In the present case, the ground taken by the private-respondent for initiating a proceeding under section 198(4) of the Act that they are resident of the said village by virtue of the same, they did not fall within the ambit and scope of the word "person aggrieved" rather they are strangers.

21. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved person. Any person means only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a Court of law. A writ petition under Article 226 of the

Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to.

22. From perusal of the aforesaid it is clear that the complaint filed under sub section (4) of Section 198 of the Act, 1950 could only be decided either by suo motu by the Collector or on the complaint made by the 'person aggrieved'. Nothing has been stated in the entire writ petition nor any argument has been raised that the complainant stood on higher preferential category in respect to the Petitioners and this was sine qua non for maintaining the application under section 198(4) of the Act, 1950 and as such in the absence of the same application is liable to be rejected.

23. In **Ram Kumar vs. State of U.P. and Others reported in 2017 (134) RD 428,** definition as well as the scope of the term "Aggrieved Person" as per Section 198 of the Act was briefly discussed. One who moves an application has to satisfy the mandate of being an aggrieved person. Merely by virtue of being a resident of the village one cannot be said to be falling within the scope of an aggrieved person, reinforcing the settled legal proposition that a stranger to the suit cannot be said to be person aggrieved. Further, "Person aggrieved" does not include a person who suffers from psychological or imaginary injury. Paragraph Nos.10, 11, 12 and 14 of the aforesaid Judgment passed in the case of **Ram Kumar (Supra**) is reproduced below:

10. Thus, if any person who moves an application for cancellation of patta which is granted in favour of another person then he has to satisfy that whether he comes within the ambit and scope of person aggrieved in order to enable him to initiate the proceedings for cancellation of patta.

11. In the present case, the ground taken by the petitioner for initiating a proceeding under section 198(4) of the Act that he is resident of the said village by virtue of the same, he does not come within the ambit and scope of the word "person aggrieved" rather he is a stranger person.

12. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved person.

14. Further, a "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised.

24. In the case of **Kanhai and Others vs. State of U.P. and Ors.** reported i**n 212 (4) ADJ 767** It was held that, a person who seeks to question the allotment has to show that he has a preferential right for the said allotment. Seeking cancellation of allotment order without showing preference cannot be questioned except on the intervention of the Gaon Sabha. Thus, having failed

to disclose their right to possess the land, respondents could not be said to have any locus to question the order. Relevant para reads as follows:-

5. The Gaon Sabha has competence to allot the said land in terms of Section 198 of the UPZA & LR Act to class of persons defined therein. While making allotment provision of Section 198 of the Act are required to be complied with. Section 198 of the Act stipulates allotment to be made on the basis of preference to be given to a particular Class. A person who seeks to question the allotment has to show that he had preferential right for the said allotment. Seeking cancellation of allotment order without showing preference cannot be questioned except on the intervention of the Gaon Sabha. Petitioner claims that the land has been wrongly allotted to the respondents without claiming that they have right to seek allotment of the said land under the Act.

6. Rules with regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority. Aggrieved person must show that he had suffered a legal grievance against whom a decision which has been pronounced which has wrongfully refused him of something, which he had a right to demand. It is within this precincts that the aggrieved person can seek redressal of his grievance under Article 226 of the Constitution of India.

25. Similarly in the case of **Hari Shankar Kushwaha and Ors. vs. State of U.P.** and Ors. Reported in **2018 (139) RD 521**, it was emphasized that only a person aggrieved be allowed to challenge the patta. Revevant portion of the judgment reads as follows:-

5. Who is a person aggrieved was a subject matter of judicial interpretation in Adi Pheroz Shah Gandhi v. H.M. Seervai MANU/SC/0044/1970 : AIR 1971 SC 385. The Hon'ble Apex Court had said:- "From these cases it is apparent that any person who feels disappointed with the result of the case is not a person aggrieved. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something."

6. From the above, it is clear that a person can be said to be aggrieved only when his rights are affected because of the existence of the patta, meaning thereby that if the patta goes then he would either continue to remain in possession or come into possession and thereafter till the land. The expression " person aggrieved" was also explained in Pyare Lal v. Deputy Director of Consolidation, Mainpuri Camp at Etah and others MANU/UP/0991/2004 : 2005 (98) RD 106, wherein this Court had held that only if a person who was aggrieved had sought to get a patta cancelled would the Collector initiate proceedings. In the instant case, the complainants were not persons aggrieved and, therefore, the very fact that the complaint was not filed by a person who was eligible to file the complaint would make the impugned orders unsustainable in law. After it has been found that the complaint itself was not maintainable nothing further ought to be looked into. However, since the Collector/Assistant Collector himself was required to make the enquiry and he did not make the enquiry himself, I also hold that orders were bad on account of the fact that the Collector/Assistant Collector himself did not make the enquiry.

26. It is settled law that a person who suffers from legal injury only can challenge the act/action/order etc. by filing a writ petition. Writ Petition under Article 226 of the Constitution is maintainable for enforcing a statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. **[Utkal University etc. Vs. Dr. Nrusingha Charan Sarangi and others (AIR 1999 SC 943) and Laxminarayan R. Bhattad and others vs. State of Maharashtra and another (2003) 5 SCC 413].**

27. Legal right is an averment of entitlement arising out of law. It is, in fact, an advantage or benefit conferred upon a person by a rule of law **[Shanti Kumar R. Canji vs. Home Insurance Co. of New York (AIR 1974 SC 1719) and State of Rajasthan v. Union of India and others (AIR 1977 SC 1361)].**

28. In **Jasbhai Motibhai Desai v. Roshan Kumar Hazi Bashir Ahmad and others [AIR 1976 SC 578]**, the Hon'ble Apex Court has held that only a person who is aggrieved by an order, can maintain a writ petition. The expression 'aggrieved person' has been explained by the Apex Court observing that such a person must show that he has a more particular or peculiar interest of his own beyond that of the general public in seeing that the law is properly administered. In the said case, a cinema hall owner had challenged the sanction of setting up of a rival cinema hall in the town contending that it would adversely affect monopolistic commercial interest, causing pecuniary harm and loss of business from competition. The Hon'ble Apex Court observed as under:-

"Such harm or loss is not wrongful in the eye of law because it does riot result in injury to a legal right or a legally protected interest, the business competition cousing it being a lawful activity. Judicially, harm of this description is called daminum sine injuria. The term injuria being here used in its true sense reason why law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large. In the light of the above discussion, it is demonstratively clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully effect his title to something. He has not been subjected to legal wrong. He has suffered no grievance. He has no legal peg for a justiciable claim to hand on. Therefore, he is not a "person aggrieved" to challenge the ground of the no objection certificate. (see Babua Ram and others Vs. State of U.P. and another (1995) 2 SCC 689 and Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and others (1997) 4SCC 452) and a decision given by a Coordinate Bench of this Court in the case of Dharam Raj Vs. State of U.P. and others, 2009 (27) LCD 1373".

29. In Collin's English Dictionary, the word "aggrieved" has been defined to mean "to ensure unjustly especially by infringing a person's legal rights". In Webster Comprehensive Dictionary,

International Edition at page 28, 'aggrieved person' is defined to mean "subjected to ill-treatment, feeling an injury or injustice. Injured, as by legal decision adversely infringing upon one's rights". In Stroud's Judicial Dictionary, Fifth Ed., Vol. 1, pages 83-84, person aggrieved means "person injured or damaged in a legal sense".

30. In Black's Law Dictionary, Sixth Ed. at page 65, aggrieved has been defined to mean "having suffered loss or injury; damnified; injured", aggrieved person has been defined to mean:

"One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation."

31. Thus, the person aggrieved is, therefore, in this context, would mean a person who had suffered legal injury or one who has been unjustly deprived or denied of something.

32. From perusal of the facts as narrated above and also for the arguments as has been raised by the counsel for the respondents it is clear that complainants who moved application under Section 198(4) of the Act, 1950 against the petitioners does not fall within the defenition of person aggrieved.

33. In this view of the matter, the Court is of the opinion that the order dated 03.10.2016 passed by the Respondent No.1 namely Additional Commissioner, Meerut Division, Meerut as well as order dated 30.06.2016 passed by the Respondent No.2 namely Additional Collector/ A.D.M., (Administration), Bulandshahar are liable to be set aside and are hereby quashed.

34. The writ petition is **allowed**. No order as to costs.

(2026) 2 ILRA 1647
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 02.02.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002144 of 2002

Sher Bahadur Singh ...Petitioner
Versus
Addl. Commissioner Judicial Lucknow & Ors. ...Respondents

Issue for consideration

Petitioner's land was auctioned for recovery of dues. Sale conducted and approved by S.D.O.. Petitioner filed appeal before Commissioner. Commissioner decided matter on merits without formally condoning delay. Petitioner challenged jurisdiction of S.D.O. to confirm sale.

Headnotes

A. Land law-U.P. Zamindari Abolition and Land Reforms Act,1950-Sections 279, 284, 286 & U.P.Z.A. & L.R. Rules,-Rr. 272, 273,281-285,285-A, 285-C, 285-H, 285-J-Recovery of arrears-Auction sale of land-Jurisdiction-Confirmation of sale-Power of Collector Vs S.D.O./Assistant Collector-Delegation of Powers-Scope-Power to confirm sale vests exclusively in Collector and not in S.D. O. /Assistant collector-Though S.D.O. may be authorised to conduct auction proceedings, such delegation does not extend to confirmation of sale unless specifically authorised-In absence of any material showing such authorization, order of S.D.O. confirming sale is without jurisdiction-Procedural irregularity-Appeal decided without formal delay condonation vitiates order-Procedural compliance is mandatory-Matter remanded for fresh decision. Allowed.(Para 11 to 22)

Held

The court examined the statutory framework under the U.P.Z.A. & L.R. Act,1950 & Rules and held that the power to confirm sale is vested exclusively in the Collector. The court further held that the appellate authority committed a procedural illegality by deciding the appeal on merits without formally allowing the delay condonation application, rendering the order unsustainable in law. Emphasizing that delegated authorities must act strictly within the limits of their conferred powers and that procedural compliance is mandatory, the court concluded that the order passed by the S.D.O. confirming the sale was without jurisdiction and void. The impugned order was quashed and the matter was remanded back to the Additional Commissioner to decide the issue afresh. (E-6)

Case law Cited

Brahm Singh Vs Board of Revenue & Ors 2008 (5) ADJ 331, Ajay Upadhayay Vs Collector, Ballia & Ors 2008 SCC OnLine All 28, Jagar Pal Singh Vs State of U.P. & Ors. (1994) 12 LCD 612-referred to.

List of Acts

U.P. Zamindari Abolition and Land Reforms Act,1950 & U.P.Z.A. & L.R. Rules

List of Keywords

Auction sale, Recovery of arrears, Jurisdiction, Confirmation of sale, Collector powers, S.D.O. Powers, Delegation, Delay condonation, void order, Remand.

Case Arising from

CIVIL JURISDICITON: WRIT-C No.- 1002144 of 2002
Sher Bahadur Singh Vs. Additional Commissioner Judicial Lucknow & 2 Ors
From the judgment and order dated 02.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):-
Shafiq Mirza Humayun Mirza, Syed Ahmad Jamal
Advs. for Respondent(s):-
C.S.C., A.z Siddiqui, Asheesh Agnihotri, I.h Farooqui, Ikhlaq Hussion Farooqui, Praveen Chandra

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Syed Ahmad Jamal, learned counsel for the petitioner and Shri Satrughan Chaudhary, learned Additional Chief Standing Counsel appearing for the respondents-State.

2. None has put in appearance for the private respondents.

3. By means of the present writ petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari quashing the order dated 10.5.2002 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow contained in Annexure No.3 to this writ petition.

4. Factual matrix of the case is that plot no.611 measuring 311, plot no.11/1 measuring 7.653, plot no.116 measuring 759 and plot no.51 measuring 0.63 are said to have been auctioned for recovery of certain alleged dues against the petitioner. On 15.2.2000, auction is said to have taken place. On 23.3.2000, the said auction is said to have been approved.

Rule 281 onwards of the Rules provide for sale of immovable property. According to Rule 281 of the Rules recourse can only be had to the sale of holding under Section 284 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. When the processes specified in clauses (a), (b), (c) or (d) of Section 279 of the Act would be insufficient for the recovery of the arrears.

The process for sale of holding under Section 284 of the Act and other immovable property under Section 286 shall be issued by the Collector. Section 284 of the Act provides that the Collector may in additional to or instead of any of the processes herein before specified either on his own motion or on the application of the Land Management Committee, attach the holding in respect of which an arrears is due.

Rule 272 of the Rules provides that process for attachment of holding under clause (d) of Section 279 may be issued only by the Collector. Rule 273 of the Rules provides that wherein any land is attached a proclamation in Z.A. Form-73 shall be affixed at a conspicuous place in the village in which the land is situate and it shall also be notified by beat of drum. The attachment of holding under the Rules shall be effected in the matter prescribed under Order 21 Rule 54 of the Code of Civil Procedure. Rule 282 of the Rules provides for a proclamation of sale.

Rule 283 of the Rules provides the manner in which the Collector has to issue the sale proclamation. Rule 283 also deals regarding the said manner. Rule 285-A provides that every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. It further makes it clear that no such sale shall take place on a Sunday or other gazetted holiday or until after the expiration of atleast 30 days from the date on which the proclamation under Rule 282 was issued. It also provides that the Collector may from time to time postpone the sale.

Rule 285-C provides that if the defaulter pays the arrears in respect of which the land for other immovable property is to be sold at any time before the day fixed for the same, the person authorized to collect the amount in arrears or to the person appointed under Rule 282-A to conduct the sale, the sale officer, on being satisfied of the payment shall stay the sale.

Rule 285-H of the Rules provides that any persons whose holding or other immovable property has been sold under the Act may, at any time within 30 days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office (a) for payment to the purchaser, a sum equal to 5% of the purchase-money; and (b) for payment on account of the arrears, the amount specified in the proclamation in Z.A. Form-74 as that for the recovery of which the sale

was ordered, less any amount which may, since the date of such proclamation of sale, have been paid on that account; and (c) the costs of the sale. On the making of such deposit the Collector shall pass an order setting aside the sale.

The S.D.O., Sadar passed an order on 23.3.2000 approving the sale. The petitioner preferred an appeal before the Commissioner and the Commissioner without passing order on the delay condonation application set aside the matter on merits vide order dated 10.5.2002. Prior to passing of the order, an interim order was also also granted on 26.4.2000.

5. Submission of learned counsel for the petitioner is that the order passed by the S.D.O. is wholly without jurisdiction as he is not empowered to confirm/ approve the sale. In the memo of appeal, the petitioner took specific ground that the S.D.O. has no power to pass order of approval of sale and in spite of that, without condoning the delay, the appellate Court proceeded to decide the appeal on merits. In this view of the matter, submission of learned counsel for the petitioner is that without allowing delay condonation application, there was no justification on the part of the appellate Court to decide the appeal on merits.

6. In support of his submission, learned counsel for the petitioner has placed reliance upon the following judgments:

(i) Brahm Singh v. Board of Revenue and others reported in 2008(5)ADJ 331

(ii) Ajay Upadhayay v. Collector, Ballia and others reported in 2008 SCC OnLine All 28

7. Reverting the submissions advanced by learned counsel for the petitioner, Shri Chaudhary, learned Additional Chief Standing Counsel submitted that the S.D.O. is empowered to pass order of sale and placed reliance upon Full-Bench judgment rendered in the case of **Jagar Pal Singh v. State of U.P. and others** reported in the case of **(1994) 12 LCD 612.**

8. Learned Additional Chief Standing Counsel also placed reliance upon the provisions contained in 285(i) and 285(k) and submitted that the petitioner cannot traveled beyond limitation of 30 days in approaching the Commissioner in revision.

9. Learned Additional Chief Standing Counsel lastly submitted that remedy lies in filing civil suit in case of any default or irregularity in passing the order by the S.D.O..

10. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record as well as law-reports cited by learned counsel for the parties.

11. For deciding the controversy involved in the present writ petition, relevant portion of the judgments relied upon by learned counsel for the petitioner is being quoted below:

(i) Brahm Singh (supra):-

34. The contention raised was that under Section 15A of 1952 Act, the Collector has only been empowered to cancel the grant of any land made under Section 14 of 1952 Act if it is found to have been obtained by misrepresentation or fraud. It was further contended in that matter that the Collector appointed under Section 14 of 1901 Act is a distinct and separate authority to that of the Additional Collector appointed under Section 14A of 1901 Act and thus, in view of Section 15A of 1952 Act, the Additional Collector is not vested with the power to cancel the grant. Their Lordships repelled the contention and held as under:

We find no merit in aforementioned submission made by the learned counsel for the petitioners. Sub-section (3) of Section 14A of the U.P. Land Revenue Act empowers an Additional Collector in such cases or class of cases as the Collector concerned may direct. Sub-section (4) then lays down that the U.P. Land Revenue Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising any powers or discharging any duties under Sub-section (3), as if he were the Collector of the district. This provision makes it absolutely clear that in cases, whether they pertain to U.P. Land Revenue Act or to any other law, assigned by the Collector to an Additional Collector, the Additional Collector is fully entitled to perform the functions of the Collector. Accordingly in cases assigned to him by the Collector, the Additional Collector is fully competent to exercise the functions of a Collector under Section 15A of the U.P. Bhoodan Yagna Act and it cannot be said that the Additional Collector lacks jurisdiction to pass an order cancelling the grant made in favour of the petitioners on ground that he was not the Collector of the districts.

35. We, having taken note of the provisions contained in 1901 Act and 1950 Act and in view of the discussions made earlier, endorse the similar view. Therefore, in Brij Kishore (supra) it has rightly been held that by virtue of Sub-section (4) of Section 14A of 1901 Act the Additional Collector when exercises power of Collector as directed by the Collector. Is Collector of the District for the purpose of all such Acts where the Bench with respect, while considering the validity of an order passed by the Additional Collector under Section 198(4) of 1950 Act, has only considered the provisions contained in Sub-section (3) of Section 14A of 1901 Act and it appears that their Lordships attention was not drawn to Sub-section (4) and, therefore, their Lordships proceeded as there was no order that the Additional Collector, Deoria was directed to exercise power. However, their Lordships, with respect, did not consider the effect of Sub-section (4) of Section 14A and, therefore, there is no discussion with respect to Sub-section (4) of Section 14A while interpreting the expression 'Collector' in the aforesaid case nor their Lordship's attention was drawn to the their judgment in the case of Brij Kishore (supra) and thus, with respect, in our view, the judgment in the case of Shiv Avtar (supra) is per incuriam and does not lay down the correct law and therefore, the law laid down in the case of Brij Kishore and Ors. v. Atrtkta Zila Adhikari and Ors. (supra) is the correct law.

(ii) Ajay Upadhayay (supra):-

8. According to Government Order No.1/1/76(2)(6)-Rajasva-7 dated 17-1-1976, all Assistant Collectors and In-charge of Tahsildars have been authorized to sanction auction and on this basis, it has been argued that S.D.O./ Dy. Collector, Sikandrpur, Ballia was authorised to set aside the sale, but we do not agree with the interpretation made by learned counsel for the

respondents. In the case of Jagat Pal Singh v. State of U.P., 1994 ACJ 608, this Court has clearly held that in view of said Notification/ Government Order, the S.D.O./Dy. Collector concerned has been given power only to conduct sale and not to confirm or set aside sale. That power lies only with the Collector concerned and no one else.

12. On perusal of the above-extracted judgment relied upon by learned counsel for the petitioner, it is evident that whether Sub-divisional Officer had power to confirm the sale or not. It has been seen in the earlier part of this judgment that under Rule 285J of the U.P. Zamindari Abolition and Land Reforms Rules the Collector has to confirm the sale after expiry of the period of 30 days if the sale does not contravene the provisions of Section 154 of the U.P. Zamindari Abolition and Land Reforms Act. The power to confirm the sale vests with the Collector and not with the Sub Divisional Officer.

13. The Board of Revenue has delegated the power to the Assistant Collector/ Sub Divisional Officer on 17.11.1976 to perform the functions of the Collector which are performed by the Collector vide Revenue Board Notification No.1/1/76(3)6 dated 17.11.1976. Notification goes to show that the Sub Divisional Officer/ Assistant Collector has only been authorised by this Notification to conduct the auction proceedings under Section 286 of the Zamindari Abolition and Land Reforms Act subject to the condition that confirmation of sale shall be done by the Collector.

14. The power of the Collector, when he acts under Section 284 of the Zamindari Abolition and Land Reforms Act has not been conferred upon the Assistant Collector/ Sub Divisional Officer by this notification. As seen in the earlier part of this judgment the sale in the present case has taken place under the provisions of Section 284 of the Act and not under Section 286. Therefore, this notification dated 17.11.1976 will not apply to the facts of the case.

15. Moreover, there is another ground on the basis of which it cannot be said that the Assistant Collector/ Sub Divisional Officer has been invested with the power to confirm the sale. The last sentence of the notification dated 17.11.1976 clearly goes to show that the power of conducting sale proceedings under Section 286 of the Act has been conferred upon the Assistant Collector/ Sub Divisional Officer with the condition that confirmation of sale shall be done by the Collector. It means that only a power to auction the property or conduct the sale has been given to the Assistant Collector/ Sub Divisional Officer and not a power to confirm the sale which has been given to the Collector under the provisions of Rule 285I of the U.P. Zamindari Abolition and Land Reforms Rules.

16. In the judgment in the case of **Ajay Upadhayay (supra)**, a similar view was taken by the Division Bench of this Court.

17. Learned Additional Chief Standing Counsel relied upon judgment of Full Bench rendered in the case of **Brahm Singh (supra)** and submitted that once the Collector authorizes to Assistant Collector/ Sub Divisional Officer to confirm the sale, he can pass an order in this regard.

18. On perusal of the above-extracted judgment relied upon by learned Additional Chief Standing Counsel, it is crystal clear that authorization is must by the Collector to pass an appropriate order by the Assistant Collector.

In the present case, there is no material to establish that at any point of time, the Collector authorized to the Assistant Collector/ Sub-Divisional Officer to confirm the sale. Therefore, the judgment relied upon by learned Additional Chief Standing Counsel is not applied to the present facts and circumstances of the case.

19. In regard to second objection that under provision of Rule 285(i) and Rule 285(k) of the Rules, in case no objection is filed within 30 days from the date of auction sale, there is no remedy available to the petitioner to approach before any Forum, I have perused the record as well as aforesaid provisions of Rules and on its perusal it is clear that the petitioner filed appeal against the order of S.D.O. along with delay condonation application. The Additional Commissioner passed the order rejecting claim set up by the petitioner without condoning the delay on merits. Meaning thereby, in approaching the Commissioner, delay was condoned and the order was passed on merits, although no formal order was passed on delay condonation application. Therefore, the impugned order passed by the Additional Commissioner is wholly without jurisdiction and is not sustainable in the eyes of law.

20. The judgment relied upon by learned Additional Chief Standing Counsel has no where considered the judgment relied upon by learned counsel for the petitioner.

21. Considering in totalities of facts and circumstances of the case and the reasons assigned above, this Court of the considered opinion that the S.D.O. has no power to confirm the sale. It is the Collector who is empowered to confirm the sale. The Additional Collector has no where considered in his order in regard to ground taken in paragraph 14 of the memo of appeal, especifically that the power to confirm the sale does not lie upon the S.D.O.

22. In the result, this writ petition succeeds and is hereby **allowed**. Order dated 10.5.2002 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow is quashed.

23. However, the matter is remanded back to the Additional Commissioner to decide the jurisdiction of the S.D.O. that whether the order dated 23.03.2000 is within his jurisdiction or not.

24. No order as to costs.

(2026) 2 ILRA 1653
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.02.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000077 of 1999

State of U.P. **...Petitioner**
Versus
Addl. Commissioner Lucknow **...Respondent**

Issue for consideration

The case involved the agricultural land of late Shri Gaindan lal in Hardoi. While initial ceiling proceedings were dropped, fresh proceedings after his death led the Prescribed Authority to declare 4.8528 hectares as surplus.

Headnotes

Civil law-Constitution of India,1950-Article 226-U.P. Imposition of Ceiling on Land Holdings Act,1960-Section 4-A-Determination of irrigated land-Mandatory procedure-Necessity of examining Khasras for Fasli years 1378, 1379, 1380-Failure to summon or peruse original records vitiates the finding-Onus of Proof-Burden lies squarely on the State to establish the irrigated character of land once challenged by the tenure-holder-Remand order-Subordinate authorities and Prescribed Authorities are strictly bound by directions issued in remand-legal presumptions-No presumptions of correctness for disputed entries in the notice served under Section 10(2)-Jurisdiciton-Non-compliance with mandatory procedural requirements under section 4-A results in a lack of jurisdiction to declare land as surplus-Dismissed.(Para 12 to 19)

Held

The court ruled that the determination of "irrigated land" under the Act,1960 must strictly follow the mandatory procedure in Section 4-A. This requires the Prescribed Authority to examine khasras for Fasli years 1378, 1379,1380, village map and relevant records rather than relying on oral evidence. The onus of proof lies squarely on the State to establish the irrigated character of the land once a tenure-holder challenges the ceiling notice. Furthermore, subordinate authorities are legally bound to carry out the specific directions contained within a remand order. Findings at intermediate stages of litigation possess only provisional finality and do not prevent a higher court for examining the legal position. Since the Prescribed Authority failed to adhere to these statutory mandates and record-based inquiries, the resultant order was deemed vitiated in law. Consequently, the High court found no perversity in the appellate order setting aside the surplus declaration and dismissed the writ petition. (E-6)

Case law Cited

Ram Nagina Chaudhary Vs State (1978 RD 280), Jasraj Indersingh Vs Hemraj Multanchand (AIR 1977 SC 1011), Balaswaraswami Varu Vs Millidi Dorayya (AIR 1972 AP 250 DB), Mohammad Miyan Vs State [2001 (3) AWC 2359), Jaswant Singh Vs State of U.P. (1979 All LJ 25)., Ram Sagar Vs Civil Judge Bahraich (1985 All LJ 125, State of U.P. Vs Mukh Ram Singh (1991 RD 312), Nathoo Singh Vs State of U.P. (1979 All LJ 354)-referred to.

List of Acts

Constitution of India, 1950.
U.P. Imposition of Ceiling on Land Holdings Act, 1960
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act,1972
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act,1974.

List of Keywords

Ceiling on land holdings, Surplus land declaration, Irrigated land determination, Section 4-A compliance, Khasras/Fasli years, Onus of Proof, Binding nature of remand order, Mandatory Procedural requirements, Provisional Finality, Appellate Authority jurisdiction.

Case Arising from

CIVIL JURISDICTION: Writ C No. 3000077 of 1999

State of U.P. Through Collector Vs. Addl. Commissioner Lucknow

From the judgment and order dated 27.02.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner(s):-

Chief Standing Counsel,

Advs. for Respondent(s):-

Chief Standing Counsel, C.S.C, Pawan Kumar Maurya, Prabhakar Vardhan Chaudhary, Usman Siddiqui

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri S.G. Singh, learned Standing Counsel for the petitioner-State and Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri P.V. Chaudhary, learned counsel for the respondent.

2. Heard learned Standing Counsel appearing for the petitioner"State and learned counsel appearing for the respondents. The Court has also perused the original records, pleadings exchanged between the parties and the short notes of arguments filed on behalf of the respondents.

3. The present writ petition has been filed by the State, challenging the order dated 07.09.1998 passed by the learned Additional Commissioner, Lucknow Division, Lucknow, whereby the appellate authority set aside the order of the Prescribed Authority dated 21.03.1998, passed under the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

4. The facts giving rise to the present controversy, in brief, are that the original tenure holder late Shri Gaindan Lal held agricultural land measuring 13.9690 hectares in village Rampur Majhiyara, Pargana and Tehsil Bilgram, District Hardoi. Ceiling proceedings were initially initiated against him, however, the same were dropped as his holding did not exceed the prescribed ceiling limit. Shri Gaindan Lal expired on 21.10.1989, and thereafter the land came to be recorded in the name of his son, Vinod Kumar.

5. Subsequently, proceedings under the Ceiling Act were again initiated by issuance of notice under Section 10(2) of the Act. Vinod Kumar filed objections on 14.11.1994. The Prescribed Authority, after considering the objections, passed an order dated 30.12.1995, declaring 4.8528 hectares of land as surplus. The said order was challenged in appeal, which resulted in a remand order dated 29.03.1997, requiring the Prescribed Authority to reconsider the matter in the light of the holdings as existing on the relevant date i.e. 8.6.1973.

6. After remand, the Prescribed Authority passed an order dated 21.03.1998. Aggrieved thereby, an appeal was preferred, which came to be allowed by the learned Additional Commissioner by order dated 07.09.1998. The State has assailed the said appellate order by filing the present writ petition.

7. Learned Standing Counsel for the petitioner"State submitted that the appellate authority has committed a patent error of law in extending the benefit of Section 5(3)(b) of the Act by taking into consideration events which occurred after the relevant date of 8.6.1973. It was contended that on the relevant date the original tenure holder was alive and admittedly had a major son, and therefore, the statutory condition for grant of additional land under Section 5(3)(b) was not fulfilled. It was further urged that the impugned order is contrary to Rule 19(3) of the U.P. Ceiling Rules, 1961, as notice under Section 10(2) had been issued during the lifetime of the tenure holder, and thus the proceedings could not have been shifted to the heirs by taking into account subsequent death. It was also argued that the appellate authority exceeded the scope of the remand and re-determined issues which stood concluded.

8. Per contra, learned counsel for the respondents sought to sustain the impugned order by contending that re-determination of land could be made only in cases where, due to passage of time, unirrigated land became irrigated or grove land lost its character. It was submitted that no spot inspection had been conducted by the Prescribed Authority, that relevant khasras of Fasli years 1378-80 had not been examined, and that the Prescribed Authority had failed to comply with the remand order dated 29.03.1997. It was also urged that on an earlier occasion the original tenure holder had not been found to possess surplus land and that, except for a negligible purchase by the mother, no further land had been acquired by the family. On the aforesaid premises, it was contended that re-determination was impermissible even under Sections 29 and 30 of the Act.

9. In support of the aforesaid submissions, learned counsel for the respondents placed reliance upon the following judgments :-

(i) **Ram Nagina Chaudhary v. State (1978 RD 280).** Relevant paragraphs 5 to 8 are being quoted below :-

"5. In my opinion, the first contention raised by the learned counsel for the petitioner, is correct. It is not denied that the aforesaid remand order was not questioned by any of the parties in any higher forum. It cannot also be doubted that so far as the Prescribed Authority and the lower appellate court itself are concerned, the said order was binding on them. In the judgment of the Division Bench reported in Fritam Singh v. Asstt. Director of Consolidation, 1978 AWC 137 the implication and effect of a remand order have been considered and discussed. After a review of the case law, the Division Bench laid down certain propositions as emerging from such case law. The 7th proposition laid down in the said judgment is as follows:"

"So far as the court passing the remand order is concerned, it cannot question it at any subsequent stage and similarly the court below to whom the case has been remanded is bound to carry out the remand order and cannot allow it to be questioned. The remand order can be questioned only in a court higher than the court which passed the remand order."

6. It is not necessary to pause here to examine whether the Prescribed Authority is a court or not. Even if the officer acting as the Prescribed Authority be held to be not a presiding officer of a regular court, still, in view of Section 37 of the U.P. Imposition of Ceiling on Land Holdings Act, he undoubtedly has all the powers and privileges of a civil court and he has to follow the procedure laid down in the Code of Civil Procedure, 1908 for the trial and disposal of suits relating to immovable property. Similarly, Section 38 vests in the appellate court all the powers and privileges of a civil court and enjoins that the procedure for the hearing and disposal of appeals laid down in the Code of Civil Procedure, 1908 should be followed. It seems to me that the aforementioned 7th proposition laid down by the Division Bench would be applicable to a remand order passed by an appellate authority under the U.P. Imposition of Ceiling on Land Holdings Act also. In this view of the matter, I have reached the conclusion that it was not open to the Prescribed Authority to act contrary to the directions given in the remand order passed by the lower appellate court and the Prescribed Authority was indeed bound to carry out the said directions. The lower appellate court in its remand order had, inter alia, observed"

"Plots of khata no. 181 of village Sisotar and 621 of village Sisotar measuring 17.46 acres were recorded under the orders of the S.D.O. of Bansdih dated 7-9-1968 as tenure not only of the appellant but also of five other persons. The Prescribed Authority treated the entire area as belonging to the appellant himself. This was wrong. The Prescribed Authority should have made enquiries to find out as to what was the share of the appellant in those plots. The learned counsel for the appellant tells me that the appellant did not own the entire area and that the appellant's share should prima facie be not more than 1/6. I think that the case should go back to the Prescribed Authority for fresh decision after enquiry in this respect."

7. In the operative part of the remand order the lower appellate court directed as under:"

"I, therefore, allow this appeal, set aside the impugned order and remand the case to the Prescribed Authority for fresh decision after allowing the parties reasonable opportunity of being heard and in the light of the observations made above."

8. In view of the said position, it was not open to the Prescribed Authority to hold that the petitioner alone was the exclusive holder of the entire 17.46 acres of Khatas nos. 181 and 621. When no evidence was forthcoming in respect of the respective shares of the recorded tenure-holders, the ordinary presumption would be that all the six co-tenure-holders had equal share in the said khatas and the Prescribed Authority should have proceeded on the said base. Therefore, the order of the Prescribed Authority and the subsequent order of the lower appellate court affirming the decision of the Prescribed Authority must be held to be illegal and the mistakes are apparent on the face of the record."

(ii) **Jasraj Indersingh v. Hemraj Multanchand (AIR 1977 SC 1011).** Relevant paragraph 14 is being quoted below :-

"14. Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other court of coordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher court when it comes up in appeal before it. This is the correct view of the law, although Shri Phadke controverted it, without reliance on any authority. Nor did Shri S.T. Desai, who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it transpires that in Lonankutty [Lonankutty v. Thomman, (1976) 3 SCC 528] this proposition has been affirmed. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject-matter is available for adjudication before us. If, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Otherwise, the whole lis for the first time comes to this Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law by this Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality. After discussing various

aspects of the matter, Chandrachud, J. speaking for the Court in Lonankutty [Lonankutty v. Thomman, (1976) 3 SCC 528] observed: "The circumstance that the remaining judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment." The contention barred before the High Court is still available to be canvassed before this Court when it seeks to pronounce finally on the entirety of the suit."

(iii) **Balaswaraswami Varu v. Millidi Dorayya (AIR 1972 AP 250 DB)**. Relevant paragraphs 5, 9 and 12 are being quoted below :-

"5. The learned Judge overruled the plea that the Tribunal and Asst. Settlement officer acted in excess of jurisdiction. He confirmed the Tribunal's view that the land in question is "Communal waste land" and rejected the writ petitions.

9. The Assistant Settlement Officer held in the first instance on 30-5-1958 that the tenants were ryots within the meaning of Sec. II of the Estates Abolition Act and directed the issue of a patta accordingly. This decision was questioned on appeal not by the Government but only by the deities. The tribunal that decided the appeal set aside the finding and directed a fresh enquiry. So far as the Government was concerned there was no challenge of the finding that the land was ryoti. In view of this position, it is contended by counsel for the appellants that the Government is precluded from asserting after the remand that the land is of such a nature that it vests in Government absolutely and no ryotwari patta is capable of being granted to any party. The scope of the remand is very limited. The function of the settlement officer is to determine in terms of the order of remand, whether the deities or the tenants are to be the grantees of the patta. There is no warrant for reopening the settled issue that a patta could be granted. This position was not canvassed in the counter affidavit of the Collector filed on behalf of the respondent.

12. The position therefore is that one of the two rival claimants is entitled to the issue of ryotwari patta. The tribunal, it is manifest did not consider that question. Nor did the Asst-Settlement officer approach the question in the true perspective. He exceeded the limit of his jurisdiction which was to conform to the limits of the orders of remand."

(iv) **Mohammad Miyan v. State [2001 (3) AWC 2359).** Relevant paragraphs 9 to 13 are being quoted below :-

"9. A reading of the aforesaid statutory provisions clearly reveals that all proceedings under sub-sections (3) to (7) of Section 14 of the principal Act, as it stood immediately before the commencement of this Ordinance pending before any Court or authority immediately before the date of such commencement shall abate. A reading of sub-section (2) of Section 27 further reveals that where any order is passed by the competent authority under the principal Act before January 17, 1975 determining the surplus land in relation to a tenure holder and the Prescribed Authority is required to redetermine the surplus land under Section 9 of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U.P. Act II of 1975), then notwithstanding anything contained in sub-section (2) of Section 19 of the U.P. Imposition of Ceiling on Land Holding (Amendment) Act, 1972, every appeal under Section 13 of the principal Act or other proceedings in

relation to such appeal, preferred against the said order on or after January 17, 1975, and pending immediately before the date of commencement of this Ordinance shall abate.

10. In the present case, as stated above, the proceedings were initiated in the year 1974, the surplus land was determined under the principal Act. The appeal was partly allowed on 30-7-1980, therefore, the provisions of sub-section (2) of Section 27 have got full application to the facts of the present case. The proceedings before the appellate authority after amending the Act came into force were liable to abate. The appellate authority acted illegally in proceeding with the appeal and declaring 7 bigha 7 baswa 10 biswansi land of the petitioner as surplus land and in asking the petitioner to give his choice.

11. The order passed by the appellate authority is, thus, liable to be quashed.

12. In view of the provision of sub-section (3) of Section 27 of the Act, after abatement, the Prescribed Authority is legally entitled to redetermine the surplus land in accordance with the amended Act. Therefore, in view of sub-section (3) of the Section 27, it will be open to the Prescribed Authority to redetermine the ceiling limit of the petitioner and to declare his land as surplus land, if any, in accordance with law and after following the procedure prescribed for the same.

13. Subject to what has been stated above, this petition succeeds and is allowed. The order dated 20-11-1974 passed by the Prescribed Authority and that of appellate authority dated 30-7-1980 are hereby quashed. So far as the claim of respondent Nos. 4 and 5 is concerned, they will be at liberty to participate in the proceedings before the Prescribed Authority and to show that the land held by them was not liable to be declared as surplus land."

(v) **Jaswant Singh v. State of U.P. (1979 All LJ 25).** Relevant paragraphs 6 and 16 are being quoted below :-

"6. The term "irrigated land has been defined in Sec. 3(11) of the Act which reads as follows:

"Irrigated land" means land determined as such in the manner laid down in Section 4-A.

In view of the definition of the term "irrigated land" contained in Sec. 3(11) of the Act, it is obvious that the Prescribed Authority can only act in accordance with the procedure contained in Sec. 4-A of the Act in order to determine the same. It is not open to the Prescribed Authority to adopt a procedure inconsistent with the provisions of Sec. 4-A of the Act in order to find out "irrigated land." The relevant part of Sec. 4-A reads as follows:

"The Prescribed Authority shall examine the relevant khasras for the years 1378 fasli, 1379 fasli and 1380 fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the Prescribed Authority is of opinion:

Firstly (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years; by (i) any canal included in Schedule No. 1 of irrigation rates notified in notification no. 1579-W-XXIII-62-W-1946, dated March 31, 1953, as amended from time to time or;

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

Secondly, that irrigation facility became available to any land by a State irrigation work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under Sec. 10; or

Thirdly (a) that any land is situated within the effective command area of a lift irrigation canal of a State tube-well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is ??? growing at least two crops in an agricultural year; then the ??? Authority shall determine such land to be irrigated land for the purpose of this Act"""""

A perusal of the above would show that Sec. 4-A makes it obligatory on the Prescribed Authority, to examine khasras for the years are 1378, 1379 and 1380 Faslis. It further makes it obligatory for the Prescribed Authority also to examine the latest village map. It then confers a discretion on the Prescribed Authority to examine such other records as it may consider necessary and also to make local inspection, if that too be necessary. The section then proceeds to say that thereafter, if the Prescribed Authoriiy be of opinion, as mentioned in sub-sections Firstly, Secondly and Thirdly, he shall determine the land to be "irrigated land." The word "thereupon" occurring in Sec. 4-A of the Act, to our mind, is meaningful. According to Webster's New International Dictionary, the word "thereupon" means "as a result of some specified things." Reading the word "thereupon" occurring in Sec. 4-A in that manner, the mandate contained in Sec. 4-A appears to be that the opinion specified in sub-sections Firstly, Secondly and Thirdly of Sec. 4-A has to be formed by the Prescribed Authority upon the khasra for the years 1378, 1379 and 1380 faslis, upon the village map, upon such other records as it may consider necessary and upon local inspection, if the Prescribed Authority considers it necessary to make one. There are no words in Sec. 4-A to justify anything other than that specified therein to be made use of by the Prescribed Authority for the formation of opinion on the points specified in sub-sections Firstly, Secondly and Thirdly thereof. The legislature thought it fit to confine the scope of enquiry to the examination of documents and local inspection presumably because almost everything that is mentioned in various sub-sections of Sec. 4-A was capable of being ascertained on the basis thereof and, indeed, where any fact can be ascertained on the basis of documents, oral evidence can serve no useful purpose.

16. For all the reasons stated above, we find ourselves in agreement with the view expressed by Hon'ble R.M. Sahai, J. in Ghasiram v. State (supra), and we hold that it is not permissible for a Prescribed Authority to make use of any oral evidence in the course of an enquiry under section 4-A of the Act."

(vi) **Ram Sagar v. Civil Judge Bahraich (1985 All LJ 125).** Relevant paragraphs 4, 5 and 7 are being quoted below :-

"4. I have carefully considered the arguments of the learned counsel for the parties and I find much substance in the arguments of the learned counsel for the petitioner. It is well settled that while computing the irrigated area, the Prescribed Authority has to consider Khasra and relevant revenue records in order to find out other irrigation facilities were available to any land in respect of any crop in 1378F, to 1379 and 1380F. by any canal, or any State tube well or by a private irrigation work and also to find out whether two crops were grown over such land in any of the aforesaid years, see Roshan Singh v. State of U.P., 1978 All LJ 1376.

5. It is also equally well settled that the onus lies on the State to establish that the land which is mentioned in the notice is irrigated land when a challenge is made by the tenure-holder while filing objection. State Government is a party to every proceedings under Section 10(2) of the Act. In such a case there is an adversary proceedings before the Prescribed Authority between the tenure-holder and the Government. It has been held in Roshan Singh's case (supra) that in such a case what comes out is that the Government assumes the role of plaintiff and the tenure-holder that of the defendant. On the basis of the statement prepared under Section 10 and the objection filed by the tenure-holder-petitioner thereto, the Prescribed Authority strikes the issue and decides the case. When it is disputed by a tenure-holder in the objection filed against a notice that any particular plot is unirrigated and that the same has been wrongly treated as irrigated land, the onus lies squarely on the State to establish that any land treated as irrigated land in the notice actually bears that character. It is not for the tenure-holder to establish in negative that the land is unirrigated and that it has been wrongly treated to be irrigated land in the notice. It is incumbent upon the Prescribed Authority to examine the relevant Khasras for the years 1378, 1379 and 1380 Fs. in order to ascertain the nature and character of the land in question. This question cropped up for consideration before the Full Bench of this Court in "Hareshwar Dayal Seth v. Second Addl. Distt. Judge decided on 27-7-1981 in writ petn. No. 767 of 1977. Reported in 1982 All CJ 207, wherein it was held that the Prescribed Authority has to summon and examine the aforesaid relevant Khasras. Thus the onus does not lie on the tenure-holder to establish that the land which has been treated to be irrigated in the notice does not bear that character because there is no presumption as to the correctness or validity of the entries which are disputed or challenged.*

7. Although the lower appellate court has observed that the Prescribed Authority has wrongly decided the issue and the manner in which the issue was approached and dealt with is incorrect, but in spite of this finding he has quite apparently erred in repelling the contention of the petitioner. As already observed above it was incumbent upon the Prescribed Authority to have summoned and perused the relevant Khasras for the years 1378, 1379 and 1380F. While recording a finding as to whether plot No. 210 is irrigated or unirrigated. The Prescribed Authority has not mentioned that the aforesaid Khasras were perused by him while deciding the said issue. When the

extracts of the Khasras were not on record it is difficult to hold that the prescribed authority should have looked to the entries in the said relevant Khasras, and, as such, no presumption could be drawn in the matter that he had perused those Khasras referred to in Section 4-A of the Act. The onus lay on the State to establish that the plot in question was rightly treated as irrigated land in the notice served on the tenure-holder and, as such, either the extracts of the aforesaid relevant Khasras should have been filed by it or the original record should have been summoned and perused by the Prescribed Authority itself."

(vii) **State of U.P. Vs. Mukh Ram Singh (1991 RD 312)**. Relevant paragraphs 5 and 6 are being quoted below :-

"5. It will be clear from a perusal of the abovementioned provisions that before a land may be held to be an irrigated land, it is the duty of the Prescribed Authority to examine the relevant khasras for the years 1378 Fasli to 1380 Fasli, the latest village map and such other records as may be considered necessary. Then he may also make local inspection where it is considered necessary. After that, the prescribed Authority has to record a finding whether the land is situated within the effective command area of a lift irrigation canal of a State Tube-well or a private irrigation work and also whether the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year. If the prescribed procedure has not been followed and no such findings are recorded then the Prescribed Authority will have no jurisdiction to determine the land to be an irrigated land for the purposes of the Act.

6. In the present case, it has been observed by the Prescribed Authority in his judgment that he did not examine the khasras for 1378 to 1380 Fasli because they were not produced by the party concerned. He has mentioned that there are private tube wells near the disputed plot and only on this basis he had recorded the finding that the said plot is an irrigated land. It was open to the Prescribed Authority to ask for the Khasras from his own records and examine the same, and not only the khasras but also the village map and other necessary records. He has not specifically recorded the finding that the class and composition of soil is such that it is capable of growing at least two crops in an agricultural year. Therefore simply because there are two tube wells near the disputed plot, it cannot be held in view of Section 4-A, and clause thirdly of that Section, that it is an irrigated plot. Moreover the finding recorded by the learned Additional District Judge is a finding of fact based on appreciation of evidence including entires in Khasra 1380 Fasli and there is no justification to interfere with the said finding, in the writ petition. It may be incidently mentioned that the learned counsel for the opposite parties has also referred to the case reported in 1979 AWC 9Dhirendra Mohan Chaudhary v. IInd Additional District Judge, Bareilly, in which it has been held that in order that a land may be termed as irrigated one, it is necessary that the land must be irrigated from the canal or any lift irrigation canal or any State Tube well or a private irrigation work and that even if the land is irrigated by boring Tube-well, it cannot be said that the irrigation work was done from a private irrigation work and it cannot be termed as irrigated land."

(viii) **Nathoo Singh v. State of U.P. (1979 All LJ 354).** Relevant paragraph 2 is being quoted below :-

"The first contention is that plot No. 230/2 measuring four bighas, has been wrongly held to be irrigated. It appears from the judgment of the Additional District Judge, acting as the appellate authority under the Act, that no Khasras were prepared for 1378F, 1379F, and 1380F due to consolidation operations. Rule 3 provides that in such cases, Khasras for earlier years could be examined by the prescribed authority. The Additional District Judge has held that the tenure-holder having failed to produce the khasras for the preceding years, it should be presumed against him that the land was irrigated. This view is contrary to that taken by the Division Bench in Jaswant Singh v. State (1978 All WC 577): (1979 All LJ 25). According to their Lordships, it is for the prescribed authority to examine the Khasras entries for 1378F. to 1380F. if available and the latest village map, and it is also open to the Prescribed Authority to examine other records (which would include khasras for the preceding years) and to make a local inspection. The finding about irrigation has to be given on the basis of the evidence referred to in S. 4-A and it is for the Prescribed Authority to comply with the requirements of this section. The finding based on non-production of the relevant records cannot, therefore, be sustained."

10. After having heard the rival submissions of learned counsel for the parties, I perused the material on record as well as the judgments relied upon by the respondents.

11. The primary contention advanced on behalf of the petitioner- State is that the appellate authority committed an error in extending the benefit of Section 5(3)(b) of the Act by taking into account events subsequent to the relevant date. However, upon a closer scrutiny of the impugned appellate order, this Court finds that the appellate authority has not acted in contravention of the statutory scheme.

12. The judgments relied upon by learned counsel for the respondents clearly emphasize the binding nature of remand orders and the obligation of subordinate authorities to act strictly within their confines. In ***Ram Nagina Chaudhary v. Stat***e, it has been categorically held that the authority to whom the matter is remanded cannot act contrary to the directions contained therein. In the present case, the appellate authority rightly noticed the deficiencies in the approach adopted by the Prescribed Authority while reconsidering the matter after remand.

13. Further, the reliance placed upon the principles laid down in ***Jasraj Indersingh v. Hemraj Multanchand*** fortifies the position that findings at intermediate stages of litigation possess only provisional finality. The appellate authority was therefore well within its jurisdiction to examine whether the Prescribed Authority had complied with the remand directions in their true spirit.

14. The respondents have consistently asserted that the Prescribed Authority failed to undertake the mandatory exercise contemplated under the Act and Rules, particularly with regard to examination of relevant khasras and revenue records. The judgments cited, including ***Jaswant Singh v. State of U.P., Ram Sagar v. Civil Judge Bahraich, and State of U.P. Vs. Mukh Ram Singh***, unequivocally lay down that determination of irrigated land must strictly conform to the procedure prescribed under Section 4-A of the Act.

15. From the record, this Court finds substance in the submission of learned counsel for the respondents that the Prescribed Authority did not adhere to the statutory mandate in its proper

perspective. The appellate authority, while passing the impugned order, has taken into account these material irregularities.

16. It is well settled that where an authority fails to comply with mandatory procedural requirements, the resultant order stands vitiated in law. The appellate authority, therefore, cannot be said to have committed any jurisdictional error warranting interference by this Court.

17. The scope of interference under Article 226 of the Constitution is limited. This Court does not sit in appeal over findings of fact recorded by the competent appellate authority unless the same are shown to be perverse or manifestly illegal. No such infirmity has been demonstrated by the petitioner-State.

18. In view of the settled legal principles emerging from the judgments relied upon by learned counsel for the respondents, this Court finds no illegality or perversity in the impugned appellate order dated 07.09.1998.

19. The writ petition, being devoid of merit, is accordingly **dismissed.**

20. No order as to costs.

(2026) 2 ILRA 1664
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.02.2026

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ C No. 3000084 of 1993

Himanshu Dhar Singh **...Petitioner**
Versus
State of U.P. **...Respondent**

ISSUE FOR CONSIDERATION

Whether the two impugned orders passed by the Ceiling Authorities can be said to be without jurisdiction in light of the transitory provisions introduced by the U.P. Amending Act No. 18 of 1973 and U.P. Amending Act No. 20 of 1976 and
Whether the impugned orders passed by the Ceiling Authorities are otherwise erroneous in law.

HEADNOTE

U.P. Imposition of Ceiling on Land Holdings Act, 1960 – U.P. Amending Act No.18 of 1973 – U.P. Amending Act No.20 of 1976 – ss.9(2), 10(2), 19, 31, 38-B – Re-determination of surplus land – Transitory provisions

The petitioner contended that since the determination of surplus land had been finally concluded on 24.07.1964 and that order was not challenged by the State Authorities, there could have been no re-determination of surplus land against the petitioner, especially when there was no addition to the land held by him – It was further contended that the findings of the ceiling authorities had attained finality on 24.07.1964 and would operate as res judicata, and therefore the authorities were not justified in re-agitating the same issue in the fresh proceedings initiated by notice dated 15.05.1976 – The impact of the amendments, particularly the transitory provisions, was that where final determination had already been made before the commencement of the Amending Act, the proceedings were to be continued and concluded in accordance with the Principal Act – Thus, it was contended that since final determination had already been made by order dated 24.07.1964, even the subsequent proceedings pursuant to notice dated 15.05.1976 were required to be governed by the Principal Act by virtue of Section 19(2) of the Amending Act – It was urged that this aspect had not been considered by the authorities, thereby vitiating the impugned orders.

Held: By the two Amending Acts, i.e. U.P. Amending Act No.18 of 1973 and U.P. Amending Act No.20 of 1976, there was a complete change in the scheme of the Act and the amended provisions were made applicable retrospectively – The Amending Act of 1976 came into force w.e.f. 10.10.1975 and required the Authorities to re-determine the surplus land within two years therefrom – It was in furtherance thereof that a fresh notice was issued to the petitioner on 15.05.1976 after the Amending Act had come into force – It is not a case where any pending proceedings had abated in light of the transitory provisions; rather, it is a case of fresh determination made in pursuance of the notice issued under Section 10(2) post the U.P. Amending Act No.20 of 1976 – Section 38-B, inserted by the Amending Act, provides that any finding or decision given before commencement shall not operate as a bar for retrial of such proceeding or issue in accordance with the Act as amended from time to time – Taking a holistic view of the Act of 1960 along with the amendments of 1973 and 1976, a composite scheme has been brought into play by the Legislature – The amended provisions were made applicable retrospectively w.e.f. 10.10.1975 and were insulated from challenge – The transitory provisions under Section 19 are confined to proceedings referable to Section 14 and Chapter III and IV and have no bearing on determination of surplus land - The Court held that the orders passed by the two Ceiling Authorities cannot be said to be bad for want of jurisdiction or as being contrary to the dictum of the Apex Court in Devendra Nath and Arvind Kumar – The Court further held that the petitioner was attempting to indirectly assail proceedings which had already attained finality by raising issues of transitory provisions which had no role to play – Accordingly, the judgment and order dated 27.06.1986 passed by the Prescribed Authority and the judgment dated 11.06.1993 passed by the Appellate Authority were confirmed. (Paras 51, 64, 66, 67, 69, 71, 74, 75, 76, 77) (E-5)

CASE LAW CITED

Devendra Nath Singh v. Civil Judge, Basti (1999) 1 SCC 71;
Arvind Kumar v. State of U.P. (2016) 9 SCC 221;
Darshan Prasad v. Civil Judge-II (1992 Supp (2) SCC 87);
Viroj Kunwar v. II ADJ (1996) 1 SCC 570;
Rajendra Prasad Singh v. 4th ADJ 1980 SCC OnLine All 402;
Gurdeep Singh v. State of U.P. MANU/UP/2265/2019;
Ram Kali Devi v. State of U.P. and others, 2023 SCC OnLine All 3483;
Kamla Kant and another v. Third Additional District Judge, 2013 SCC OnLine All 2228.

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960;
U.P. Amending Act No. 18 of 1973;

U.P. Amending Act No. 20 of 1976.

List of Keyword

Ceiling proceedings; Surplus land; Re-determination; Transitory provision; Retrospective operation; Section 38-B; Res judicata; Jurisdiction; Fresh notice; Legislative scheme.

CASE ARISING FROM

rom judgment dated 27.06.1986 of Prescribed Authority and order dated 11.06.1993 of Appellate Authority

Appearances for Parties

Advs For Petitioner: D.C. Mukherjee, Amit Mukerjee, Ananttika Singh, Gopesh Tripathi, Sarvesh Kumar Dubey

Advs For Respondents: C.S.C., Alok Kumar Mishra.

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

1. By means of the instant writ petition, the petitioner assails the impugned judgment and order dated 27.06.1986, passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act of 1960', in short), which has been affirmed in Appeal by the Appellate Authority vide its judgment dated 11.06.1993.

2. Though, this is the first writ petition filed by the petitioner, however, the orders impugned herein, have been passed in the fourth round of litigation between the petitioner and the State Authorities.

3. In this view of the matter, it will be appropriate at this stage to briefly take a glance as to how the dispute between the parties have unfolded. For the sake of convenience, the Court has referred to the parties as they were originally impleaded at the time of filing of the writ petition.

4. With the advent of the Act of 1960, a notice was issued to the petitioner, namely, Himanshu Dhar Singh, under Section 10(2) of the Act of 1960 on 28.07.1962. The petitioner filed his objections to the said notice and the Prescribed Authority after considering the same discharged the notice under Section 10(2) of the Act of 1960, by means of its order dated 24.07.1964. Significantly, this order was not assailed by the State Authorities and with this order the first round of litigation came to an end.

5. A fresh litigation emerged when the State Authorities issued a fresh notice on 15.06.1976, under Section 10(2) of the Act of 1960. This notice was again contested by the petitioner on the ground that the land which was recorded in the name of his wife and adult sons and daughters were clubbed with the land of the petitioner, which was legally not permissible, as the adult sons and daughters were holding the land in their own individual rights in terms of a decree passed in a civil suit decided by the District Judge, Raebareli on 28.08.1954.

6. This issue was considered by the Prescribed Authority, who by means of its order dated 15.11.1978 excluded the land held by the sons and daughters of the petitioner but continued to keep the land of the petitioner's wife, clubbed with that of the petitioner.

7. This order of the Prescribed Authority dated 15.11.1978 was assailed by the petitioner in an appeal under Section 13 of the Act of 1960, which was registered as Appeal No.16/1978. In the appeal, the petitioner agitated his ground that the land belonging to his wife, in her individual capacity, could not be clubbed with the land of the petitioner. It was also urged that the Prescribed Authority has failed to consider that the son of the petitioner was a co-tenant and erroneously held him not to be a co-tenant. Another ground raised was that the petitioner could not exercise his choice in terms of Section 12-A of the Act of 1960 regarding the land he desired to retain with himself.

8. This Appeal No.16/1978 was decided by the Appellate Authority on 20.03.1979 and the matter was remanded with the observations to re-determine the surplus land after determining the land whether it was irrigated or non-irrigated and also permitted the petitioner to furnish his choice which was directed to be considered by the Prescribed Authority. With this judgment of the Appellate Authority dated 20.03.1979, the second round of litigation came to an end.

9. After remand, vide order dated 20.03.1979 as aforesaid, the third round of litigation commenced and the Prescribed Authority vide its judgment dated 23.04.1982 dismissed the objections of the petitioner and held that the petitioner had given a vague statement relating to the land in village Dadu Tikari and Salon to be retained and the rest may be considered for the purposes of determination of surplus land. The Prescribed Authority found that the said choice had not been made at all, by the petitioner, as it was vague and as far as the claim relating to the land of his wife to be separated was concerned, it did not find favour with the Prescribed Authority.

10. This order of the Prescribed Authority dated 23.04.1982 was again assailed in appeal by the petitioner before the Appellate Authority which was registered as Appeal No.3/1982.

11. The Appellate Authority once again considering the three issues raised before him noticed that the Prescribed Authority had not considered the Plots bearing No.353, 432, 433, 498 and 503 of Village Dadu Tikari as non-irrigated which was required to be done in terms of the earlier order of remand dated 20.03.1979 passed in Appeal No.16/1978, hence, the matter required a remand again.

12. The Appellate Authority further found that the plea taken by the petitioner that he was entitled to have additional 2 hectares of land on account of his major son Akhileshwari Pratap Singh could not be raised as the said plea had already been turned down in the Rent Appeal No.16/1978 and the said findings at that point of time had not been assailed any further coupled with the fact that the Rent Appeal No.16/1978 was allowed only for a limited purpose of permitting the petitioner to furnish his choice and re-determination of surplus land treating the land of plots number (as mentioned aforesaid) as non-irrigated land.

13. The Appellate Authority also considered that even though the petitioner had given a vague statement regarding his choice but since the matter was being remanded, accordingly, another opportunity was granted to the petitioner to furnish his choice regarding the land he wanted to retain and by passing this order dated 16.09.1983, it allowed the Appeal No.3/1982 and remitted the matter to the Prescribed Authority for a limited purpose and this brought to an end, the third round of litigation.

14. Once again the matter was before the Prescribed Authority, who taking note of the directions of the Appellate Authority passed a fresh order dated 27.06.1986 wherein 7.3 hectares of land was permitted to be retained, rest was declared surplus and it also noticed that despite specific liberty having been granted by the Appellate Authority, yet the petitioner did not give any clear choice rather a fresh plea was raised that there were proceedings pending under Section 161 of the U.P. Z.A. & L.R. Act, 1950 (hereinafter referred to as 'the Act of 1950', in short) relating to exchange of land and the land which was proposed to be exchanged, as put forward by the daughters of the petitioner, may be the land which may be retained by the petitioner and it may be treated to be his choice. This did not find favour with the Prescribed Authority noticing that the proceedings under Section 161 of the Act of 1950 were different and they had no bearing on the proceedings under the Act of 1960, hence, by means of the judgment dated 27.06.1986, the contention was turned down.

15. Once again in this fourth round of litigation, the petitioner filed an appeal bearing Appeal No.25/85-86 and this appeal also came to be dismissed by means of the order dated 11.06.1993 whereby the findings of the Prescribed Authority dated 27.06.1986 were affirmed. By this appellate order, the fourth round of litigation before the Ceiling Authorities came to an end. At this stage for the first time the two orders dated 27.06.1986 passed by the Prescribed Authority and the judgment and order dated 11.06.1993 passed by the Appellate Authority were challenged in the instant writ petition.

16. It may also be noticed that the instant writ petition was filed on 27.10.1993 and while entertaining the petition, the operation of the orders passed by the Prescribed Authority and the Appellate Authority were stayed with a further observation that the possession of the petitioner shall not be disturbed. However, after almost two decades, an application for amendment was moved by the petitioner incorporating new grounds and certain new facts. This application for amendment of the writ petition was allowed by a Coordinate Bench of this Court, by means of the order dated 25.05.2023.

17. It is in the aforesaid backdrop that the parties have advanced their submissions based on the amended writ petition. It will also be relevant to notice that during pendency of the writ petition, the original petitioner expired and his son, namely, Akhileshwari Pratap Singh, on the basis of a Will executed by his father, was substituted in his place.

18. Shri Vivek Raj Singh, learned Senior Counsel ably assisted by Shri Shantanu Sharma, learned counsel for the petitioner has submitted that originally the petitioner was served with a notice in the year 1962 which was contested by the original-petitioner and considering the law as it

existed at that point of time, the Prescribed Authority vide its judgment and order dated 24.07.1964 discharged the notice.

19. It was urged that again on 15.05.1976 another notice was issued to the petitioner proposing to declare 91.48 hectares of land as surplus land under the Act of 1960. It was contended by the learned Senior Counsel that once by means of the order dated 24.07.1964, the notice under Section 10(2) of the Act of 1960 had been discharged, it was now not open for the State Authorities to have re-initiated the proceedings. Even if at all, the said proceedings were to be initiated, but then it had to be considered in accordance with the Principal Act, as it stood prior to the amendments brought in the Act, in the year 1973 and 1976 respectively.

20. Learned Senior Counsel for the petitioner while elaborating his submissions specifically pointed out that the Principal Act of 1960 was drastically amended vide U.P. Amending Act No.18 of 1973, whereby major changes were brought in the definition clause and more specifically in respect of the word 'family' (which is relevant for the instant petition) and also that the ceiling limit had been drastically reduced from 40 acres to 7.3 hectares. It was also pointed out that Section 29 was introduced in the Act of 1960 for the first time by the aforesaid Amending Act and it also brought in a transitory provision in shape of Section 19. The impact of the aforesaid amendment and more particularly the transitory provision brought in would be that in case if any final determination of surplus land had been made in respect of any tenure holder before the commencement of the Amending Act then it was to be continued and concluded in accordance with the provisions of the Principal Act. It was thus contended that as in the instant case, since, the final determination had already been done in terms of the order dated 24.07.1964 then even in context with the subsequent notice dated 15.05.1976, the proceedings were to be concluded in terms of the Principal Act giving the benefit of the transitory provision as provided under Section 19(2) of the Amending Act and this aspect of the matter has not been considered by either of the Authorities, which has vitiated the two judgments under challenge before this Court.

21. Learned Senior counsel for the petitioner has further raised his submission, one notch up, by urging that since the determination of surplus land had been finally concluded on 24.07.1964 and that order was not challenged by the State Authorities, hence, there could have been no re-determination of surplus land against the petitioner especially when there was no addition to the land held by the petitioner. It was also submitted that only contingency in which such further determination could be made, would be in a situation, where the provisions of Section 29 of the Act of 1960 were attracted and as already stated that there was no addition to the land in the hands of the petitioner, hence, the said Section did not empower the Authority to re-determine the land and as such the impugned orders have been passed by the authorities which are without jurisdiction and cannot be sustained in law.

22. Learned Senior Counsel for the petitioner further urged that by the amendments introduced to the Principal Act in the year 1976, Section 38-B was inserted in the Act. It was to be read with the transitory provision i.e. Section 31(3). It was urged that since there was no addition or change in the circumstances nor any land was added either by purchase, succession or by prescription that is to say by adverse possession, hence, the petitioner was covered by the transitory provision and the provisions of the Principal Act of 1960 would be applicable.

23. Taking his submissions forward, learned Senior Counsel urged that the provisions of Section 38-B were interpreted by the Apex Court in **Devendra Nath Singh v. Civil Judge, Basti and another, 1999 (1) SCC 71** and as per the learned Senior Counsel, the Apex Court held that any finding or decision which was given by any forum prior to the commencement of the Section in respect of a matter governed by the Ceiling Act, then it would operate as res judicata provided the findings given in the ceiling proceedings had not attained finality.

24. It is urged that applying the aforesaid principles to the facts of the instant case, it would be clear that the findings of the ceiling authorities in the instant case had attained finality on 24.07.1964, hence, they would operate as res judicata and the ceiling authorities were not justified in re-agitating the same issue in the fresh round of litigation commenced on issuance of the notice dated 15.05.1976.

25. Learned Senior Counsel further submitted that the transitory provision as introduced in the Amending Act of 1976 and Section 38-B should be construed in a harmonious manner so that it achieves its purpose and can be taken to a logical conclusion. In case if the Section 31(3) i.e. transitory provision is construed in a narrow manner then it would result in complete chaos as that would permit the ceiling authorities to unsettle everything, at their discretion, to the detriment of the tenure holders moreso when the matters may have been settled finally under the Ceiling Act.

26. It is urged that with the aforesaid object, the provisions of the Amending Act of 1976 may be read down to make it prospective in operation, as permitting it to have a retrospective operation, would lead to the said provisions being declared unconstitutional.

27. It was also urged that a right which is vested in a party cannot be divested by making a provision operational, retrospectively. It has been submitted that since the issues involved are purely legal, hence, they can be considered by this Court in this writ petition even though it may not have been cogently raised before the Ceiling Authorities. Since, the impugned orders are per-se, bad in the eyes of law, in light of the aforesaid submissions, hence, they are liable to be quashed and set aside.

28. Learned Senior Counsel in support of his submissions has relied upon the following decisions:-

(a) Devendra Nath Singh v. Civil Judge, Basti and others, (1999) 1 SCC 71;

(b) Arvind Kumar v. State of U.P. and others, (2016) 9 SCC 221;

(c) Ram Kali Devi v. State of U.P. and others, 2023 SCC OnLine All 3483;

(d) Kamla Kant and another v. Third Additional District Judge, 2013 SCC OnLine All 2228.

29. Shri Hemant Kumar Pandey along with Shri L.M. Khare, learned standing counsel for the State-respondents has vehemently controverted the submissions advanced on behalf of the petitioner.

30. It was urged that the entire arguments advanced by the learned Senior Counsel for the petitioner are fallacious. It was pointed out that first and foremost the transitory provision of Section 19(2) of the Amending Act No.18 of 1973 is not applicable in the instant case. Hence, the said provisions cannot come to the aid of the petitioner.

31. Elaborating his submissions, Shri Pandey has urged that on a bare perusal of Section 19 of the Amending Act No.18 of 1973, it would reveal that it specifically holds that it would be applicable only in respect of the proceedings which were pending at the time of enforcement of the Act of 1960. It further reveals that all the proceedings which at the time of enforcement whether under Sections 9, 10, 11, 12, 13 or 30 of the Principal Act, if pending would stand abated. The Prescribed Authority is required to initiate fresh proceedings for determination of ceiling area under the provisions of the Amended Act by issuing notice under Section 9(2) of the Act. This fresh determination of the surplus land is to be made in accordance with the provisions of the Act of 1960 as amended by the Amending Act No.18 of 1973.

32. Shri Pandey has further pointed out that by introducing the Amending Act No.18 of 1973, the Principal Act was radically amended and the same came into effect on 08.06.1973. The provision as introduced by the Amending Act No.18 of 1973 received the Presidential Assent. Earlier under the Principal Act, there was a concept of ceiling limit of 40 acres of fair quality land with addition of 8 acres for each family member exceeding 5 subject to a maximum of 24 acres. However, with the introduction of Amending Act No.18 of 1973 which came into force on 08.06.1973. The Act required the surplus land to be determined by taking into consideration irritated land. The ceiling limit was reduced from 40 acres to 7.3 hectares of irrigated land with permissible addition upto 6 hectares depending on the family size.

33. It was further pointed out by Shri Pandey that Section 19(2) of the Amending Act No.18 of 1973 has limited applicability and that too in respect of proceedings under Section 14 or those which fall under Chapter III or Chapter IV of the Principal Act which are required to be continued and are to be concluded in accordance with the provisions of the Principal Act. It was submitted that the Legislature by using the words 'be continued and concluded' clearly indicates that the provision has been made applicable only to such proceedings which were pending at the time of commencement of the Amending Act and only such proceedings as referred to i.e. proceedings under Section 14, Chapter III & IV of the Principal Act could be taken to be its logical conclusion in terms of the Principal Act. However, there is no indication that the said provisions would be applicable to the proceedings which had already been decided. It has also been urged that the aforesaid provisions also has an overriding applicability as the provision clearly clarifies that even if the proceedings have been concluded under the old Act, the new inserted provisions of Section 9(2) and Section 13-A would still be applicable.

34. Shri Pandey has referred to several provisions of the Act both prior to the amendment as well as the amended provisions to demonstrate the changes brought in by the amendments. He

submitted that Section 14 of the Act of 1960 does not relate to determination of ceiling area rather it only gives a guideline as to how the surplus land is to be taken over and it cannot have any applicability insofar as the determination of surplus land is concerned.

35. It has further been urged that with a further amendment introduced in the year 1976, it made re-determination of the surplus land mandatory in accordance with the Principal Act of 1960 as amended by the Amending Act No.20 of 1976 within a limit of two years, commencing from 10 October, 1975. In this regard, he has specifically referred to Section 31(3) of the Amending Act No.20 of 1976 to submit that the Legislature in clear terms expected that all surplus land which was determined prior to the 10 October, 1975 be re-determined and it is in this context that the subsequent notice under Section 10(2) of the Act of 1960 was issued to the petitioner on 15.05.1976 i.e. after the Act was amended by the Amending Act No.20 of 1976.

36. Shri Pandey further urged that by the Amending Act No.20 of 1976, Section 38-B was also introduced which clearly indicated that any finding to the decision, order or decree rendered before the commencement of the Amending Act, made by any Court or Tribunal or any Authority in respect of the ceiling matter shall bar the re-trial or consideration, notwithstanding the principles of res judicata.

37. It has further been submitted that the decisions cited by the learned Senior Counsel for the petitioner relating to Section 13-A are not applicable to the facts of the instant case. It is urged that in the instant case, fresh proceedings were initiated under Section 9(2)/10(2) of the Act of 1960 which came into effect after the amendment was introduced vide Amending Act No.20 of 1976 also taking into consideration Section 31(3). The instant proceedings were not for correction of records as provided under Section 13-A, hence, the decision cited by the learned Senior Counsel, which is referable to Section 13-A of the Act of 1960 cannot be pressed into service in the instant case, as it would have no applicability.

38. It has further been pointed out that the petitioner has changed the entire complexion of the petition by raising issues which were never raised before the ceiling authorities. It has further been urged that the initial case set up by the petitioner was only confined to the issue of land recorded in the name of the wife, sons and daughters of the petitioner, being clubbed with the land of the petitioner and the issue relating to choice as per Section 12-A of the Act of 1960 and the issue relating to the land being considered as irrigated or unirrigated.

39. It has further been urged that this issue had been decided more specifically in the third round of litigation between the parties vide judgment dated 16.09.1983 passed by the Appellate Authority in Appeal No.3/1982, whereby the Appellate Authority had crystallized and narrowed the controversy only on two points that is to say (i) the Plots bearing No.353, 432, 433, 498 and 503 were to be considered as unirrigated and for the aforesaid purpose, the matter was remanded (ii) Further indulgence was granted to the petitioner to give his choice regarding the land he wanted to retain, and all other issues had been turned down.

40. This judgment dated 16.09.1983 was never assailed by the petitioner and thereafter he succumbed to the jurisdiction of the Prescribed Authority and in the fourth round also, no such

issues were raised which are now being raised before this Court. Moreover, even the issue of choice did not find favour with the Prescribed Authority and the Appellate Authority for the reason that the manner in which the choice was expressed by the petitioner was in context with the certain proceedings for exchange initiated by the daughters of the petitioner which had no bearing with the ceiling proceedings. In the aforesaid circumstances, the petitioner now cannot turn around and raise an issue which was never the subject matter before the ceiling authority and by an indirect method the petitioner is trying to enlarge the scope of adjudication which is not permissible also noticing the fact that since 1976 more than 4 decades have gone by and the petitioner has been successful in prolonging the litigation and it is for the same very reason that in the petition instituted in the year 1993 an amendment was introduced in the year 2022 by which new facts and grounds have been raised which apparently in the given fact situation, have no applicability and the writ petition deserves to be dismissed.

41. In support of his submissions, Shri Pandey has relied upon the following decisions:-

(a) Darshan Prasad and others v. Civil Judge-II, Gorakhpur and others, 1992 Suppl. 2 SCC 87;

(b) Viroj Kunwar and others v. II Additional District Judge and others, (1996) 1 SCC 570;

(c) Rajendra Prasad Singh v. 4th Additional District Judge, 1980 SCC OnLine All 402;

(d) Gurdeep Singh v. State of U.P. and others, MANU/UP/2265/2019.

42. The Court has heard learned counsel for the parties at length and also perused the material on record including the written submissions submitted by the contesting parties.

43. In light of the submissions advanced by the parties, certain undisputed facts which emerge from the record are:-

(a) The original petitioner late Himanshu Dhar Singh was served with a notice under Section 10(2) of the Act of 1960. The petitioner had furnished his objections and the Prescribed Authority, Raebareli by means of the order dated 24.07.1964 had discharged the notice.

(b) A fresh notice was issued to the petitioner on 15.05.1976 which was again contested by the petitioner on the ground that the land recorded in the name of his wife, sons and daughters was clubbed with the land of the petitioner despite the wife, daughters and sons being recorded owners in their own individual capacity.

(c) It is also not disputed that the Prescribed Authority vide its order dated 15.11.1978 excluded the land recorded in the names of sons and daughters of the petitioner and thereafter re-determined the surplus land by considering the land recorded in the name of the petitioner's wife as land available with the petitioner.

(d) It is also an undisputed fact that the petitioner had assailed the order dated 15.11.1978 by filing Appeal No.16/1978 which was allowed on 20.03.1979 by remanding the matter to the Prescribed Authority to re-determine the surplus land by treating certain plots as unirrigated and also directed the Prescribed Authority to take the preference of the petitioner in respect of the land he proposed to retain with himself.

(e) It is also undisputed that the Prescribed Authority in pursuance of the remand order dated 20.03.1979, re-determined the matter and rejected the objection holding that no specific choice was given by the petitioner rather a vague statement was given that except for the land in Village Dadu Tikari and Salon, rest can be considered for being declared surplus.

(f) It is also undisputed that this order of the Prescribed Authority dated 23.04.1982 was assailed by the petitioner in Appeal No.3/1982 which was allowed by the Appellate Authority on 16.09.1983, wherein the Appellate Authority remanded the matter directing the Prescribed Authority to consider the Plots No.353, 432, 433, 498 and 503 as unirrigated and the petitioner was permitted to submit his choice for the land which he wished to retain.

(g) It is also an undisputed fact that this judgment dated 16.09.1983 was never assailed by the petitioner any further and the matter went back to the Prescribed Authority for the fourth time and now the Prescribed Authority accepted the directions of the Appellate Authority and considering Plots No.353, 432, 433, 498 and 503 as unirrigated land, permitted the petitioner to retain 7.3 hectares of land and rest was declared surplus.

(h) Effectively, it was only the issue of choice which remained to be considered by the Prescribed Authority, but the same was turned down. It is also an undisputed fact that this order of the Prescribed Authority was again assailed in an appeal, which came to be dismissed on 11.06.1993 and the orders dated 27.06.1986 or 11.06.1993 are now under challenge in this writ petition.

44. In the backdrop of the undisputed facts noted above, the two issues which arise for consideration are:-

(I) Whether the two impugned orders passed by the Ceiling Authorities can be said to be without jurisdiction in light of the transitory provisions introduced by the U.P. Amending Act No. 18 of 1973 and U.P. Amending Act No. 20 of 1976.

(ii) Whether the impugned orders passed by the Ceiling Authorities are otherwise erroneous in law?

45. In order to examine the first issue as noticed above, it will be appropriate to consider the certain provisions of the Amending Act No. 18 of 1973 and the Amending Act No. 20 of 1976 by which the U.P. Act of 1960 was drastically amended.

46. The U.P. Act of 1960 came to be amended by the U.P. Amending Act No. 18 of 1973 and the provisions of the said Amending Act No. 18 of 1973 are being noticed hereinafter:-

The Uttar Pradesh Imposition of Ceiling on Land Holdings, (Amendment) Act, 1972)

(U.P. Act No. 18 of 1973)

Substitution of new sections for sections 3, 4, 5, 6, 7 and 8 of U.P. Act I of 1961

'3 (7). 'family' in relation to a tenure-holder, means himself or her-self and his wife or her husband, as the case may be (other than judicially separated wife or husband),minor sons daughters (other than married daughters);

3(17). 'tenure-holder' means a person who is the holder of a holding, but does not include-

(a) a woman whose husband is a tenure-holder:

(b) a minor child whose father or mother is a tenure-holder.

Imposition of ceiling

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Imposition of ceiling

5. (1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure- holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.

(2) Nothing in sub-section (1) shall apply to land held by the following classes of persons, namely:-

(a) the Central Government, the State Government or any local authority or a Government Company or a Corporation;

(b) a University;

(c) a post-graduate college;

(d) a banking company or a co-operative bank or a co-operative land development bank;

(e) the Bhoodan Yagna Committee constituted under the U. P. Bhoodan Yagna Act, 1952.

(3) Subject to the provisions of sub-sections (4), (5) and (6), the ceiling area for purposes of sub-section (1) shall be-

(a) In the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), plus two additional hectares of irrigated land or such additional which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;

(b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land.

Explanation-The expression 'adult son' in clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less than two hectares of irrigated land;

(c) in the case of a tenure-holder being a degree college imparting education in agriculture, 20 hectares of irrigated land;

(d) in the case of a tenure-holder being an intermediate college imparting education in agriculture, 12 hectares of irrigated land;

(e), in the case of any other tenure-holder, 7.30 hectares of irrigated land

Explanation-Any transfer or partition of land which is liable to be ignored under sub-sections (6), and (7) shall be ignored also-

(p) for purposes of determining whether an adult son of a tenure holder is himself a tenure- holder within the meaning of clause (a);

(q), for purposes of service of notice under section 9.

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Amendment of section 9

4. Section 9 of the principal Act, shall be re-numbered sub-section (1). shall be inserted, namely,-

"9. (2) As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the prescribed authority shail, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on

the enforcement of the said Act, to submit to him within 30 days of publication of such notice, a statement referred to in sub-section (1).

(3) Where the tenure-holder's wife holds any land which is liable to be aggregated with the land held by the tenure-holder for purposes of determination of the ceiling area, the tenure-holder shall, along with his statement referred to in sub-section (1), also file the consent of his wife to the choice in respect of the plot or plots which they would like to retain as part of the ceiling area applicable to them and where his wife's consent is not so obtained, the prescribed authority shall cause the notice under sub- section (2) of section 10 to be served on her separately."

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Substitution of new section for section 29

14. For section 29 of the principal Act, the following section shall be substituted, namely :-

29.Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) 1972-

(a) any land has come to be held by a tenure-holder under a decree or order of any court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together her with the land already held by him exceeds the ceiling area applicable to him; or

(b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work, or any grove-land loses its character as grove-land or any land exempted under this Act ceases to fall under any of the categories exempted,-

The ceiling area shall be liable to be re-determined and accordingly any land held by him in excess of the ceiling area so re-determined shall be liable to be treated as surplus land."

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Transitory provisions

19. (1) All proceedings for the determination of surplus land under section 9, section 10, section 11, section 12, section 13 or section 30 of the principal Act, pending before any court or authority at the time of the commencement of this Act, shall abate and the prescribed authority shall start the proceedings for determination of the ceiling area under that Act afresh by issue of a notice under sub-section (2) of section 9 of that Act as inserted by this Act:

Provided that the ceiling area in such cases shall be determined in the following manner :-

(a) firstly, the ceiling area shall be determined in accordance with the principal Act, as it stood before its amendment by this Act;

(b) thereafter, the ceiling area shall be re-determined in accordance with the provisions of the principal Act as amended by this Act.

(2) Notwithstanding, anything in sub-section (1), any proceeding under section 14 or under Chapter III or Chapter IV of the principal Act, in respect of any tenure-holder in relation to whom the surplus land has been determined finally before the commencement of this Act, may be continued and concluded in accordance with the provisions of the principal Act, without prejudice to the applicability of the provisions of sub-section (2) of section 9 and section 13-A of that Act, as inserted by this Act, in respect of such land.

47. Now, once again, the U.P. Act no. 1960 was amended by the U.P. Amending Act No. 20 of 1976 and certain relevant provisions which were introduced in the Act of 1960 by the U.P. Amending Act No. 20 of 1976 are being noticed hereinafter:-

The Uttar Pradesh Imposition of Ceiling on Land Holdings

(Amendment) Act, 1976)

(U.P. Act No. 20 of 1976)

Transitory Provisions

31. (1) All proceedings under sub-sections (3) to (7) of section 14 of the principal Act, as it stood immediately before the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1976, pending before any Court or authority immediately before the date of such commencement shall be deemed to have abated on such date.

(2) Where an order determining the surplus land in relation to a tenure-holder has been made under the principal Act before January 17, 1975 and the Prescribed Authority is required to re-determine the surplus land under sec-tion 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amend-ment) Act, 1974, then notwithstanding anything contained in sub-section (2) of section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amend-ment Act, 1972, every appeal under section 13 of the principal Act or other proceedings in relation to such appeal, preferred against the said order, and pending immediately before the tenth day of October. 1975, shall be deemed to have abated on the said date.

(3) Where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date,redetermine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

(4) The provisions of section 13 of the principal Act shall mutatis mutandis apply to every order re-dermining surplus land under sub-section (3) of this section or section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Amendment) Act, 1974:

Provided that the period of thirty days shall, in the case of an appeal against the order referred to in section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974, be computed from the date of such order or October 10, 1975, whichever is later.

(5) The provisions of section 13-A of the principal Act shall mutatis mutandis apply to every re-dermination of surplus land under the section or under section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974.

(6) Where any Assessment Roll has become final under sub-section (4) of section 21 before the sixteenth day of February, 1976, this same shall not be reopened, notwithstanding any amendment made in Chapter III of the principal Act read with the Schedule thereof by this Act.

48. Having taken note of the aforesaid statutory provisions which were introduced by the two Amending Acts i.e. U.P. Amending Act No.18 of 1973 and the U.P. Amending Act No.20 of 1976, it would reveal that there is a complete change in the scheme of the Act and the amended provisions have been made to apply retrospectively. Having noticed the aforesaid legislative scheme of the Act of 1960 which was put through several amendments, as noticed above, it is now the stage to consider the decisions cited by the learned counsel for the petitioner to completely comprehend the thrust of the submissions advanced by the learned Counsel for the respective petitioner.

49. The learned Senior Counsel for the petitioner heavily relied upon the decision of the Apex Court in **Arvind Kumar** (Supra) wherein the Apex Court in paragraph 14 to 18 held as under:-

'**14**. The argument of the learned counsel for the State, therefore, leads us to analyse the four Acts in question a little closely. One thing becomes clear at the outset : that the original statutory scheme of 1960 which spoke of surplus 'fair quality land' was substituted in its entirety by a completely new and different scheme by the 1972 Amendment Act read with the 1974 Amendment Act. Both of these Acts, as has been noticed above, with certain minor exceptions, came into force on the same date, namely, 8-6-1973. The new statutory scheme would necessarily involve 'fair quality land' being substituted by 'irrigated land', the ceiling area in the two cases also being entirely different. This being the case, it is important to now construe Section 9 of the 1974 Amendment Act in this backdrop:

14.1 Be it noted that Section 9 itself comes into force only on 17-1-1975. For Section 9 to apply, an order has to be made determining surplus land in relation to a tenure-holder before the commencement of the Amendment Act. By Section 1(2), 'this section' and Section 9 both come into force at once i.e. on 17-1-1975. The expression 'this section' refers to Section 1(1) which in turn refers to the Act as the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. This being the case, it is clear that the Act has commenced only on 17-1-1975, even though a number of sections shall be deemed to have come into force retrospectively i.e. on 8-6-1973. The order passed

by the prescribed authority being on 13-1-1975, the first condition of Section 9 is met, namely, that this order has been passed before 17-1-1975.

14.2. It is the second part of the section on which a lot of the debate featured. According to the learned counsel for the State a discretion is vested in the prescribed authority by use of the expression 'may'. We may hasten to add that the very expression 'may, at any time within a period of two years " also occurs in Section 31(3) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. This sub-section makes it clear that the expression 'may' goes along with the words 'at any time within a period of two years " as it is clear that on a correct reading of the sub-section, the prescribed authority has,'in every case, to redetermine surplus land if an order determining surplus land has been made before the 10th day of October, 1975. The idea is that a period of two years is given to redetermine surplus land in accordance with the principal Act as amended by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. This being the case, it is clear that no discretion is vested in the prescribed authority to redetermine the surplus land. Surplus land has, in all cases, to be redetermined, as a completely different and new scheme applicable to'all'lands has replaced the existing scheme. The only exception is where, prior to 8-6-1973, a determination of surplus land has been made finally, that is, an appeal has been disposed of under Section 13.

15. The matter may be looked at from a slightly different angle. Section 19 of the 1972 Amendment Act, which is a transitory provision, provides for abatement of proceedings that are pending on the commencement of the said Act. We have already indicated that the pending proceedings of 1967 had to start afresh on the issuing of a general notice under Section 9(2) as inserted by the 1972 Amendment Act, which was in fact done. Thus, the 13-1-1975 order is a consequence of Section 19(1) of the Act. Section 19(2) on facts has no application for the simple reason that surplus land had not in this case been determined finally before commencement of the 1972 Act ' that is, an appeal had not been decided under Section 13 of the principal Act prior to this date.

16. This brings us then to the transitory provision contained in the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. Under Section 31(2), clearly, the order determining the surplus land in the present case had been made four days before 17-1-1975 and thus the first condition or prerequisite for the application of the section is met. The second prerequisite is also met for the simple reason that Section 9 of the 1974 Act, which forms part of the same legislative scheme as the 1972 Amendment Act, would apply for the reason that an order determining surplus land had been made prior to commencement of the said Act, namely, 17-1-1975, [which happens to be the same as the first prerequisite for the application of Section 31(2) of the 1976 Amendment Act]. This being the case, the language of Section 31(2) makes it clear that every appeal preferred against such orders and pending immediately before the 10th day of October, 1975, shall be deemed to have abated on the said date. On facts, we are informed that an appeal had been filed prior to this date.

17. This being the case, it was necessary for the prescribed authority to redetermine the surplus land under Section 31(3) in accordance with the principal Act as amended by the 1976 Act, for which purpose, the provisions of Section 13 of the principal Act shall apply mutatis mutandis to

every order redetermining surplus land under sub-section (3) of this section or Section 9 of the 1974 Amendment Act [vide'Section 31(4) of the 1976 Amendment Act]. This never having been done on facts in the present case, it is clear that the appeal filed in 1975 has abated and could not therefore have been heard by the Additional Commissioner, Agra on merits. This being so, the judgment and order passed by the Commissioner dated 13-1-1975 is without jurisdiction.

18. It only remains to consider the reasoning of the appellate authority and the High Court. Both the appellate authority and the High Court were of the view that no fresh notice had been issued under Section 9(2) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972. It has been pointed out to us, on facts, that in fact such a notice had been issued on 24-11-1975. Despite this, the appellate authority and the High Court, in their anxiety to decide against the abatement, have wrongly held that no such notice was proved to have been issued. Be that as it may, it is clear that abatement under Section 31 does not depend upon the issuance or non-issuance of any notice under Section 9(2) as amended. This being the case, the finding of fact of non-issuance of notice itself being a non-issue, it is unnecessary for us to pursue the same. It is only necessary to reiterate that no fresh exercise under the 1976 Amendment Act was undertaken by the prescribed authority as is required by Section 31(3) of the 1976 Amendment Act. This being the case, the impugned judgment *[Kamla Devi'v.'State of U.P., 2007 SCC OnLine All 1621]* of the High Court has necessarily to be set aside. The appeal is, therefore, allowed with no order as to costs.'

50. A careful reading of the decision of the Apex Court in **Arvind Kumar** (Supra), reveals that the Apex Court noticed the import of Section 31(2) of the Amending Act of 1976 and held that two conditions must be present to draw the applicability of Section 31(2) i.e. (i) there should have been an order declaring the surplus land which had been made prior to the Principal Act as amended vide the U.P. Amending Act No. 20 of 1976 and (ii) The Prescribed Authority was required to re-determine the surplus land under Section 9 of the U.P. Amending Act No.18 of 1973.

51. The aforesaid decision does not come to the aid of the petitioner for the reason that the facts of the instant case are quite different. After the U.P. Amending Act No.20 of 1976 had come into force, it mandated the authorities to re-determine the land and it is in furtherance thereof that fresh notice was issued to the petitioner. It is not a case where any pending proceedings had abated in light of the transitory provision and thereafter if the proceedings had to be continued then the original Act of 1960 would have been made applicable. Admittedly, here it is a case of fresh determination made in pursuance of the notice issued under Section 10(2) post the U.P. Amending Act No.20 of 1976 having been introduced. Thus, the said decision cannot be pressed into service per se and also for an additional reason that admittedly, the issue which was being considered and pressed by the petitioner before the ceiling authorities was in respect of the the land recorded in the name of petitioner's wife which, as per the petitioner, could not be clubbed with the land of the petitioner, as she held her land in her separate right.

52. The learned Senior Counsel for the petitioner also relied heavily on the decision of the Apex Court in **Devendra Nath Singh** (Supra), more specifically paragraph 3, which is being reproduced hereinafter for ready reference:-

'3. Having examined the provisions of Section 13-A and Section 38-B of the Act, we are of the considered opinion that under Section 13-A, the prescribed authority has the power to reopen the matter within two years from the date of the notification under sub-section (4) of Section 14 to rectify any apparent mistake which was there on the face of the record. That power will certainly not include the power to entertain fresh evidence and re-examine the question as to whether the two sons, namely, Hamendra and Shailendra were major or not. The power under Section 38-B merely indicates that if any finding or decision was there by any ancillary forum prior to the commencement of the said section in respect of a matter which is governed by the Ceiling Act then such findings will not operate as res judicata in a proceeding under the Act. That would not cover the case where findings have already reached their finality in the very case under the Act. In this view of the matter, we have no hesitation to come to the conclusion that the prescribed authority had no jurisdiction to reopen the question of the majority of the two sons in purported exercise of the power under Section 13-A. If the authority had no jurisdiction, question of waiver of jurisdiction does not arise, as contended by learned counsel for the respondent.'

53. From a careful perusal of the aforesaid decision, it would indicate that the aforesaid judgment is in context with Section 13-A of the Act of 1960. If the aforesaid Section 13-A is seen, it would reveal that the said provision applies is in a very limited sphere and becomes applicable when any rectification is necessitated on account of any mistake apparent on the face of the record and that too can be done within two years from the date of the notification made in respect of Section 14(4) of the Act of 1960.

54. Keeping this in mind, if the said judgment of **Devendra Nath Singh** (supra) is noticed, it would reveal that it is not applicable to the facts of the instant case as in the present case fresh notice had been issued under Section 10(2) of the Act of 1960 after the U.P. Amending Act No.20 of 1976 had came into effect, the scope of Section 10(2) of the Act of 1960 is completely different to the scope of Section 13-A of the Act of 1960.

55. It is not a case where the Prescribed Authority had given any finding which were found to be erroneous. Had it been a case of Section 13-A only then the limitation provided in the said Section itself i.e. of two years, could have been nudged into play. Moreover, the Apex Court has also noticed the provisions of Section 38-B but then, again if it is seen in context with Section 13-A, it would reveal that the same has no applicability to the facts of the instant case, hence, the said decision also cannot help the petitioner.

56. Apart from the aforesaid decisions, the learned Senior Counsel for the petitioner relied upon the decision in **Ramkali Devi** (Supra) and **Kamla Kant** (Supra).

57. Considering the decision of **Ramkali Devi** (supra) it would reveal that the said decision is on completely different facts situation, hence, it does not come to the aid of the petitioner as the issue being considered therein was in context with Section 13-A and considering whether the Prescribed Authority under the Act of 1960 has the power of review which is not the case at hand, hence, the said decision does not help the petitioner.

58. As far as the decision of **Kamla Kant** (supra) is concerned, needless to say that the same is based on a parallel drawn from the authority of the Supreme Court of **Devendra Singh** (supra) which as already noticed above, had no role to play in the instant case and for the same reason, the decision of **Kamla Kant** (supra) also cannot save the day for the petitioner.

59. Now, it will be appropriate to examine the decisions cited by Sri Pandey, learned Standing Counsel for the State.

60. The Apex Court in **Viroj Kuwar** (Supra) in paragraph 8 has held as under:-

'8. In other words, in computation of the ceiling area the family defined under Section 3(7) becomes relevant in computation of the members of the family to give additional land to the extent of the members of the family envisaged therein. While aggregating the ceiling area a judicially separated wife has been excluded to be a member of the family. The question, therefore, is whether judicially separated wife is a tenure-holder under the Act. It is seen that Section 3(17)(a) would exclude the wife when husband is a tenure-holder and that, therefore, she cannot be at the same time an independent tenure-holder when the husband is a tenure-holder, though she was judicially separated from her husband. In this definition, the judicially separated wife has not been excluded for obvious reason that though by judicial separation the wife and the husband may not be living together, in law, still she remains to be his wife so long as there is no divorce putting an end to the marital tie.

9. Under those circumstances, judicially separated wife cannot be an independent tenure-holder when her husband is a tenure-holder within the meaning of Section 3(17) of the Act. If this construction is adopted, it is consistent with the provisions of the Act for the reason that under the Amendment Act judicially separated wife has been brought in for computation of the aggregate of the ceiling area under Section 5 obviously for the reason that the legislators intended that when there is judicial separation between wife and husband, she cannot be treated to be a member of the family for the purpose of aggregating the ceiling area held by the tenure-holder. The learned Single Judge in the judgment (supra) obviously has overlooked the impact of the definition under Section 3(17)(a) and held that in the absence of any express exclusion of the judicially separated wife to be the tenure-holder she is entitled to a separate holding as a tenure-holder. We are of the opinion that the view of the learned Judge is clearly in negation of the expressed provision contained in Section 3(17)(a) of the Act. Therefore, it is not correct law.'

61. The next decision relied upon by the learned Standing Counsel is that of **Darshan Prasad** (Supra) wherein the Apex Court has held as under:-

'3.'We do not find any force in this contention. The Amendment Act 20 of 1976 inserted two Sections 38-A and 38-B in the Principal Act of 1960. Sections 38-A and 38-B are reproduced as under:

'38-A.'Power to call for particulars of land from tenure-holders.' (1) Where the prescribed authority or the appellate court considers it necessary for the enforcement of the provisions of this Act, it may, at any stage of the proceedings under this Act, require any tenure-

holder to furnish such particulars by affidavit in respect of the land held by him and members of his family as may be prescribed.

(2) The particulars of land filed under sub-section (1) may be taken into consideration in determining the surplus land of such tenure-holder.

38-B.'Bar against res judicata.' No finding or decision given before the commencement of this section in any proceeding 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 the retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time.'

4.'The above provisions clearly show that the prescribed authority was given power to require any tenure-holder to furnish such particulars, by affidavit in respect of the land held by him and members of his family as may be prescribed which may be considered necessary for the enforcement of the provisions of the Ceiling Act. It is clearly provided under Section 38-B inserted by the Amending Act as mentioned above that any finding or decision given before the commencement of this section will not operate as a bar for the retrial of such proceeding or issue in accordance with the provisions of the Act as amended from time to time. The appellants had raised a similar objection before the High Court, but the same was rejected on the ground that if an earlier judgment is said to operate as res judicata in the subsequent proceedings, then all the necessary facts including pleadings of the earlier litigation must be placed in the subsequent proceedings. The High Court further observed that in the instant case, the earlier notice under Section 10(2) which was issued to the tenure-holder along with the statement prepared in Form No. 3 were not placed before the ceiling authorities in subsequent proceedings. It was further held that even in the writ petition no such material was placed in order to enable the Court to decide whether the second notice could be said to be illegal. Section 30(3) of the U.P. Act 20 of 1976 clearly provided that the prescribed authority was authorised to issue fresh notice within a period of two years from the date of any order passed in earlier ceiling proceedings. We are in agreement with the view taken by the High Court. Learned counsel for the appellants was unable to show that in the facts and circumstances of the case, the notice issued under Section 10(2) of the present proceedings was in any manner illegal or without jurisdiction.

* * *

6.'We do not find any force in the above contention in view of the clear provisions of the Ceiling Act, 1960. Section 3(7) defines 'family' as under:

'3.(7) 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);'

7.'It is clear from the above definition that the wife is included in the family of her husband other than a judicially separated wife.

8.'It is important to note that the Hindu Marriage Act, 1955 had come into force on May 18, 1955. Section 10 of this Act provided for the judicial separation. Under Section 10 of the Hindu Marriage Act either party to a marriage was entitled to present a petition to the District Court praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13 and in the case of wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented. Thus, in order to get a judicial separation, it was necessary to obtain a decree under the above provision and then alone it could be recognised as a judicial separation. The Ceiling Act, 1960 was enacted and brought into operation long after the Hindu Marriage Act, and as such the legislature was fully aware of the meaning of judicially separated wife or husband while using this term in the definition of 'family' under Section 3(7) of the Ceiling Act, 1960. It is further important to note that sub-section (3) of Section 5 of the Ceiling Act, 1960, prescribes, while determining the ceiling area, the land of 'adult son/sons' who were themselves tenure-holders being excluded, but no such land is allowed to be excluded in the case of the wife, even though she might be a separate tenure-holder. Thus, it is abundantly clear from a perusal of the above provisions that in the case of determining ceiling area of the land belonging to a person, the land even if owned or possessed by his wife in her own right would have to be included in the land of the husband treating the wife as a member of his family. The only exception has been made in the case of a judicially separated wife. It was contended by the learned counsel for the appellants that a wider meaning should be given to the term 'judicially separated' wife to include a wife who may be living separately from her husband and agricultural land owned or possessed in lieu of her right of maintenance should be excluded from the ceiling limit of her husband. It is difficult for us to accept this contention in view of the clear provisions of the Ceiling Act, 1960 which apart from being a beneficial act for the landless has used the term 'judicially separated' wife after the coming into force of the Hindu Marriage Act, 1955. This cannot be given a meaning to include a wife merely living separately from the husband, but having not obtained a decree for judicial separation under the provisions of the Hindu Marriage Act, 1955.'

62. The learned Standing Counsel has relied upon a decision of this Court in **Gurdeep Singh (Supra)** wherein noticing the definition of the word 'family' as amended, this Court held as under:-

'7. The word "family' has been defined in Section 3 (7) of the Ceiling Act to mean the tenure holder himself or herself and his/her spouse as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughter). The said definition occurring in Section 3 (7) is extracted herein below:-

"(7) "family" in relation to tenure-holder means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughter)."

8. A perusal of definition of "family' as given in the Ceiling Act leaves no doubt that family in relation to a tenure holder would exclude judicially separated wife or husband. However, what is of significance in this case is to consider the relevant date for determination as to who constitutes family of a tenure holder.

9. The Ceiling Act was amended by U.P. Act No.2 of 1975 with effect from 08.06.1973. Sub-section (3) of Section 5 as it existed in the Principal Act was also substituted by the said amending Act. Section 5 (3) as it stands amended vide U.P. Act No.2 of 1975 is extracted herein below:-

"(3) [Subject to the provisions of sub-sections (4), (5), (6) and (7)] the ceiling area for purposes of sub-section (1) shall be -

(a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;

(b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land;

(c) [x x x]

(d) [x x x]

(e) in the case of any other tenure-holder, 7.30 hectares of irrigated land;

(f) for purposes of determining whether an adult son of a tenure-holder is himself a tenure-holder within the meaning of [clause (a) or clause (b)];

(g) for purposes of service of notice under Section 9".

10. In the case of Murari Lal vs. District Judge, Mathura and others, reported in 1987 RD 103, it has clearly been held that relevant date for determination as to whether the wife was judicially separated would be 08.06.1973 and not any other date. In the instant case, admittedly the decree of divorce on which Gurdeep Singh as also Smt Prakash Kaur relied upon to contend that the land recorded in the name of Smt Prakash Kaur could not have been clubbed with the land of tenure holder-Gurdeep Singh, was passed on 10.05.1984 i.e. much after the relevant date which is 08.06.1973. Sub-section (3) of Section 5 provides for determination of ceiling area in the case of tenure holder having a family of not more than five members and also a tenure holder having a family of more than five members. Thus, for the purpose of determination of surplus land, the family which existed on 08.06.1973 is to be taken into consideration.

11. Any judicial separation or decree of divorce passed or obtained after 08.06.1973 will be a factor to be taken into consideration for the purpose of clubbing or excluding the land held by such judicially separated or divorced wife. Even otherwise, the Prescribed Authority has categorically recorded a finding that Gurdeep Singh and Smt Prakash Kaur have been living together and in fact it is Gurdeep Singh who has been doing agriculture even on the land recorded in the name of Smt Prakash Kaur.

12. Legally, in the proceedings for determination of ceiling area/surplus area, a woman whose husband is tenure holder, does not have any status as tenure holder and her land is thus to be clubbed with the land of her husband. Exclusion of land held by wife is possible only in a case where there exists a judicial separation, that too on the relevant date i.e. 08.06.1973.'

63. The learned Standing Counsel also relied upon the decision of this Court in **Rajendra Prasad Singh** (Supra), wherein this Court in paragraph 6 held as under:-

'6.'Accordingly, the first point is rejected.

POINT No. 2:' So far as this point is concerned, it should be seen that it is wholly immaterial that Smt. Sushila Devi, the wife of the petitioner, was treated as a separate tenure-holder in the earlier ceiling proceedings. It should be seen that the provisions contained in the Ceiling Act before its amendment by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act 1972 (U.P. Act No. 18 of 1973) were radically different. There was no provision for the clubbing of the land held by the wife with the holding of her husband-tenure-holder. In view of the definition of the 'family' in Section 3(7) and of the 'tenure-holder' in Section 3(17), it is clear that when the husband has been treated as the tenure-holder, the wife herself cannot be treated to be a tenure-holder. Further, Section 5(3) provides for the clubbing of the land held by the members of the family of a tenure-holder with the holding of the tenure-holder. Reading all these provisions together, it is obvious that the land held by Smt. Sushila Devi as the member of the family of her husband tenure-holder was bound to be clubbed with the holding of her husband tenure-holder and she could not herself be treated as a tenure-holder in her own rights. Therefore, it is not at all material that in the earlier ceiling proceedings, which were held under the provisions of the Act as they stood before 8-6-1973, the were had been treated as a Separated tenure-holder. The said finding lost its relevance and effect in view of the change in the law brought about by the U.P. Act No. 18 of 1973. The constitutionality of the provisions of the Ceiling Act providing for the clubbing of the lands held by the members of the family with the holding of the tenure-holder concerned, was sought to be attacked on the ground of the infringement of fundamental rights, but such a challenge cannot be entertained in view of the fact that the Ceiling Act and its amending Acts were included in the 9th schedule of the Constitution. (See'State'v.'Rajesh Pachauri1977 All WC 180 : 1977 Rev Dec 160 : ((1977) 2 SCC 548 : AIR 1977 SC 915)).'

64. In the aforesaid backdrop of the submissions, the undisputed facts and the decisions relied upon by the respective parties, this Court finds that in the instant petition actually there is no challenge to the validity or vires of Sections or provisions of the Act of 1960. Hence, the submission of the learned Senior Counsel that the provisions of the Act should be construed harmoniously and be given prospective application is misconceived.

65. It will not be out of place to mention that the provisions of the Act of 1960 amended by the Amending Act of 1976 has been made applicable retrospectively i.e. w.e.f. 10th October, 1975 and the said provisions have been insulated from judicial review by placing them under Chapter IX of the Constitution of India. For this additional reason as well, there cannot be any challenge to the provisions of the Act as suggested by the learned Senior Counsel. Needless to say that this aspect of the matter was considered by this Court way back in **Rajendra Prasad Singh** (supra) and this Court does not find that the matter requires any fresh re-determination.

66. Moreover, if the provisions are to be given a harmonious and prospective construction, as suggested by the learned Senior Counsel for the petitioner, then the only conclusion that will be evident, would lead to an anomaly. The basic purpose of the Act of 1960 was transitional in nature and was a step forward taken after the abolition of the Zamindari in the State of U.P. Huge land holdings which were concentrated in the hands of few privileged sections, were to be distributed amongst the actual tilling class, landless labourers and to achieve an optimum and widespread use of the State resources to subserve the common good and this would not be achieved.

67. Another anomaly which will set in and that would be that the ceiling limit contained in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 will get violated. The two Acts of 1950 and Act of 1960 are complimentary and are not supposed to derogate each other. If the ceiling of 40 acres as initially available in the unamended Act of 1960 is retained then it will cause more harm than good and it would result in violating the language and provisions of the Act of 1960, as amended by several amendments which are not under challenge here.

68. Learned Senior Counsel laid heavy emphasis on the transitory Section 19 of the Amending Act no. 18 of 1973 and Section 31 of the Amending Act of 1976. In case if the said Sections are closely examined, it would be clear that the said transitory provision is confined to proceedings which were referable to Section 14 and Chapter III and IV of the Principal Act. Section 14 apparently is a procedural aspect relating to process as to how the possession of the surplus land as declared is to be taken and how it is to be dealt with. This is the stage, after the surplus land has already been declared and the orders have attained finality. Similarly, Chapter III is titled 'determination and payment of amount' and comprises of Sections 17 to 23 and Chapter IV is titled 'disposal and settlement of surplus land' and comprises of Section 24 (which was deleted by the Amending Act No.18 of 1973) till Section 31. These are provisions which relate to payment of compensation and as noticed above relating to disposal of land declared surplus and it has got nothing to do with the determination of rights and declaration of surplus land.

69. The Amending Act of 1976 (U.P. Act no. 20 of 1976) came into force from 10.10.1975 and it required the Authorities to re-determine the surplus land within two years w.e.f. 10.10.1975. It was in furtherance thereof that fresh notice was issued to the petitioner on 15.05.1976 after the Amending Act had come into force. This situation is further clarified by Section 38-B introduced by the Amending Act No. 20 of 1976. Hence, this Court is inclined to accept the reasoning of Sri Pandey, learned Standing Counsel on the aforesaid aspects.

70. Taking a complete holistic view of the Act of 1960 along with Amendments introduced in the year 1973 and 1976, it would reveal that a composite scheme has been brought into play by the

Legislature. The submissions made by the learned Senior Counsel for the petitioner appears to be based on disjointed and selective reading of the provisions and is based on tearing observations out of context, from a decision or from the provisions of the Act of 1960. The interpretation suggested does not impress this Court, and it cannot be accepted as it would violate the provisions of the Act of 1960 and it would run contrary to the legislative scheme.

71. Thus, this Court finds that the orders passed by the two Ceiling Authorities cannot be said to be bad for want of jurisdiction or having been passed in contradiction or against the dictum of the Apex Court in **Devendra Nath** (Supra) and **Arvind Kumar** (Supra). **Thus, the first question is answered accordingly.**

72. Now, considering the second question, this Court finds that in light of the facts noticed hereinabove first, it would reveal that one part of the submission/objection of the original tenure-holder i.e. that the land belonging to the sons and daughters should not be clubbed with the land of the original tenure-holder. This was already accepted in the second round vide order dated 15.11.1978 and the matter rested. The other issue that was raised was regarding clubbing of the land belonging to the wife of the original tenure-holder (though as per the original petitioner, his wife held the land in her own separate right.

73. In this regard, it will be relevant to take note of the definition of the word 'family' which has been defined in Section 3(7). Simultaneously, the definition of words 'surplus land and tenure holder' which has been mentioned in Section 3(16) and (17) may also be perused.

'3 (7) 'family' in relation to a tenure-holder means himself or herself and his wife or her husband as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters) ;

3 (16) 'surplus land' means land held by a tenure-holder in excess of the ceiling area applicable to him, and includes any buildings, wells and trees existing thereon ;

3 (17) 'tenure-holder' means a person who is the holder of a holding but 1[except in Chapter III] does not include-

(a) a woman whose husband is a tenure-holder ;

(b) a minor child whose father or mother is a tenure-holder ;

74. From the perusal of the above definition, it would clearly indicate that in the word 'family' in relation to tenure holder, the wife or the husband as the case may be are included alongwith minor sons and daughters.

75. Similarly, in the definition of the words 'tenure holder', it clearly prohibits the inclusion of a woman whose husband is a tenure holder. It also prohibits a minor child to be treated as a tenure holder whose father or mother is already a tenure holder. Thus, it would be seen that a determination has to be made as to who would be a tenure holder, then for the purposes of Ceiling Act either the husband or the wife can only be

treated as a tenure holder but both cannot be tenure holders together to exclude the land held by them, while determining the ceiling and surplus land under the Act of 1960.

76. Since, the definition clause was amended and in the word 'family', in relation to a tenure-holder it included the husband or wife, of the tenure holder. Taking note of the definition of the word 'tenure holder' it will reveal that it can either be the husband or the wife as a tenure-holder for the purposes of the Act of 1960 and in such a situation, if the husband is treated as a tenure holder, then his wife, will be excluded and if any land is held by her it will be clubbed with the husband being a family and in case if the wife is treated to be a tenure holder then her husband will be excluded and his land would be clubbed with his wife, being a family.

77. In the instant case, it was always the husband (the original petitioner) who was treated as a tenure holder and he had always raised this issue that the land recorded in the name of his wife may not be included, but that was turned down by the ceiling authorities. It is also relevant to notice that the Prescribed Authority in the second round of litigation vide its order dated 15.11.1978 had already excluded the adult sons and daughters whereas it continued to club the land recorded in the name of the petitioner's wife as the land of the petitioner. Thus, the order passed by the Prescribed Authority to include the land of the wife of the tenure holder along with the land of the petitioner cannot be said to be bad or against the law.

78. There is another aspect to this issue, though, the original petitioner had raised this issue of clubbing of his wife's land by filing Appeal No.16/1978 which did not find favour with the Appellate Authority and it partly allowed the appeal vide judgment dated 20.03.1979. A limited issue was left and remanded for consideration whereby certain plots were directed to be considered unirrigated. Had the petitioner been aggrieved by the finding that his wife's land was being clubbed with him, he could have raised the matter at that stage by escalating the matter further, but he did not and once having succumbed to it, the issue before the Prescribed Authority naturally remained confined to the issue relating to certain plots being treated as unirrigated and liberty was granted to the petitioner for making his choice known for the land he wished to retain in terms of Section 12-A of the Act of 1960.

79. As the admitted facts would indicate that Appeal No.3/1982 was allowed by the Appellate Authority on 16.09.1983 and again the only issue was regarding the choice and certain plots to be treated as unirrigated and admittedly this judgment dated 16.09.1983 was never challenged. In the fourth round, the Prescribed Authority excluded Plots bearing No.353, 432, 433, 498 and 503 as unirrigated. At this stage, the only issue remained was regarding choice. The decision rendered by the Prescribed Authority dated 27.06.1986 cannot be examined for any other purpose except as to relating to the issue of choice whether it has been properly considered by the Prescribed Authority.

80. As noticed above, 7.3 hectares was permitted to be retained by the petitioner and rest was declared surplus and this finding apparently could not be demonstrated to be erroneous, hence, it does not suffer from any manifest error which may persuade this Court to enter into the factual dispute under Articles 226/227 of the Constitution of India.

81. As far as the issue regarding choice is concerned, despite on two occasions, liberty was granted to the petitioner to express his choice explicitly yet on one earlier occasion, he gave a vague statement. However, the authority giving indulgence to the petitioner gave another opportunity to express his choice and on the second occasion, the petitioner gave a reason that his choice must be treated to be dependent on

the exchange proceedings which were initiated at the behest of married daughters of the original petitioner, who wanted to get their land exchanged with that of their mother. Once the exchange proceedings under Section 161 of the Act of 1950 could not have any bearing on the ceiling authorities, it could not be treated as a valid expression of choice.

82. Even before this Court, learned Senior Counsel could not demonstrate that despite having been granted two opportunities to express the choice, why no cogent choice was given, knowing well that the provisions of Section 161 of the Act of 1950 are different and operate in a different sphere and it could not bind the ceiling authorities or have any impact.

83. Even otherwise though this petition has been pending before this Court since 1993 and the writ petition came to be amended drastically in the year 2022 i.e. after about two decades yet nothing has been brought on record to indicate the status of exchange proceedings which allegedly were initiated by the daughters of the original petitioner, nor any option of choice has been made and no prayer for seeking another opportunity to give choice to the Prescribed Authority has been made.

84. In this backdrop, the petitioner is attempting to raise issues indirectly by trying to hit at the proceedings which had already attained finality by raising issues of transitory provisions which have no role to play and as already considered, this Court finds that submissions advanced by the learned Senior Counsel have no force and substance, they have been raised only to perpetuate the litigation before this Court and it does not find favour with this Court. **Thus, the second question is answered accordingly.**

85. In light of the facts and law discussed hereinabove, this Court finds that the view taken and expressed by the Ceiling Authorities in the impugned orders cannot be faulted.

86. This Court unhesitatingly holds the writ petition to be sans merit and it is **dismissed**. The judgment and order dated 27.06.1986, passed by the Prescribed Authority and the judgment dated 11.06.1993 passed by the Appellate Authority are confirmed. In the facts and circumstances, there shall be no order as to costs.

87. The original records provided to this Court has been handed over to Shri Hemant Kumar Pandey, learned standing counsel, for the State.

(2026) 2 ILRA 1691
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.02.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ-C No.33442 of 2025

Dinesh Chandra @ Dinesh Chandra Bhatt ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

विचारार्थ प्रश्न

न्यायालय के समक्ष मुख्य प्र न यह था कि क्या निर्वाचन अधिकरण (जनपद **न्यायाधीश**, बदायूँ) द्वारा निर्वाचन याचिका के आदे ा 7 नियम 11 सिविल प्रक्रिया संहिता के अंतर्गत वाद हेतु के अभाव और भौतिक तथ्यो की कमी के आधार पर निरस्त करना विधिक रूप से उचित था।

हेडनोट्स

- निर्वाचन याचिका और भौतिक तथ्यः उत्तर **प्रदेश** नगर पालिका अधिनियम, 1916 की धारा 20 के तहत निर्वाचन याचिका मे उन सभी भौतिक तथ्यो का संक्षिप्त विवरण और भ्रश्ट आचरण के पूरे ब्यौरे देना अनिवार्य है जिन पर याचिकाकर्ता निर्भर करता है।
- सीपीसी आदे ा 7 नियम 11 का अनुप्रयोगः यदि निर्वाचन याचिका मे भौतिक तथ्यो का उल्लेख नही या वह पूर्ण वाद हेतुक प्रकट नही करती है, तो उसे भ्रारूआती स्तर पर ही निरस्त किया जा सकता है।
- मतदाता सूची मे त्रुटिः अधिनियम की धारा 19(2)(क) के अनुसार, मतदाता सूची मे किसी अपात्र व्यक्ति का नाम जुडने या पात्र व्यक्ति का नाम छूटने के आधार पर निर्वाचन को चुनौती नहीं दी जा सकती । (E-6)

अधिनियमों की सूची

- भारत का संविधान(अनुच्छेद 226)
- उत्तर **प्रदेश** नगर पालिका अधिनियम, 1916(वि ोशकर धारा 12–घ, 19, 20 और 28
- सिविल प्रकिया संहिता(सी0पी0सी0, 1908(आदे ा 7 नियम 11
- उत्तर **प्रदेश** नगरपालिका(सदस्यो का निर्वाचन) नियमावली, 2010

उद्धृत केस लॉ

- कनिमोझी करूणानिधि बनाम ए.संथान कुमार (2023) : भौतिक तथ्यो के अभाव मे याचिका निरस्त की जा सकती है।
- डी रामचंद्रन बनाम आर.वी जनकिरामन (1999) वाद पत्र को टुकडो मे खारिज नही किया जा सकता।
- पी.वी.गुरू राज रेडडी बनाम पी.नीरथा रेडडी (2015) आदे ा 7 नियम 11 की कठोरता पर चर्चा।
- करीमुद्दीन बरभुइया बनाम अमीनुल हक ल ाकर (2024) : भ्रश्ट आचरण के आरोपो मे स्पश्टता की आव यकता
- लक्ष्मी नारायण नायक बनाम रामरतन चतुर्वेदी (1990): निर्वाचन याचिकाओ के अभिवचनो के सिध्दांत ।

मुख्य भाब्द

- निर्वाचन याचिका
- भ्रश्ट आचरण
- वाद हेतुक
- आदे ा 7 नियम
- पुनर्मतगणना

पक्षो की उपस्थिति

- याचिकाकर्ता की ओर से : श्री राहुल सहाय, अधिवक्ता
- प्रतिपक्षी (राज्य) की ओर से : श्री **शिखर** अवस्थी, मुख्य स्थायी अधिवक्ता
- निर्वाचित उम्मीदवाद (प्रतिवादी सं. 4) की ओर सेः श्री भा ा नन्दन, वरिश्ठ अधिवक्ता एवं अन्य(जो पत्रावली के अनुसार उपस्थित रहे।

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

१. वर्तमान याचिका, याचिकाकर्ता दिनेश चन्द्र उर्फ दिनेश चन्द्र भट्ट ने भारत के संविधान के अनुच्छेद २२६ के अंतर्गत संस्थित की है, कि उसके द्वारा संस्थापित की गयी, निर्वाचन याचिका संख्या १ वर्ष २०२३ को प्रतिवादी संख्या ४ (अनुपम पाठक), निर्वाचित चेयरमैन/अध्यक्ष नगर पंचायत, मुडिया धुरेकी, जनपद बदायूं के द्वारा, आदेश ७ नियम ११ सिविल प्रक्रिया संहिता के अन्तर्गत संस्थापित आवेदन को स्वीकार कर, निर्वाचन अधिकरण (जनपद न्यायाधीश, बदायूं) ने उक्त निर्वाचन याचिका को आदेश दिनांकित १४.०८.२०२५ द्वारा निरस्त कर दिया गया है। उक्त आदेश वर्तमान याचिका के माध्यम से आक्षेपित किया गया है।

२. वर्तमान प्रकरण के उचित निर्धारण हेतु, निम्न तिथियों व संगत प्रसंगो का उल्लेख करना आवश्यक रहेगा:

वर्ष/दिनांक	प्रसंग
२०२३	निर्वाचन याचिकाकर्ता व निर्वाचित उम्मीदवार (प्रतिवादी सं० ४) ने उपरोक्त नगर पंचायत चुनाव में अन्य ५ उम्मीदवारों के साथ निर्वाचन प्रक्रिया में भाग लिया।
११.०५.२०२३	उपरोक्त नगर पंचायत में निर्वाचन हेतु १० मतदान केन्द्रों पर मतदान हुआ व प्रतिवादी संख्या ४ को ५ वोट से विजयी घोषित किया गया एवं निर्वाचन याचिकाकर्ता द्वितीय क्रमांक पर रहा।
२३.०५.२०२३	निर्वाचन याचिकाकर्ता ने निर्वाचन याचिका संख्या ०१ वर्ष २०२३, निर्वाचन अधिकरण (जनपद न्यायाधीश, बदायूँ) के समक्ष धारा २०, उत्तर प्रदेश नगर पालिका अधिनियम, १९१६ (संक्षेप में 'अधिनियम १९१६') के अंतर्गत संस्थापित करी तथा प्रार्थना करी कि 'भ्रष्ट आचरण' के आधार पर निर्वाचित उम्मीदवार का निर्वाचन निरस्त किया जाये।
१८.०१.२०२५	निर्वाचन याचिका में उत्तर शपथ पत्र व प्रतिउत्तर शपथ पत्र दायर होने के उपरांत, निर्वाचन अधिकरण द्वारा विवाद के बिन्दुओं को निर्धारित किया गया।
२८.०१.२०२५	उपरोक्त के उपरांत प्रतिवादी संख्या ४ ने आदेश ७ नियम ११ सिविल प्रक्रिया संहिता के अंतर्गत एक आवेदन दायर किया कि निर्वाचन याचिका में सारवान तथ्यों व पूरे ब्यौरे को उल्लिखित नहीं किया गया है एवं अभिकथन अस्पष्ट है। वाद हेतुक प्रकट न होने के कारण उपरोक्त प्रावधानों के अंतर्गत निर्वाचन याचिका निरस्त की जाये।
२८.०२.२०२५	निर्वाचन अधिकरण ने उक्त आवेदन को, कि निर्वाचन याचिका में साक्ष्य शपथ पत्र दाखिल किया जा चुका है, अतः याचिका को गुण-दोष के आधार पर निर्णीत करना उचित रहेगा, अतः उक्त आवेदन को अस्वीकार कर दिया।
३०.०५.२०२५	निर्वाचित उम्मीदवार ने उपरोक्त आदेश के विरूद्ध इस न्यायालय के समक्ष, सिविल पुनर्निरीक्षा याचिका सं० ६३ सन् २०२५ संस्थित की, जो आदेश दिनाँक ३०.०५.२०२५

	द्वारा स्वीकार कर ली गयी एवं आक्षेपित आदेश को अपास्त कर, निर्वाचन अधिकरण को आदेशित किया कि आदेश ७ नियम ११, सिविल प्रक्रिया संहिता के अंतर्गत दायर आवेदन को गुण-दोष पर निर्णीत किया जाये।
१४.०८.२०२५	प्रतिप्रेषण के उपरांत उक्त आवेदन पर गुण दोष पर निर्णय लिया। निर्वाचन अधिकरण द्वारा उक्त आवेदन को स्वीकार कर लिया गया एवं निर्वाचन याचिका को नामंजूर कर दिया गया। उपरोक्त आदेश को वर्तमान याचिका के माध्यम से आक्षेपित किया गया है।

३. वर्तमान प्रकरण में निर्वाचन याचिका, आदेश ७ नियम ११ सिविल प्रक्रिया संहिता के अंतर्गत दायर आवेदन पत्र व आक्षेपित आदेश के मुख्य अंश निम्न उल्लेखित किये जा रहे हैः-

(क) <u>निर्वाचन याचिका के मुख्य अंश</u>

"८- यह कि विपक्षी सं०- ४ भाजपा की सक्रिय कार्यकर्ता है तथा उसका उठना बैठना भी भा०ज०पा० के बड़े बड़े राजनैतिक व्यक्तियों व पूर्व विधायक व बड़े बड़े अधिकारी में है और उन्होंने अपने प्रभाव से मतदान होने से पूर्व मतदाता सूची के बनते समय नगर पंचायत मुडिया धुरेकी के परिसीमन क्षेत्र से बाहर के गाँव के लोगों के लगभग २५० वोट नगर पंचायत मुडिया धुरेकी की वोटर लिस्ट में बढ़वा दिये जबकि यह लोग स्थायी व अस्थायी किसी भी रूप से नगर पंचायत मुडिया धुरेकी, जिला बदायूँ में नहीं रहते है और उक्त सभी लोगों ने नगर पंचायत मुडिया धुरेकी के चुनाव में वोट डाले है।

९- यह कि विपक्षी सं० ४ ने अपने प्रभाव से नगर पंचायत मुडिया धुरेकी जिला बदायूँ में निर्वाचन को पूरी तरह से प्रभावित किया है जिसका प्रभाव यह कि विपक्षी सं० ४ का मायका रहोली विकास खण्ड बनिया खेड़ा जिला सम्भल में भी मतदाता सूची में नाम है तथा मायके वालों के हाल पता मुरादाबाद गेट वार्ड सं० १६ निकास चन्दौसी नगर पालिका परिषद निर्वाचक नामावली २०२२ में भी विपक्षी सं० ४ और उनके मायके के लोगों के वोट है। इसके अतिरिक्त विपक्षी सं० ४ के सगे भाई कपिल पाठक, आशुतोष पाठक पुत्रगण विनोद कुमार के वोट नगर पंचायत निर्वाचक नामावली २०२२ में वार्ड नं १ मतदान स्थल प्रा० स्कूल मुडिया का नं० २ में है। जबकि विपक्षी सं० ४ के सगे भाई आशुतोष पाठक पुत्र विनोद उर्फ विनोद कुमार पाठक नगर पंचायत निर्वाचक नामावली २०२२ वार्ड सं० १ के अतिरिक्त वार्ड सं० ३ की रियान में नाम अंकित है जो विपक्षी सं० १ के भ्रष्ट आचरण को स्पष्ट दर्शाता है।

१०- यह कि याची को विपक्षी सं० ४ के प्रभाव और निर्वाचन अधिकारी / सहायक निर्वाचन अधिकारी और गणना पर्यवेक्षक के द्वारा जिताने में किये गये सहयोग का प्रभाव मतगणना के समय भरे गये प्रारूप ३८ और प्रारूप ५७ में वोट घटाने और बढ़ाने में की गयी ओवर राइटिंग से पूर्णतया स्पष्ट होता है उक्त ओवर राइटिंग में किसी भी अधिकारी के कोई ह० नहीं है।

११- यह कि याची को वार्ड सं० १ में १३९ वोट प्राप्त हुये जबकि विपक्षी सं० ४ को २९२ वोट पड़े। वार्ड सं० २ में याची को ९४ वोट पड़े विपक्षी सं० ४ को १५१ वोट पड़े। वार्ड सं० ३ में याची को ३३३ मत पड़े और विपक्षी सं० ४ को ११९ वोट पड़े। वार्ड सं० ४ में याची को १९७ वोट पड़े जबकि विपक्षी सं० ४ को ११९ वोट पड़े। वार्ड सं० ५ में याची १८९ वोट पड़े विपक्षी सं० ४ को ४९ वोट पड़े। वार्ड सं० ६ में याची को ८६ वोट पड़े जबकि विपक्षी सं० ४ को १२७ वोट पड़े जिसे बढ़ाकर १२८ किया गया। वार्ड सं० ७ में याची को २६४ वोट पड़े जबकि विपक्षी सं० ४ को ५९ वोट पड़े। वार्ड सं० ८ में याची को ३२ वोट पड़े जबकि विपक्षी सं० ४ को २४२ वोट पड़े जिन्हें बढ़ाकर २४७ किया गया। वार्ड नं० ९ में याची को ४३ वोट पड़े जबकि विपक्षी सं० ४ को १०२ वोट पड़े। वार्ड सं० १० में याची को ११३ वोट पड़े जिसे घटाकर ११२ किया गया। जबकि विपक्षी सं० ४ को २२० वोट पड़े जिन्हें बढ़ाकर २२५ किया गया। मतगणना के दौरान याची को १४९० वोट मिले विपक्षी सं ४ को मात्र १४८० वोट मत मिले। याची को पोस्टल वोट १ मिला जबकि विपक्षी सं० ४ को पोस्टल वोट ४ मिले। इसके आधार पर याची को १४९१ वोट मिले और विपक्षी सं० ४ को १४८४ वोट मिले। परन्तु मतगणना अधिकारी ने निजी स्वार्थ तथा राजनैतिक प्रभाव के कारण याची का वार्ड नं० १० में १ वोट घटाकर और विपक्षी सं० ४ के वार्ड नं० ६ में १ वोट, वार्ड नं० ८ में ५ वोट तथा वार्ड नं० १० में ५ वोट बढ़ाकर वार्ड संख्या १ ता १० के मतगणना के समय रद्द / अस्वीकृत मतों को गलत प्रकार से रद्द (अस्वीकृत) करना दर्शाया जो वास्तव में याची को प्राप्त होने थे।"

(ख) <u>आदेश ७ नियम ११, सिविल प्रक्रिया संहिता अंतर्गत दायर आवेदन के मुख्य अंश</u>

"3. That to test of section 19 (2) (b) as well as section 20 has to specifically plead and establish the violations of rules 2010, that it is pertinent to mention here that there is no averment or specification as to on which counting booth, table and as to which counting agent tied the wrong bundling of votes as alleged. The election petition had to specify and disclose full particulars of any corrupt practices that the petitioner alleges a full statement disclosing the names of the parties alleged to have been committed such corrupt practices as well as the dates and place of the commission such practices and also as to which of the procedure specified in rule 51 of the rule 10 was violated and the requisite security has also not been deposited by the petitioner.

4. That it is submitted that even if the election petition could be filed under section 19(2)(b) of the U.P. Municipality Act, the petition should have disclosed 'material facts' and 'particulars' as specified in Section 20(1) and on failure of such disclosure of the material facts in the petition, it is liable to be dismissed and as such the the instant application be allowed and the Petition filed by the Petitioner should have dismissed which lacks in 'material facts' and 'particulars', as is clear from the perusal of the election petition itself.''

३. यह कि धारा १९(२)(ख) तथा धारा २० के परीक्षण हेतु नियमावली २०१० के उल्लंघनों का विशिष्ट रूप से उल्लेख और स्थापना करना अनिवार्य है। यहाँ यह उल्लेख करना प्रासंगिक है कि याचिका में इस बात का कोई विवरण या स्पष्टीकरण नहीं दिया गया है कि किस गणना स्थल, किस पटल और किस गणना एजेंट द्वारा मतों का गलत संग्रह किया गया। निर्वाचन याचिका में उन सभी भ्रष्ट आचरणों का पूर्ण विवरण और विशिष्टता प्रकट करना अनिवार्य है जिसका याचिकाकर्ता आरोप लगाता है। इसमें उन पक्षों के

नामों का पूर्ण विवरण होना चाहिए जिनके द्वारा ऐसे भ्रष्ट आचरण किए गए, साथ ही उन आचरणों के किए जाने की तिथि और स्थान का भी उल्लेख होना चाहिए। इसके अतिरिक्त, यह भी स्पष्ट नहीं किया गया है कि नियमावली १० के नियम ५१ में निर्दिष्ट किस प्रक्रिया का उल्लंघन किया गया है। साथ ही, याचिकाकर्ता द्वारा आवश्यक जमानत राशि भी जमा नहीं की गई है।

४. यह निवेदन है कि यदि निर्वाचन याचिका उत्तर प्रदेश नगरपालिका अधिनियम की धारा १९(२)(ख) के तहत दायर की जा सकती है, तब भी याचिका में धारा २०(१) में निर्दिष्ट 'भौतिक तथ्यों' और 'विवरण' का उल्लेख किया जाना चाहिए था। याचिका में ऐसे भौतिक तथ्यों के प्रकटीकरण की विफलता पर याचिका निरस्त होने योग्य है। अतः, वर्तमान आवेदन को स्वीकार किया जाए और याचिकाकर्ता द्वारा दायर याचिका को निरस्त किया जाना चाहिए, क्योंकि चुनाव याचिका के अवलोकन मात्र से ही यह स्पष्ट है कि इसमें 'भौतिक तथ्यों' और 'विवरण' का पूर्ण अभाव है।"

(हिन्दी अनुवाद न्यायालय द्वारा किया गया है।)

(ग) <u>आक्षेपित आदेश के मुख्य अंश</u>

"१३- याची द्वारा चुनाव याचिका में याची को विजयी घोषित किये जाने हेतु व विपक्षी संख्या-४ का चुनाव अवैध तरीके अपनाये जाने व भ्रष्ट आचरण के तहत पड़े मतों को रद्द किये जाने तथा सक्षम प्राधिकारी द्वारा आयोजित कराये गये चुनाव पर जो आपत्ति की गयी हैं, वह मुख्यत: चुनाव याचिका की मद संख्या-८, ९, १०, ११ में उल्लेखित हैं।

१४- याची ने चुनाव याचिका की मद सं०-८ में यह कथन किया है कि विपक्षी सं०-४ भाजपा की सक्रिय कार्यकर्ता है तथा उसका उठना बैठना भी भाजपा के बड़े-बड़े राजनैतिक व्यक्तियों व पूर्व विधायक व बड़े-बड़े अधिकारियों में है और उन्होंने अपने प्रभाव से मतदान होने से पूर्व मतदाता सूची के बनते समय नगर पंचायत मुडिया धुरेकी के परिसीमन क्षेत्र से बाहर के गांव के लोगों की लगभग २५० वोट नगर पंचायत मुडिया धुरेकी की वोटर लिस्ट में बढ़वा दिये, जबकि यह लोग स्थायी या अस्थायी किसी भी रूप से नगर पंचायत मुडिया धुरेकी पंचायत में नहीं रहते हैं और उक्त सभी लोगों ने मुडिया धुरेकी के चुनाव में वोट डाले हैं।

याची ने चुनाव याचिका की मद संख्या-९ में यह कथन किया है कि विपक्षी संख्या-४ ने अपने प्रभाव से नगर पंचायत मुडिया धुरेकी जिला बदायूँ में निर्वाचन को पूरी तरह से प्रभावित किया है, जिसका प्रभाव यह कि विपक्षी संख्या-४ का मायका रहोली विकास खण्ड बनिया खेडा, जिला सम्भल में भी मतदाता सूची में नाम हैं तथा मायके वालों के हाथ पता मुरादाबाद गेट वार्ड सं०-१६ निकास चन्दौसी नगर पालिका परिषद निर्वाचक नामावली २०२२ में भी विपक्षी संख्या-४ और उनके मायके के लोगों के वोट हैं। इसके अतिरिक्त विपक्षी संख्या-४ के सगे भाई कपिल पाठक, आशुतोष पाठक पुत्रगण विनोद कुमार के वोट नगर पंचायत निर्वाचक नामावली २०२२ में वार्ड नं ०-१ मतदान स्थल प्रा० स्कूल मुडिया का नं०-२ में है, जबकि

विपक्षी संख्या-४ के सगे भाई आशुतोष पाठक पुत्र विनोद उर्फ विनोद कुमार पाठक, नगर पंचायत निर्वाचक नामावली २०२२ वार्ड सं०- १ के अतिरिक्त वार्ड सं०-३ की रियान में नाम अंकित है जो विपक्षी सं०-१ के भ्रष्ट आचरण को स्पष्ट दर्शाता है।

१५- इस प्रकार याची ने चुनाव याचिका की मद सं०-८ में मुख्यत: यह कथन किया है कि विपक्षी सं०-४ ने मतदाता सूची बनते समय नगर पंचायत मुडिया धुरेकी से बाहर के गांव के लोगों के लगभग २५० वोट नगर पंचायत मुडिया धुरेकी की वोटर लिस्ट में बढवा दिये। जबकि मद संख्या-९ में मुख्य तौर से कथन किया है कि विपक्षी सं०-४ के घरवालों के वोट गैर जनपद की मतदाता सूची में भी अंकित हैं जो कि भ्रष्ट आचरण को स्पष्ट दर्शाता है।

१६- उ०प्र० नगर पालिका अधिनियम १९१६ की धारा-१९ (२) के अनुसार नगर पालिका के सदस्य के निर्वाचन के सम्बन्ध में इस आधार पर आपत्ति नहीं की जायेगी कि किसी ऐसे व्यक्ति का नाम जो मतदान के लिए पात्र था, परन्तु उसका नाम निर्वाचक नामावली में छोड़ दिया गया है या किसी ऐसे व्यक्ति का नाम जो मतदान करने के लिए पात्र नहीं था और उसका नाम निर्वाचक नामावली में जोड दिया गया हो।

इस प्रकार प्रस्तुत प्रकरण में चुनाव याचिका में वर्णित यह आधार देखा जाये कि विजयी उम्मीदवार विपक्षी सं०-४ ने नगर पंचायत मुडिया धुरेकी से बाहर के गांव के लोगों के लगभग २५० वोट नगर पंचायत मुडिया धुरेकी की वोटर लिस्ट में बढ़वा दिये तथा यह आधार कि विपक्षी सं०-४ के घर वालों के नाम गैर जनपद की मतदाता सूची में अंकित हैं तो उ०प्र० नगर पालिका अधिनियम १९१६ की धारा-१९ (२) के आलोक में याची को नगर पालिका सदस्य के चुनाव पर आपत्ति करने का अधिकार प्राप्त नहीं होगा क्योंकि अधिनियम १९१६ की धारा-१९ (२)(क) स्पष्ट रूप से प्रावधानित किया गया है कि मतदाता सूची में गलत मतदाता का नाम अंकित हो जाने से निर्वाचन पर आपत्ति करने की शक्ति किसी व्यक्ति को प्राप्त नहीं होगी।

१७- याची ने चुनाव याचिका की मद संख्या-१० में यह कथन किया है कि विपक्षी संख्या-४ के प्रभाव और निर्वाचन अधिकारी/सहायक निर्वाचन अधिकारी और गणना पर्यवेक्षक के द्वारा जिताने में किये गये सहयोग का प्रभाव मतगणना के समय भरे गये प्रारूप ३८ और प्रारूप ५७ में वोट घटाने और बढ़ाने में की गयी ओवर राइटिंग से पूर्णतया स्पष्ट होता है कि उक्त ओवर राइटिंग में किसी भी अधिकारी के कोई हस्ताक्षर नहीं हैं।

उ०प्र० नगर पालिका अधिनियम १९१६ की धारा-१९ (२) (ख) के अनुसार किसी अधिकारी द्वारा अधिनियम की किसी नियम ले त्रुटि, भूल या अनियमितता के आधार पर निर्वाचन के सम्बंध में आपत्ति नहीं की जायेगी, जबकि यह परिलक्षित न हो कि ऐसी त्रुटि, भूल या अनियमितता का निर्वाचन के परिणाम पर कोई सारवान प्रभाव पडा हो। इस प्रकार यदि किसी अधिकारी के ओवरराईटिंग पर हस्ताक्षर नहीं है तो इससे मतदाता की संख्याओं पर कैसे प्रभाव पडा, इस सम्बंध में चुनाव याचिका मौन है। मतगणना के समय भरे

गये प्रारूप ३८ और प्रारूप ५७ में ओवर राईटिंग पर हस्ताक्षर न होने से किसी प्रकार की सारवान प्रभाव का होना प्रदर्शित नहीं है, ऐसे में मतदान अधिकारी का यह कृत्य भ्रष्ट आचरण की परिधि में नहीं आता हैं और न ही इस आधार पर चुनाव याचिका योजित की जा सकती है।

१८- याची की ओर से याचिका की मद संख्या-११ में यह कथन किया है कि मतगणना अधिकारी ने निजी स्वार्थ तथा राजनैतिक प्रभाव के कारण याची का वार्ड नं०- १० में १ वोट घटाकर और विपक्षी संख्या-४ के वार्ड नं०-६ में १ वोट, वार्ड नं०-८ में ५ वोट, वार्ड नं०- १० में ५ वोट बढ़ाकर विपक्षी संख्या-४ को ५ मतो से विजयी घोषित किया गया और वार्ड सं०-१ ता १० के मतगणना के समय रद्द/अस्वीकृत मतों को गलत प्रकार से रद्द/अस्वीकृत करना दर्शाया गया, जो मत वास्तव में याची को प्राप्त होना थे।

उ०प्र० नगर पालिका अधिनियम १९१६ की धारा-२० के अनुसार याची को चुनाव याचिका प्रस्तुत करते समय ऐसे सारवान तथ्यों का विवरण देना होता है और ऐसे भ्रष्ट आचरण के, जो अर्जीदार ने आरोपित किये हो, पूरे ब्योरे देने होंगे, इसमें ऐसे पक्षो के नामों का विवरण देना होगा, जिन पर भ्रष्ट आचरण का आरोप लगाया हो और ऐसा प्रत्येक आचरण करने का दिनांक तथा स्थान का यथासंभव पूरा ब्योरा देना होगा।

ऐसे में यदि याची द्वारा चुनाव याचिका के मद संख्या -११ में जो आपत्ति की गयी है, वह सारवान तथ्यों की श्रेणी में नहीं आती है क्योंकि याची ने उस अधिकारी का ब्योरा नहीं दिया है, जिसने याची या विपक्षी के वोट घटाये या बढाये। मात्र चुनाव अधिकारी पर आरोप लगा दिये जाने से यह नहीं माना जा सकता है कि याची के पक्ष में पडे वोट घटाये गये व विपक्षी के पक्ष में पडे वोट बढाये गये। धारा-२० के अनुक्रम में याची को सम्बन्धित मतगणना अधिकारी का पूर्ण ब्योरा देना चाहिए, जो कि नहीं दिया गया है, ऐसे ने निष्कर्ष निकलता है कि मद संख्या -११ में किये गये कथन सारवान तथ्यों की श्रेणी में नहीं आता है।

१९- माननीय सर्वोच्च न्यायालय द्वारा विधि व्यवस्था -कानीमोझी करूणानिधि बनाम ए० सन्थना कुमार २०२३ LiveLaw (SC)३९८ में विधि व्यवस्था दी गयी है कि

1. In case material facts are not disclosed in the election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by the clause (a) and Rule 11 of Order VII of the CPC.

2. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

[१. यदि चुनाव याचिका में भौतिक तथ्यों का उल्लेख नहीं किया गया है, तो वह केवल उसी आधार पर निरस्त होने योग्य है, क्योंकि ऐसा मामला संहिता के आदेश ७ के नियम ११ के खंड (क) के अंतर्गत आएगा।

२. चुनाव याचिका एक गंभीर मामला है और इसे हल्के में या काल्पनिक तरीके से नहीं लिया जा सकता है, न ही यह उस व्यक्ति को दी जाती है जो इसका उपयोग तंग करने वाले उद्देश्य के लिए करता है।]

(हिन्दी अनुवाद न्यायालय द्वारा किया गया है।)

२०- इस प्रकार माननीय सर्वोच्च न्यायालय , द्वारा दी गयी विधि व्यवस्था के आलोक में हस्तगत चुनाव याचिका में, निर्वाचन पर की गयी आपतियों को देखा जाये तो यह सारवान तथ्यों की श्रेणी में नहीं आते हैं। याची द्वारा चुनाव याचिका में ऐसी कोई आपत्ति अंकित नहीं की गयी है जो कि निर्वाचन के दौरान किसी भी व्यक्ति के भ्रष्ट आचरण को दर्शित करता हो। "

४. श्री राहुल सहाय, याचिकाकर्ता के विद्वान अधिवक्ता ने पूर्व में उल्लेखित निर्वाचन याचिका के मुख्य प्रस्तरो पर इस न्यायालय का ध्यान आकर्षित कराया कि वर्तमान निर्वाचन में हार-जीत का अंतर मात्र ५ वोट का रहा। उपरोक्त प्रस्तरो में निर्वाचन याचिकाकर्ता ने स्पष्ट रूप से यह कथन किया है कि २५० मतदाताओं के नाम विरोधी राजनैतिक पार्टी के प्रभाव से मतगणना सूची में बढ़ाये गये। यह भी स्पष्ट रूप से उल्लेखित किया कि निर्वाचित उम्मीदवार के करीबी रिश्तेदारों के नाम दो मतदाता सूचियों में है और दोनों स्थानों में उन्होनें मतदान भी किया। प्रारूप ३८ व प्रारूप ३९ में ओवर राईटिंग की गयी है। प्रस्तर १२ में वार्ड संख्या क्रमांक के अनुसार वर्णित किया कि कैसे याचिकाकर्ता के ५ से अधिक वोटों को घटाकर कम कर दिया गया, जिसके कारण निर्वाचन के परिणाम पर सारवान् प्रभाव पड़ा।

५. श्री सहाय ने अग्रतर, उत्तर प्रदेश नगरपालिका अधिनियम, १९१६ की धारा १९,२० व २८ को संदर्भित किया कि निर्वाचित उम्मीदवार को एक से अधिक मतों को अनुचित रूप से अस्वीकार या स्वीकार किये जाने के कारण निर्वाचित घोषित किया गया है अतः इस कारण से वो वैध मतों के बहुमत से सम्यक रूप से निर्वाचित नहीं हुआ है। निर्वाचन अधिकारियों द्वारा इस अधिनियम के नियमों का समुचित पालन नहीं किया, जैसे प्रारूप ३८ व ३९ में ओवर राईटिंग, २५० मतदाताओं के नाम मतदाता सूची में अनुचित प्रभाव से सम्मिलित करना, कई मतों को अनुचित रूप से अस्वीकार या स्वीकार करना एवं कई मतदाताओं द्वारा एक से अधिक मतदान केंद्रो पर मत देना आदि। और ऐसी अनुपालक भूल, त्रुटि व अनौपचारिकता का प्रभाव निर्वाचन के परिणाम पर सारवान रूप से हुआ।

६. उत्तर प्रदेश नगरपालिका अधिनियम, १९१६ की धारा १९, २० एवं २८ निम्नलिखित हैः-

"१९. याचिका द्वारा नगरपालिका निर्वाचन पर आपत्ति करने की शक्ति (१) किसी व्यक्ति के नगरपालिका के सदस्य के रूप में निर्वाचन के सम्बन्ध में निर्वाचन याचिका द्वारा इस आधार पर आपत्ति की जा सकती है कि-

(क) ऐसे व्यक्ति ने निर्वाचन कार्यवाहियों के दौरान या उसके सम्बन्ध में धारा २८ में यथा परिभाषित कोई भ्रष्ट आचरण किया है;

(ख) ऐसा व्यक्ति एक से या अधिक मतों के अनुचित रूप से अस्वीकार या स्वीकार किये जाने के कारण निर्वाचित घोषित किया गया है, या किसी अन्य कारण से वैध मतों के बहुमत से सम्यक् रूप से निर्वाचित नहीं हुआ है;

(ग) ऐसा व्यक्ति निर्वाचन के लिए उम्मीदवार के रूप में नाम-निर्देशित किये जाने के लिए अर्ह नहीं था या यह कि याचिका देने वाले का नाम-निर्देशन-पत्र अनुचित रूप से अस्वीकृत किया गया था।

(२) नगरपालिका के सदस्य के रूप में किसी व्यक्ति के निर्वाचन के सम्बन्ध में इस आधार पर आपत्ति नहीं की जायेगी कि-

(क) किसी ऐसे व्यक्ति का नाम, जो मत देने के लिए अर्ह था, निर्वाचक नामावली या नामावलियों में से छोड़ दिया गया है, या किसी ऐसे व्यक्ति का नाम, जो मत देने के लिए अर्ह नहीं था, उसमें या उनमें रख दिया गया है;

(ख) इस अधिनियम या किसी नियम का अनुपालन किया गया है, या एतद्द्वारा अपेक्षित प्रपत्रों में कोई भूल है, या किसी ऐसे अधिकारी या अधिकारियों ने, जिस पर या जिन पर इस अधिनियम या किन्हीं नियमों को कार्यान्वित करने का भार सौंपा गया हो, कोई त्रुटि, अनियमितता या अनौपचारिकता की है, जब तक कि ऐसा अनुपालन भूल, त्रुटि या अनौपचारिकता का निर्वाचन के परिणाम पर कोई सारवान प्रभाव न पड़ा हो।

२०. याचिका का प्ररूप और उसका प्रस्तुत किया जाना- (१) जिस दिन रिटर्निंग आफिसर द्वारा ऐसे निर्वाचन का परिणाम घोषित किया जाये, जिसके सम्बन्ध में आपत्ति ईप्सित हो, उसके पश्चात् ३० दिन के भीतर निर्वाचन याचिका प्रस्तुत की जायेगी और उसमें ऐसा आधार या ऐसे आधार विनिर्दिष्ट किये जायेंगे जिन पर प्रत्यर्थी के निर्वाचन पर आपत्ति की गई हो और उसमें ऐसे सारवान् तथ्यों का संक्षिप्त विवरण होगा जिन पर याचिका देने वाला निर्भर करता हो और ऐसे भ्रष्ट आचरण के, जो अर्जीदार ने आरोपित किए हों, पूरे ब्यौरे होंगे जिसमें ऐसे पक्षों के नामों का जिन पर ऐसे भ्रष्ट आचरण करने का आरोप लगाया हो और ऐसा प्रत्येक आचरण करने का दिनांक तथा स्थान का यथासम्भव पूरा ब्यौरा होगा।

(२) याचिका पर याची द्वारा हस्ताक्षर किया जायेगा और उसे सिविल प्रक्रिया संहिता, १९०८ (१९०८ का ५) में अभिवचन के सत्यापन के लिये अधिकथित रीति से सत्यापित किया जायेगा।

(३) याचिका किसी ऐसे उम्मीदवार द्वारा जिसके पक्ष में मत अभिलिखित किये गये हों और जिसको याचिका में ऐसे व्यक्ति के स्थान पर जिसके निर्वाचन के सम्बन्ध में आपत्ति की गयी हो, निर्वाचित घोषित किये जाने का दावा किया हो या नगरपालिका के दस या उससे अधिक निर्वाचकों द्वारा या किसी ऐसे व्यक्ति द्वारा जो यह दावा करे कि उसका नाम-निर्देशन पत्र अनुचित रूप से अस्वीकृत किया गया था, प्रस्तुत की जा सकती है।

(४) वह व्यक्ति जिसके निर्वाचन के सम्बन्ध में आपत्ति की गई हो और जहाँ याची यह दावा करे कि ऐसे व्यक्ति के स्थान पर कोई अन्य व्यक्ति निर्वाचित घोषित किया जाये तो प्रत्येक असफल उम्मीदवार जो याचिका में याची न हो, याचिका में प्रत्यर्थी बनाया जायेगा।

(५) याचिका उस क्षेत्र में अधिकारिता का प्रयोग करने वाले जिला न्यायाधीश को प्रस्तुत की जायेगी जिसमें वह नगरपालिका स्थित है, जिससे निर्वाचन याचिका सम्बन्धित है:

परन्तु याचिका जिला न्यायाधीश द्वारा ग्रहण नहीं की जायेगी जब तक कि उसके साथ कोषागार चालान न हो जिसमें यह दर्शित हो कि विहित प्रतिभूति जमा कर दी गयी है।

२८. भ्रष्ट आचरण- ऐसा व्यक्ति, जो प्रत्यक्ष या अप्रत्यक्ष रूप से, स्वयं या किसी अन्य व्यक्ति द्वारा-

(i) किसी मतदाता को किसी उम्मीदवार के पक्ष में मत देने या मत देने से विरत रहने के लिए कपट, साशय दुर्व्यपदेशन, प्रपीड़न, क्षति पहुँचाने की धमकी, द्वारा उत्प्रेरित करे या उत्प्रेरित करने का प्रयत्न करे;"

"(ii) किसी उम्मीदवार के पक्ष में मत देने या मत देने से विरत रहने के लिए किसी मतदाता को उत्प्रेरित करने के उद्देश्य से, किसी व्यक्ति को कोई धन या मूल्यवान प्रतिफल या कोई स्थान या नियोजन देने का प्रस्ताव करे या दे या किसी व्यक्ति को कोई व्यक्तिगत फायदा या लाभ का वचन दे;

(iii) किसी ऐसे मतदाता के नाम से जो इस प्रकार मत देने वाला व्यक्ति नहीं है कोई मत दे या मत उपाप्त करे;

(iv) खण्ड (i), (ii) और (iii) में विनिर्दिष्ट किसी कार्य को करने में (भारतीय दण्ड संहिता (अधि० सं० १५ वर्ष १८६०) के अर्थान्तर्गत दुष्प्रेरित करे;

(v) किसी उम्मीदवार अथवा निर्वाचक को ऐसा विश्वास करने के लिए उत्प्रेरित करे या उत्प्रेरित करने का प्रयत्न करे कि वह, या अन्य कोई व्यक्ति, जिसमें वह हित रखता है, दैवी अप्रसाद या आध्यात्मिक परिनिन्दा का पात्र हो जायेगा बना दिया जायेगा;

(vi) जाति, सम्प्रदाय, पंथ या धर्म के आधार पर संरचना करे;

(vii) कोई ऐसा अन्य कार्य करे जिसे राज्य सरकार नियम द्वारा भ्रष्ट आचरण विहित करे, यह समझा जायेगा कि उसने भ्रष्ट आचरण किया है।"'

७. श्री सहाय ने यह भी कथन किया कि मतदाता सूची में बहुत से मतदाताओं के नाम एक से अधिक मतदाता सूचियों में है, जिसके कारण वह हर एक मतदाता 'अधिनियम, १९१६' की धारा १२(घ) (iii) के अंतर्गत, निर्वाचन संबंधी 'भ्रष्ट आचरण' के कारण मतदान करने का अधिकारी नहीं रहा और ऐसा कृत्य 'अधिनियम १९१६' धारा २८ के अंतर्गत 'भ्रष्ट आचरण' माना जाएगा, क्योंकि निर्वाचित उम्मीदवार के प्रभाव में ऐसे मतदाताओं के नाम दो मतदाता सूचियों में सम्मिलित कराये गए। 'अधिनियम, १९१६' की धारा १२ घ(iii) को निम्न वर्णित किया जा रहा हैः-

"*१२-घ (iii) निर्वाचन सम्बन्धी भ्रष्ट आचरण और अन्य अपराधों से सम्बन्धित किसी विधि के उपबन्धों के अधीन मत देने के लिए तत्समय अनर्ह हो।*"

८. श्री सहाय ने अपने उपरोक्त तर्कों को बल देने हेतु उच्चतम न्यायालय द्वारा **डी. रामचंद्रन बनाम आर.वी. जनकिरामन ए.आई.आर १९९९ एस.सी. ११२८ व पी.वी. गुरु राज रेड्डी और अन्य बनाम पी. नीरथा रेड्डी और अन्य (२०१५) ८ एससीसी ३३१** के प्रकरणों में पारित निर्णयों का संदर्भ दिया और उनके द्वारा क्रमशः निम्न अंशो का वाचन किया गयाः-

D.Ramchandran

"10. *On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the*

allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] . We are satisfied that the election petition in this case could not have been rejected in limine without a trial.

11. *Designedly, we are refraining from adverting to the arguments pertaining to each allegation of corrupt practice, lest any observation by us might affect the views of the trial Judge. Suffice it to point out that this Court has repeatedly clarified the difference between □material facts□ and □full particulars□ and the different consequences of failure to set out either of them. In L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666 : (1998) 6 Scale 361] cited by counsel on both sides, the case-law has been traced and the propositions are reiterated.''*

P.V. Guru Raj Reddy

''5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

डी. रामचन्द्रन

"१०. दूसरी ओर सिविल प्रक्रिया संहिता के आदेश ७ का नियम ११ न्यायालय को व्यादेश देता है कि वह उस वादपत्र को खारिज कर दे जहाँ वह 'वाद हेतुक' प्रकट नहीं करता है। इस नियम के तहत अभिवचन के किसी भी हिस्से को निरस्त कर देने का कोई प्रश्न ही नहीं है। ओ.ए. संख्या ३६/१९९७ में प्रथम प्रत्यर्थी द्वारा दायर आवेदन इस आधार पर है कि निर्वाचन याचिका के अभिवचनों में ऐसे 'सारवान तथ्य' नहीं हैं जो कोई विचारणीय मुद्दा उत्पन्न करते हों या वाद हेतुक प्रकट करते हों। आदेश ७ नियम ११(क) के प्रावधानों पर बल देते हुए, प्रथम प्रत्यर्थी के विद्वान वरिष्ठ अधिवक्ता ने हमें पूरी निर्वाचन याचिका का अवलोकन कराया और यह तर्क दिया कि इसमें निहित अभिवचन कोई वाद हेतुक प्रकट नहीं करते हैं। याचिका को पढ़ने के उपरांत, हम उनसे सहमत हो ऐसा संभव नहीं हैं। यह निर्वाचन याचिका अपने आप में एक वाद हेतुक प्रकट करती है, जिसे यदि अखंडित रहने दिया जाए तो वह निर्वाचन को शून्य कर सकती है, और इसलिए इस प्रकरण में सी.पी.सी. के आदेश ७ नियम ११(क) के प्रावधानों का सहारा नहीं लिया जा सकता। इस तर्क में कोई बल नहीं है कि कुछ आरोप 'सारवान तथ्यों' से रहित हैं और इस प्रकार

वे वाद हेतुक प्रकट नहीं करते। यह एक मौलिक सिद्धांत है कि सी.पी.सी. के आदेश ७ नियम ११(क) के अंतर्गत, न्यायालय अभिवचनों को कई भागों में विखंडित नहीं कर सकता और यह विचार नहीं कर सकता कि क्या उनमें से प्रत्येक भाग वाद हेतुक प्रकट करता है। इस नियम के अधीन, वादपत्र या याचिका को आंशिक रूप से खारिज नहीं किया जा सकता। (देखें: रूप लाल साथी बनाम नछत्तर सिंह गिल [(१९८२) ३ एस.सी.सी. ४८७]। हम इस बात से संतुष्ट हैं कि इस मामले में निर्वाचन याचिका को बिना विचारण के आरंभ में ही सरसरी रूप से निरस्त नहीं किया जा सकता था।

११. हम जानबूझकर 'भ्रष्ट आचरण' के प्रत्येक आरोप से संबंधित तर्कों का उल्लेख करने से बच रहे हैं, कहीं ऐसा न हो कि हमारी कोई टिप्पणी विचारण न्यायाधीश के दृष्टिकोण को प्रभावित कर दे। यह इंगित करना पर्याप्त होगा कि इस न्यायालय ने बार-बार "सारवान तथ्यों" और "पूर्ण ब्यौरे" के मध्य के अंतर को स्पष्ट किया है और यह भी कि उनमें से किसी एक को भी प्रस्तुत करने में विफलता के अलग-अलग परिणाम क्या होते हैं। दोनों पक्षों के अधिवक्ताओं द्वारा उद्धृत एल.आर. शिवरामगौड़ा बनाम टी.एम. चंद्रशेखर [(१९९९) १ एस.सी.सी. ६६६ : (१९९८) ६ एस.सी.ए.एल.ई. ३६१] में, निर्णय-विधि का उल्लेख किया गया है और सिद्धांतों को दोहराया गया है।"

<u>पी.वी. गुरु राज रेड्डी</u>

"५. सी.पी.सी. के आदेश ७ नियम ११ के तहत वादपत्र को निरस्त करना न्यायालय को प्रदत्त एक कठोर शक्ति है जिससे दीवानी कार्यवाही को आरंभ में ही समाप्त किया जा सके। इसलिए, आदेश ७ नियम ११ के तहत शक्ति का प्रयोग करने के लिए पूर्व-शर्तें अत्यंत सख्त हैं और न्यायालय द्वारा लगातार ऐसा ही माना गया है। यह केवल वादपत्र के अभिवचन ही हैं जिन्हें यह पता लगाने के लिए समग्र रूप से पढ़ा जाना चाहिए कि क्या यह कोई वाद हेतुक प्रकट करता है या क्या यह वाद किसी विधि के तहत वर्जित है। आदेश ७ नियम ११ के तहत शक्ति के प्रयोग के चरण में, लिखित कथन में या वादपत्र निरस्त करने के आवेदन में प्रतिवादियों का पक्ष पूरी तरह से महत्वहीन है। वादपत्र को केवल तभी निरस्त किया जा सकता है यदि वादपत्र के अभिवचन प्रथम दृष्टया कोई वाद हेतुक प्रकट नहीं करते हैं या उसे पढ़ने पर वाद किसी विधि के अंतर्गत वर्जित प्रतीत होता है। अन्य सभी स्थितियों में, दावों का निर्णय विचारण के दौरान ही करना होगा।"

(हिन्दी अनुवाद न्यायालय द्वारा किया गया है।)

९. उपरोक्त तर्कों का विरोध, प्रतिवादी संख्या ४ (निर्वाचित उम्मीदवार) के वरिष्ठ अधिवक्ता श्री तरून अग्रवाल ने अपने सहयोगी अधिवक्ता सर्वश्री शिखर अवस्थी एवं सौरभ मिश्रा द्वारा किया गया।

१०. श्री तरून अग्रवाल ने निर्वाचन याचिका के प्रस्तर संख्या ८, ९, १०, ११ व १२ को सन्दर्भित किया कि प्रस्तर ८,९ व १० में निर्वाचन याचिकाकर्ता ने मतदाता सूची की त्रुटियों का हवाला दिया है, कि निर्वाचित

उम्मीदवार ने अपने प्रभाव से नगर पंचायत मुड़िया धुरेकी के परिनियम क्षेत्र के बाहर के लगभग २५० मतदाताओं के नाम नगर पंचायत मुडिया धुरेकी में अवैधानिक रूप से सम्मिलित कराए। परन्तु कथित २५० मतदाताओं में से किसी एक भी मतदाता का नाम व अन्य विवरण का संक्षेप में भी उल्लेख नहीं किया तथा यह भी स्पष्ट नहीं किया कि उक्त २५० मतदाताओं ने किसके पक्ष में संभावित मतदान किया। वरिष्ठ अधिवक्ता ने अधिनियम, १९१६ की धारा १९ (२)(क) का संदर्भ दिया कि किसी व्यक्ति के निर्वाचन को मात्र इस आधार पर प्रश्नगत नहीं किया जा सकता कि कोई व्यक्ति मतदाता बनने के लिए सक्षम नहीं था, फिर भी उसे मतदाता की सूची में सम्मिलित कर दिया गया। वरिष्ठ अधिवक्ता ने वर्तमान प्रकरण में पूर्व में दायर पुर्ननिरीक्षण याचिका के निर्णय दिनांक ३०.०५.२०२५ के प्रस्तर २२ पर इस न्यायालय का ध्यान आकर्षित कराया जिसे निम्न उल्लेखित किया जा रहा हैः-

"22. Similarly, clause (b) of Sub-section (2) of Section 19 also oust the institution of election petition on the ground of non-compliance of any provision of the act or rules. Prima facie there is no disclosure in the election petition as to who had wrongly voted in favour of election petitioner not being the member of Nagar Panchayat Mudiya Dhureki. A vague figure of 250 voters have been given without there being any disclosure as to their names.

२२. इसी प्रकार, धारा १९ की उपधारा (२) के खंड (ख) के तहत भी अधिनियम या नियमों के किसी प्रावधान का पालन न करने के आधार पर चुनाव याचिका दायर करने का अधिकार समाप्त हो जाता है। प्रथम दृष्टया, चुनाव याचिका में यह खुलासा नहीं किया गया है कि नगर पंचायत मुड़िया धुरेकी के सदस्य न होते हुए भी याचिकाकर्ता के पक्ष में किसने गलत तरीके से मतदान किया था। मतदाताओं की संख्या अस्पष्ट रूप से २५० बताई गई है, जबकि उनके नाम का कोई खुलासा नहीं किया गया है।"

(हिन्दी अनुवाद न्यायालय द्वारा किया गया है।)

११. वरिष्ठ अधिवक्ता श्री अग्रवाल ने यह भी कथन किया कि भ्रष्ट आचरण के निर्धारण के लिए अधिनियम १९१६ की धारा २० के अंतर्गत जहां निर्वाचन याचिका के प्रारूप के संबंध में प्रावधान बताए गए हैं, निर्वाचन याचिका में 'पूरे ब्योरे' देने होंगे, ऐसा प्रावधान बनाया है, परंतु वर्तमान याचिका में न तो सारवान् तथ्यों का संक्षिप्त विवरण है और न ही पूर्ण ब्यौरा ही दिया गया है। वरिष्ठ अधिवक्ता ने उत्तर प्रदेश नगरपालिका (सदस्यों, पार्षदों, अध्यक्षों और महापौरों के चुनाव) नियम, २०१० (संक्षेप में 'नियम २०१०') के नियम ४७,४८,४९,५० व ५१ का संदर्भ दिया कि मतों की गिनती उक्त नियमों के अनुसार ही की गयी। हर उम्मीदवार ने गणन अभिकर्ता (काउनटिंग एजेन्ट) नियुक्त किये और रिटर्निंग आफिसर ने गणन अभिकर्ताओं को इलेक्ट्रानिक मशीन की जाँच करने का अवसर भी प्रदान किया। मतगणना के दौरान चुनाव याचिकाकर्ता के गणन अभिकर्ता द्वारा किसी भी प्रकार की शिकायत नहीं की गयी और न ही कोई ऐसी पत्रावली याचिका के साथ संलग्न करी और इस संदर्भ में कोई अभिवचन भी नहीं किया है। ऐसा भी कोई ब्यौरा नहीं दिया गया है कि निर्वाचन याचिकाकर्ता के निर्वाचन अभिकर्ता ने अस्वीकृत मत की सत्यता पर

कोई प्रश्न ही किया हो। नियम २०१० के नियम क्रमांक ४७,४८,४९,५० व ५१ को निम्न वर्णित किया जा रहा हैः-

*"**४७- मतगणना-** प्रत्येक निर्वाचन में जहां मतदान आयोजित किया जाता है वहां मतगणना रिटर्निंग अधिकारी द्वारा या उसके पर्यवेक्षण और निर्देश के अधीन की जायेगी।*

***४८- मतगणना हेतु समय, स्थान और दिनांक का नियत किया जाना-** (१) रिटर्निंग अधिकारी मतदान समाप्त होने के पश्चात आयोग द्वारा यथा नियत मतगणना का दिनांक परिनिश्चित करेगा और ऐसा स्थान तथा समय नियत करेगा जिस स्थान तथा समय पर मतगणना की जायेगी।*

(२) रिटर्निंग अधिकारी निर्वाचन लड़ने वाले अभ्यर्थियों या उनके निर्वाचन अभिकर्ताओं को ऐसे दिनांक, समय और स्थान के संबंध में सूचना देगा।

(३) यदि मतगणना हेतु इस प्रकार नियत किये गये समय पर परिगणित किये जाने वाले मतों से अन्तर्विष्ट मतपेटिकायें, रिटर्निंग अधिकारी द्वारा नहीं प्राप्त की जाती हैं या यदि किसी अन्य अपरिहार्य कारण से गणना की कार्यवाही करने में असमर्थ हो तो वह मतगणना को अन्य दिनांक तक के लिये टाल सकता है और इसके लिये जिला निर्वाचन अधिकारी के पूर्व अनुमोदन से समय और स्थान को नियत कर सकता है और तत्सम्बन्ध में सूचना, निर्वाचन लड़ने वाले अभ्यर्थियों या उनके निर्वाचन अभिकर्ताओं को दे सकता है।

***४९- गणन अभिकर्ता -** (१) निर्वाचन लड़ने वाला अभ्यर्थी या उसके निर्वाचन अभिकर्ता, मतगणना के समय उसके गणन अभिकर्ताओं के रूप में उपस्थित रहने के लिये किसी एक व्यक्ति को परिनिश्चित कर सकता/सकते हैं।*

(२) ऐसी प्रत्येक नियुक्ति, मतगणना प्रारम्भ होने के पूर्व लिखित रूप में किया जायेगा।

(३) किन्ही गणन अभिकर्ताओं को गणना हेतु नियत स्थान पर तब तक प्रवेश नहीं दिया जायेगा जब तक वह उपनियम (२) के अधीन अपनी नियुक्ति का पत्र रिटर्निंग अधिकारी को न दे दे।

***५० -ऐसे व्यक्ति, जो मतगणना के समय उपस्थित रह सकते हैं -** (१) रिटर्निंग अधिकारी ऐसे व्यक्तियों को छोड़कर, किसी व्यक्ति को मतगणना के समय उपस्थित रहने की अनुज्ञा नहीं देगा, जैसाकि वह मतगणना में उसकी, और प्रत्येक निर्वाचन लड़ने वाले अभ्यर्थी, उसके निर्वाचन अभिकर्ताओं, और उसके गणन अभिकर्ताओं की सहायता करने के लिये नियत करें।*

(२) ऐसे किसी व्यक्ति, जिसे निर्वाचन में या उसके संबंध में किसी अभ्यर्थी द्वारा या उसकी ओर से नियोजित किया गया हो या वह उस अभ्यर्थी के लिये अन्यथा कार्य रहा हो, को मतगणना में रिटर्निंग अधिकारी की सहायता करने के लिये नियुक्त नहीं किया जायेगा।

(३) ऐसे किसी व्यक्ति, जो मतगणना के दौरान स्वयं कदाचार करता है या रिटर्निंग अधिकारी के विधिसम्मत निर्देशों का पालन करने में विफल रहता है, को ऐसे स्थान से हटाया जा सकता है जहां पर रिटर्निंग अधिकारी द्वारा या कर्तव्यरत किसी पुलिस अधिकारी द्वारा या इस निमित्त रिटर्निंग अधिकारी द्वारा प्राधिकृत किसी व्यक्ति द्वारा मतों की गणना की जा रही हो।

५१- *गणना की प्रक्रिया -नियम ४८ के अधीन नियत दिनांक, समय और स्थान पर रिटर्निंग अधिकारी निम्नलिखित कार्यवाही करेगा - (क) रिटर्निंग अधिकारी स्वयं का समाधान करेगा कि मतदान के समय प्रयुक्त और उस स्थान पर परिगणित की जाने वाली समस्त मतपेटिकाएं या इलेक्ट्रानिक वोटिंग मशीनें प्राप्त कर लिये गये हैं और उनका विवरण दिया जा चुका है,*

(ख) तत्पश्चात रिटर्निंग अधिकारी मतगणना के समय उपस्थित अभ्यर्थियों और उनके निर्वाचन अभिकर्ताओं तथा गणन अभिकर्ताओं को यथास्थिति मतपेटिकाओं या इलेक्ट्रानिक वोटिंग मशीन और यह समाधान करने के लिये मुहरों का निरीक्षण करने का अवसर देगा कि वे उचित क्रम में हैं।

(ग) रिटर्निंग अधिकारी इस बात का भी स्वयं समाधान करेगा कि किसी भी पेटिका या इलेक्ट्रानिक वोटिंग मशीन के साथ छेड़छाड़ नहीं की गयी है; यदि उसके द्वारा यथास्थिति, किसी मतपेटिका या इलेक्ट्रानिक वोटिंग मशीन के साथ छेड़छाड़ किया गया या उसे नष्ट किया गया या खोया हुआ पाया जाता है तो रिटर्निंग अधिकारी मतगणना को रोक देगा और नियम ४२ के उपबन्धों के अनुसार कार्यवाही करेगा।

(घ) यदि रिटर्निंग अधिकारी का यह समाधान हो जाता है कि यथास्थिति ऐसी समस्त मतपेटिकाएं या इलेक्ट्रानिक वोटिंग मशीन, जिनकी ऐसे स्थानों पर गणना की जानी हो, प्राप्त कर लिये गये हैं और वे उचित क्रम में हैं तो वह मतपेटिकाओं में अन्तर्विष्ट मतपत्रों की गणना प्रारम्भ करेगा। मतदान स्थल पर प्रयुक्त समस्त मतपेटिकाओं और इलेक्ट्रानिक वोटिंग मशीनों को खोला जायेगा और उसी समय उन पेटिकाओं में पाये गये मतपत्रों की गणना की कार्यवाही राज्य निर्वाचन आयोग के अनुदेशों के अनुसार की जायेगी।

(ङ) मतदान स्थल की पेटिकाओं में पाये गये मतपत्रों या उस स्थल के इलेक्ट्रानिक वोटिंग मशीन में अभिलिखित मतों के लेखा को निर्वाचन आयोग द्वारा विनिर्दिष्ट प्रारूप वाले विवरण में अभिलिखित किया जायेगा।

(च) रिटर्निंग अधिकारी अभ्यर्थियों या उनके निर्वाचन अभिकर्ताओं और गणन अभिकर्ताओं, जो उपस्थित हो, को समस्त मतपत्रों, जो रिटर्निंग अधिकारी की राय में अस्वीकृत किये जाने योग्य हों, का निरीक्षण करने का युक्तियुक्त अवसर प्रदान करेगा किन्तु उन्हें इन पत्रों या किसी अन्य पत्र को संभालने नहीं देगा। रिटर्निंग अधिकारी प्रत्येक मतपत्र, जो अस्वीकृत हो गया हो, पर हिन्दी में देवनागरी लिपि में अस्वीकृति के संबंध में पृष्ठांकन करेगा। यदि कोई अभ्यर्थी या उसका निर्वाचन अभिकर्ता किसी मतपत्र की अस्वीकृति की सत्यता के संबंध में प्रश्न करता है तो रिटर्निंग अधिकारी ऐसे मतपत्र पर संक्षेप में अपनी अस्वीकृति के आधारों को भी अभिलिखित करेगा।

(छ) मतदान स्थल की मतपेटिकाओं में अन्तर्विष्ट समस्त मतपत्रों या उक्त स्थल की इलेक्ट्रानिक वोटिंग मशीन में अभिलिखित मतों की गणना को पूरा कर लिये जाने के पश्चात रिटर्निंग अधिकारी ऐसे समस्त मतपत्रों को ऐसे पृथक पृथक पैकेट में रखवायेगा जिस पर ऐसे विवरण इंगित किये जायेंगे जिससे कि मतदान स्थल, नगरपालिका का नाम और निर्वाचन क्षेत्र, जिनसे मतपत्र या मत संबंधित हो, की पहचान हो सके।"

१२. प्रारूप ३८ व प्रारूप ३९ में कथित गड़बड़ी/ओवर राईटिंग के आरोप व निर्वाचन याचिका के प्रस्तर १०,११ व १२ के संबंध में वरिष्ठ अधिवक्ता श्री अग्रवाल ने राज्य निर्वाचन आयोग, उत्तर प्रदेश द्वारा मतगणना अधिकारियों/कर्मचारियों के उपयोग हेतु निर्देश पुस्तिका, २०२२ में दिये गये संबंधित निर्देशों का संदर्भ दिया कि मतगणना में उक्त निर्देशों का उचित पालन हुआ है। श्री अग्रवाल नें यह भी कथन किया कि याचिकाकर्ता ने निर्वाचन याचिका के प्रस्तर १९ में यह अभिकथन किया है कि इस संबंध में मतगणना अधिकारी की शिकायत करी, परन्तु बिना किसी विवरण दिये याचिकाकर्ता ने इस संदर्भ में कोई प्रपत्र भी सम्मिलित नहीं किया है। प्रारूप ३८ व ३९ की प्रति भी संलग्न नहीं करी है कि यह जाँच की जा सके कि प्रथम दृष्टया ही सही, त्रुटियों या ओवर राईटिंग का कोई सारवान् प्रभाव है अथवा नहीं, और ऐसा भी नहीं है कि ये प्रपत्र विधिक रूप से उपलब्ध नहीं हो सकते है। साथ ही अन्य विवरण जैसे मतगणना पटल तथा मतगणना अभिकर्ता के नाम का भी उल्लेख नहीं किया गया हैं।

१३. वरिष्ठ अधिवक्ता द्वारा **दिनेश चन्द्र भट्ट प्रति उत्तर प्रदेश एवं ३ अन्य तटस्थ उद्धरण संख्या २०२३:ए.एच.सी.:१७८८१०:डी.बी.; दिनेश चन्द्र उर्फ दिनेश चन्द्र भट्ट प्रति सुनील कुमार एवं ८ अन्य तटस्थ उद्धरण संख्या २०२५: ए.एच.सी.:४७०३; अनुपम पाठक प्रति दिनेश चन्द्र उर्फ दिनेश चन्द्र भट्ट एवं ८ अन्य तटस्थ उद्धरण संख्या २०२५:ए.एच.सी.:९३१५८** में पारित निर्णयों पर बल दिया गया।

१४. विद्वान अधिवक्ताओं के कथनों को ध्यानपूर्वक श्रवण किया एवं पत्रावली का अध्ययन किया।

१५. आदेश ७ नियम ११, सिविल प्रक्रिया संहिता को निम्न उल्लेखित किया जा रहा हैः-

"११. वादपत्र का नामंजूर किया जाना- वादपत्र निम्नलिखित दशाओं में नामंजूर कर दिया जाएगा-

(क) जहां वह वाद-हेतुक प्रकट नहीं करता है;

(ख) जहां दावाकृत अनुतोष का मूल्यांकन कम किया गया है और वादी मूल्यांकन को ठीक करने के लिए न्यायालय द्वारा अपेक्षित किए जाने पर उस समय के भीतर जो न्यायालय ने नियत किया है, ऐसा करने में असफल रहता है;

(ग) जहां दावाकृत अनुतोष का मूल्यांकन ठीक है किन्तु वादपत्र अपर्याप्त स्टाम्प-पत्र पर लिखा गया है और वादी अपेक्षित स्टाम्प-पत्र के देने के लिए न्यायालय द्वारा अपेक्षित किए जाने पर उस समय के भीतर, जो न्यायालय ने नियत किया है, ऐसा करने में असफल रहता है;

(घ) जहां वादपत्र में के कथन से यह प्रतीत होता है कि वाद किसी विधि द्वारा वर्जित है;

[(ङ) जहां यह दो प्रतियों में फाइल नहीं किया जाता है;]

[(च) जहां वादी नियम ९ के उपबंधों का अनुपालन करने में असफल रहता है :]

[परन्तु मूल्यांकन की शुद्धि के लिए या अपेक्षित स्टाम्प-पत्र के देने के लिए न्यायालय द्वारा नियत समय तब तक नहीं बढ़ाया जाएगा जब तक कि न्यायालय का, अभिलिखित किए जाने वाले कारणों से यह समाधान नहीं हो जाता है कि वादी किसी असाधारण कारण से, न्यायालय द्वारा नियत समय के भीतर, यथास्थिति, मूल्यांकन की शुद्धि करने या अपेक्षित स्टाम्प-पत्र के देने से रोक दिया गया था और ऐसे समय के बढ़ाने से इन्कार किए जाने में वादी के प्रति गंभीर अन्याय होगा।]"

१६. उपरोक्त आदेश ७ नियम ११ व निर्वाचन याचिका की विधि के विश्लेषण की पृष्ठभूमि में वर्तमान निर्वाचन याचिका के अभिवचनों का आकलन करना होगा कि क्या आदेश ७ नियम ११ के अंतर्गत उक्त याचिका निरस्त की जा सकती है अथवा नहीं? और यह कि आक्षेपित आदेश विधिक है अथवा नहीं।

१७. सर्वोच्च न्यायालय द्वारा **करीमुद्दीन बरभुइया बनाम अमीनुल हक लशकर एवं अन्य, २०२४ आई.एन.एस.सी. २८२ में लक्ष्मी नारायण नायक बनाम रामरतन चतुर्वेदी एवं अन्य, (१९९०) २ एस.सी.सी. १७३** के प्रकरण में दिए गए निर्णय का संदर्भ लेना समीचीन होगा, जिसमें उच्चतम न्यायालय ने पूर्व के निर्णयों की समीक्षा करते हुए, भ्रष्ट आचरण से जुड़े निर्वाचन प्रकरणों पर आदेश ७ नियम ११, सिविल प्रक्रिया संहिता के लागू होने वाले निम्नलिखित सिद्धांतो को निर्धारित किया है:-

''14. A beneficial reference of the decision in case of Laxmi Narayan Nayak v. Ramratan Chaturvedi be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:

''5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] and Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442].

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide Manphul Singh v. Surinder Singh [(1973) 2 SCC 599 : (1974) 1 SCR 52], Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93].

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya v. Lachhi Ram [(1954) 2 SCC 306 : (1955) 1 SCR 608 : AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660].

(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649].

(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], M. Narayana Rao v. G. Venkata Reddy [(1977) 1 SCC 771 : (1977) 1 SCR 490], Lakshmi Raman Acharya v. Chandan Singh [(1977) 1 SCC 423 : (1977) 2 SCR 412] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], Mohan Singh v. Bhanwarlal [(1964) 5 SCR 12 : AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].

15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of Kanimozhi Karunanidhi v. A. Santhana Kumar (supra):-

''28. The legal position enunciated in afore-stated cases may be summed up as under:-

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the

judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100 (1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.''

"१४. लक्ष्मी नारायण नायक बनाम राम रतन चतुर्वेदी के प्रकरण में दिए गए निर्णय का भी एक उपयोगी संदर्भ दिया जा सकता है, जिसमें इस न्यायालय ने पिछले निर्णयों की समीक्षा करने के बाद, भ्रष्ट आचरण से जुड़े चुनाव प्रकरणों पर लागू होने वाले निम्नलिखित सिद्धांत निर्धारित किए:-

"५. इस न्यायालय ने निर्णयों की एक लंबी श्रृंखला में निर्वाचन प्रकरणों में अभिवचनों की प्रकृति के संबंध में सिद्धांत निर्धारित किए हैं, जिनका सार और तत्व इस प्रकार है:

(१) चुनाव याचिकाकर्ता की याचिका में अभिवचन पूर्णतः यथार्थ और स्पष्ट होने चाहिए, जिसमें समस्त आवश्यक विवरण और ब्यौरा शामिल हो, जैसा कि धरतीपकड़ मदन लाल अग्रवाल बनाम राजीव गांधी [१९८७ सप० एस.सी.सी. ९३] और कोना प्रभाकर राव बनाम एम शेषगिरी राव [(१९८२) १ एस.सी.सी. ४४२] में उल्लेखित किया गया है।

(२) चुनाव याचिका में लगाए गए आरोप अस्पष्ट, सामान्य प्रकृति के या सारवान तथ्यों के अभाव वाले या निर्थक या कष्टप्रद करने वाले नहीं होने चाहिए; क्योंकि न्यायालय को कार्यवाही के किसी भी चरण में उन अभिवचनों को निरस्त या खण्डित करने के लिए शसक्त है जो ऐसे दावों से ग्रस्त है और जैसा कि मनफूल सिंह बनाम सुरिंदर सिंह [(१९७३) २ एस.सी.सी. ५९९ : (१९७४) १ एस.सी.आर. ५२], कोना प्रभाकर राव बनाम एम.शेषगिरी राव [(१९८२) १ एस.सी.सी. ४४२] और धरतीपकड मदन लाल अग्रवाल बनाम राजीव गांधी [१९८७ सप० एस.सी.सी. ९३] में कहा गया है।

(३) अभिवचनों के समर्थन में प्रस्तुत साक्ष्य इस प्रकृति का होना चाहिए जो एक अकाट्य निष्कर्ष या निर्विवाद परिणाम की ओर ले जाए कि लगाए गए आरोप कारित किए हैं, जिससे धारा १०० के तहत

चुनाव शून्य हो सकता है, जैसा कि जमुना प्रसाद मुखरिया बनाम लच्छी राम [(१९५४) २ एस.सी.सी. ३०६ : (१९५५) १ एस.सी.आर. ६०८ : ए.आई.आर १९५४ एस.सी. ६८६] और रहीम खान बनाम खुर्शीद अहमद[(१९७४) २ एस.सी.सी. ६६०] में कहा गया है।

(४) अभिवचनों के समर्थन में न्यायालय के समक्ष प्रस्तुत साक्ष्य स्पष्ट, सुसंगत, संतोषजनक, विश्वसनीय और सकारात्मक होने चाहिए और उन्हें सख्त एवं सावधानी पूर्वक जांच की कसौटी पर भी खरा उतरना चाहिए।, जैसा कि राम शरण यादव बनाम ठाकुर मुनेश्वर नाथ सिंह में कहा गया है। [(१९८४) ४ एस.सी.सी. ६४९].

(५) चुनाव के मामले में, कुछ पक्के साक्ष्य या बिना शक वाले पत्रावली को देखे बिना मौखिक साक्ष्य को सीधे तौर पर मान लेना सुरक्षित नहीं है, देखें रहीम खान बनाम खुर्शीद अहमद [(१९७४) २ एस.सी.सी. ६६०], एम. नारायण राव बनाम जी. रेड्डी [(१९७७) १ एस.सी.सी. ७७१ : (१९७७) १ एस.सी.आर. ४९०], लक्ष्मी रमन आचार्य बनाम चंदन सिंह [(१९७७) १ एस.सी.सी. ४२३ : (१९७७) २ एस.सी.आर. ४१२] और रामजी प्रसाद सिंह बनाम राम बिलास झा [(१९७७) १ एस.सी.सी. २६०]।

(६) चुनाव याचिका में लगाए गए आरोप को साबित करने का बोझ निसंदेह उस व्यक्ति पर होता है जो पहले से हो चुके चुनाव को चुनौती देता है, देखें रहीम खान बनाम खुर्शीद अहमद [(१९७४) २ एस.सी.सी. ६६०], मोहन सिंह बनाम भंवरलाल [और रामजी प्रसाद सिंह बनाम राम बिलास झा [(१९७७) १ एस.सी.सी. २६०]।''

१५. आर.पी. एक्ट की धारा ८३(१)(क) की आवश्यकता के अनुपालन न करने और सिविल प्रक्रिया संहिता के आदेश ७ नियम ११ के तहत चुनाव याचिका को खारिज करने के संबंध में विधिक स्थिति को हाल ही में इस न्यायालय द्वारा 'कनिमोझी करुणानिधि बनाम ए. संथान कुमार (उपरोक्त)' के मामले में फिर से दोहराया गया है:-

''२८. पूर्वोक्त मामलों में प्रतिपादित कानूनी स्थिति को निम्नानुसार संक्षेपित किया जा सकता है:-

***I.** लोक प्रतिनिधित्व अधिनियम, १९५१ की धारा ८३(१)(क) यह अधिदेश देती है कि एक चुनाव याचिका में उन भौतिक तथ्यों का संक्षिप्त विवरण होना चाहिए जिन पर याचिकाकर्ता भरोसा करता है। यदि चुनाव याचिका में भौतिक तथ्यों का उल्लेख नहीं किया गया है, तो वह केवल उसी आधार पर निरस्त होने योग्य है, क्योंकि ऐसा मामला संहिता के आदेश ७ के नियम ११ के खंड (क) के अंतर्गत आएगा।*

***II.** भौतिक तथ्य ऐसे तथ्य होने चाहिए जो याचिका में लगाए गए आरोपों के लिए आधार प्रदान करें और वाद हेतुक का गठन करें, अर्थात प्रत्येक वह तथ्य जिसे वादी/याचिकाकर्ता के लिए साबित करना*

आवश्यक होगा, यदि न्यायालय के निर्णय के अधिकार का समर्थन करने के लिए उसे चुनौती दी जाती है। एक भी भौतिक तथ्य का लोप एक अपूर्ण वाद हेतुक की ओर ले जाएगा और वाद-पत्र का विवरण दोषपूर्ण हो जाएगा।

III. *भौतिक तथ्यों का अर्थ तथ्यों का वह पूरा समूह है जो एक पूर्ण वाद हेतुक का गठन करता है। भौतिक तथ्यों में तथ्यों का सकारात्मक विवरण यदि आवश्यक हो, तो नकारात्मक तथ्य का सकारात्मक अभिकथन भी शामिल होगा।*

IV. लोक प्रतिनिधित्व अधिनियम की धारा १००(१)(घ)(iv) के तहत किसी चुनाव को शून्य घोषित कराने के लिए, चुनाव याचिकाकर्ता को यह अभिकथन करना चाहिए कि संविधान के प्रावधानों या अधिनियम या अधिनियम के तहत बनाए गए किसी भी नियम या आदेश के अनुपालन न होने के कारण, निर्वाचित उम्मीदवार से संबंधित चुनाव का परिणाम तात्विक रूप से प्रभावित हुआ था।

V. चुनाव याचिका एक गंभीर मामला है और इसे हल्के में या काल्पनिक तरीके से नहीं लिया जा सकता है, न ही यह उस व्यक्ति को दी जाती है जो इसका उपयोग तंग करने वाले उद्देश्य के लिए करता है।

VI. एक चुनाव याचिका को एक ही भौतिक तथ्य की चूक, जिससे वाद-कारण अपूर्ण रह जाता है, या उन भौतिक तथ्यों के संक्षिप्त विवरण के अभाव में जिन पर याचिकाकर्ता वाद-कारण स्थापित करने के लिए भरोसा करता है, सीपीसी के आदेश ७ नियम ११ के खंड (क) के तहत शक्तियों का प्रयोग करते हुए और लोक प्रतिनिधित्व अधिनियम की धारा ८३ द्वारा अनिवार्य आवश्यकताओं के साथ पढ़ते हुए, सरसरी तौर पर खारिज किया जा सकता है।''

(हिन्दी अनुवाद न्यायालय द्वारा किया गया है।)

१८. निर्वाचन याचिका के प्रस्तर ८ में निर्वाचन याचिकाकर्ता ने यह अभिकथन किया कि निर्वाचित उम्मीदवार का उठना-बैठना भा.ज.पा. के बड़े बड़े राजनैतिक व्यक्तियों तथा पूर्व विधायक एवं कई बड़े अधिकारियों से है। परंतु किसी भी ऐसे व्यक्ति, विधायक या अधिकारी के नाम का उल्लेख नहीं किया है। इसके उपरांत उक्त प्रस्तर में यह भी अभिकथन किया कि, किसी व्यक्ति, विधायक या अधिकारी ने अपने प्रभाव से परिसीमन की प्रक्रिया के दौरान, गांव के बाहर के लोगों के लगभग २५० वोटरों के नाम पंचायत मुडिया धुरेकी की मतदाता सूची में शामिल करा दिया, जबकि वह उक्त क्षेत्र के निवासी नहीं थे और उन सबने इस चुनाव में मतदान भी किया, परंतु न तो प्रभाव डालने की प्रक्रिया में कथित रूप से शामिल किसी व्यक्ति के नाम का उल्लेख किया गया है और न ही कथित २५० व्यक्तियों में से किसी भी एक व्यक्ति का नाम बताया गया तथा न ही यह उल्लेख किया कि उन्होंने किस वार्ड में किस मतदान स्थल पर मतदान किया और न ही यह घोषित किया कि यह २५० मतदाता या इसमें से कितने मतदाताओं ने निर्वाचित

उम्मीदवार के पक्ष में मतदान किया। यहाँ यह उल्लेख करना आवश्यक है कि निर्वाचन याचिका इस आधार पर संस्थित नहीं करी जा सकती कि इन मतदाताओं का नाम अर्ह न होते हुए भी निर्वाचन नामावली में उनके नाम सम्मिलित किये गये। [**देखें 'अधिनियम १९१६' की धारा १९(२) (क)**]

१९. उपरोक्त अभिवचनों में कथित अनियमितताओं का संदर्भ तो दिया है परंतु उससे होने वाली त्रुटियों का किसी भी प्रकार से निर्वाचन प्रक्रिया पर हुए कथित सारवान् प्रभाव का उल्लेख करने में निर्वाचन याचिकाकर्ता पूर्ण रूप से असफल रहा है।, निर्वाचन याचिका में मात्र तथ्यों का संक्षिप्त विवरण ही आवश्यक नहीं है अपितु तथ्यों का सारवान् होना भी आवश्यक है, ऐसा अधिनियम १९१६ की धारा २० (१) की अपेक्षा है। अन्यथा ऐसी अपूर्ण निर्वाचन याचिका को प्रारम्भ में ही निरस्त किया जा सकता है। उपरोक्त विश्लेषण के निर्णय स्वरूप इस न्यायालय का यह निश्चित मत है कि उपरोक्त वर्णित प्रस्तर ८ में अभिवचन इस परीक्षा में पूर्ण रूप से अनुतीर्ण रहे है और ऐसे अभिवचन सारवान् तथ्यों की श्रेणी में नहीं आ सकते है। ऐसे अभिवचन पूर्णतः अस्पष्ट व असंगत माने जायेंगे।

२०. निर्वाचन याचिका के प्रस्तर ९ व १७ को एक साथ पढा जा सकता है। प्रस्तर ९ में निर्वाचन याचिकाकर्ता ने अभिवचन किया है कि निर्वाचित उम्मीदवार के मायके के लोगों के नाम दो मतदाता सूची में है। पहली सूची सम्भल जिला में व दूसरी सूची चंदौसी जिला में, परन्तु इन दोनो मतदाता सूची से वर्तमान निर्वाचन जो बदायूँ जिला में हुआ है उससे कोई सरोकार नहीं है। अतः यह अभिवचन भी पूर्णतः अस्पष्ट, असंगत व वर्तमान प्रकरण में किसी भी रूप में सारवान् नहीं है।

२१. निर्वाचन याचिका के प्रस्तर ९ में आगे यह कथन किया है कि निर्वाचित उम्मीदवार के सगे भाई आशुतोष पाठक का वर्तमान निर्वाचन क्षेत्र परीसीमन में व ग्राम पंचायत निर्वाचन नामावली- २०२२ के वार्ड संख्या १ व वार्ड संख्या ३ में भी नाम अंकित है। जो एक भ्रष्ट आचरण है। प्रस्तर १७ में यह कथन किया है कि कपिल पाठक ने नगर पालिका चंदौसी व नगर पंचायत मुडिया धुरेकी में भी मतदान किया व आशुतोष पाठक ने नगर पंचायत मुडिया धुरेकी के दोनो वार्ड से वोट डाला। यहाँ न्यायालय यह ध्यान में रखता है कि वर्तमान प्रकरण में हार जीत का फासला मात्र ५ मत है अतः अगर एक मतदाता का नाम दो वार्ड की मतदाता सूची में अंकित है और दोनो स्थानों पर उसने मतदान किया है तो उसके दोनों मत अधिनियम १९१६ की धारा १३ ङ (३) के अंतर्गत शून्य माने जा सकते है। अधिनियम १९१६ की धारा १३ (ङ) को निम्न उल्लेखित किया जा रहा हैः-

"१३-ङः मत देने का अधिकार (१) कोई व्यक्ति, जिसका नाम तत्समय किसी कक्ष की निर्वाचक नामावली में प्रविष्ट न हो उस कक्ष में मत देने का हकदार न होगा जैसा कि इस अधिनियम में स्पष्टतः उपबन्धित है उसके सिवाय प्रत्येक व्यक्ति जिसका नाम तत्समय किसी कक्ष की निर्वाचक नामावली में प्रविष्ट हो, उस कक्ष में मत देने का हकदार होगा।

(२) कोई व्यक्ति किसी कक्ष में निर्वाचन में मत नहीं देगा, यदि वह धारा १२-घ में निर्दिष्ट किसी अनर्हता के अधीन है।

(३) कोई व्यक्ति किसी साधारण निर्वाचन में एक से अधिक कक्षों में मत नहीं देगा और यदि कोई व्यक्ति ऐसे एक से अधिक कक्षों में मत देता है तो ऐसे सभी कक्षों में उसके दिये हुये मत शून्य हो जायेंगे।

(४) कोई व्यक्ति किसी निर्वाचन में एक ही कक्ष में एक से अधिक बार मत नहीं देगा भले ही उस कक्ष की निर्वाचक नामावली में उसका नाम एक से अधिक बार रजिस्ट्रीकृत किया गया हो, और यदि वह इस प्रकार मत देता है, तो उस कक्ष में उसके दिये हुये सभी मत शून्य हो जायेंगे।

(५) कोई व्यक्ति किसी निर्वाचन में मत नहीं देगा, यदि वह कारागार में, चाहे कारावास के या निर्वासन दण्डादेश के अधीन या अन्य प्रकार से परिरुद्ध हो, या पुलिस की विधिपूर्ण अभिरक्षा में हो:

परन्तु इस उपधारा की कोई बात ऐसे व्यक्ति पर लागू न होगी, जिसको तत्समय प्रवृत्त किसी विधि के अधीन निवारक निरोध किया गया हो।"

२२. इस स्तर पर यह भी विचार करना होगा कि निर्वाचन याचिका में उपरोक्त कथन के साक्ष्य में जब कोई भी प्रलेखी साक्ष्य संलग्न नहीं किया है तो क्या ऐसा कृत्य ' भ्रष्ट आचरण' में सम्मिलित होगा। 'भ्रष्ट आचरण' जो अधिनियम १९१६ की धारा २८ में परिभाषित किया गया है उसमें एक मतदाता द्वारा दो स्थान पर मतदान कारित करना, निर्वाचित उम्मीदवार के 'भ्रष्ट आचरण' का कारण नहीं हो सकता। अतः यह कृत्य यदि कारित भी हुआ है तब भी 'भ्रष्ट आचरण' नहीं माना जा सकता है।

२३. इसके अतिरिक्त उक्त कथन पर जो किसी प्रालेखी साक्ष्य पर आधारित नहीं है, ऐसे अस्पष्ट आधार पर क्या निर्वाचन याचिका को बनाए रखना चाहिये अथवा गुण-दोष पर पुनः मतगणना का आदेश पारित करना चाहिये, जबकि अविवादित रूप से गणन अभिकर्ता ने मतगणना स्थल पर कोई लिखित शिकायत नही करी व दो मत के कम होने से भी निर्वाचन का परिणाम सारवान् रूप से प्रभावित नहीं होगा। जबकि यह 'भ्रष्ट आचरण' नहीं है और न ही यह अभिवचन 'पूरे ब्यौरे' की कसौटी पर खरा उतरता है जो ' अधिनियम १९१६' की धारा २० के अंतर्गत प्रस्तुत करना आवश्यक होता है।

२४. इस स्तर पर निर्वाचन याचिका की प्रार्थना पर ध्यान देना भी आवश्यक है। याचिकाकर्ता ने 'भ्रष्ट आचरण' के आधार पर ही याचिका दाखिल की है और चुनाव रद्द किये जाने की प्रार्थना की है। उसने पुर्नगणना की कोई प्रार्थना नहीं की है। इसलिए याचिकाकर्ता ने यह आधार नहीं लिया कि, यदि मतगणना में त्रुटि है तो पुनः गणना करें। निर्वाचन याचिकाकर्ता नें मुख्य रूप से यह आधार लिया है कि निर्वाचित उम्मीदवार ने २५० नयें मतदाताओं का नाम मतदाता सूची में सम्मिलित कराया और निर्वाचित उम्मीदवार

के दो भाईयों ने एक से अधिक मतदान केंद्रों पर अपना मत डाला जो निर्वाचित उम्मीदवार का भ्रष्ट आचरण है। याचिका में की गई प्रार्थना निम्न हैः-

"It is, therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

Issue a order, order or direction in the nature of certiorari for quashing the impugned judgment/order dated 14.08.2025 passed by the Additional District Judge Court No. 10 Budaun in Election Petition No. 1 of 2023 (Dinesh Chandra @ Dinesh Chandra Bhatt Vs. Sunil Kumar and others) (Annexure-1 to the petition).

Issue any such other and further order which this Hon'ble Court may deem fit and proper under the circumstances of the case.

III. Award the cost of the writ petition to the petitioner, against the respondent

<u>हिन्दी अनुवाद</u>

अतः, इस माननीय न्यायालय से अत्यंत विनम्रतापूर्वक निवेदन है कि वह कृपापूर्वक निम्नलिखित आदेश जारी करे:

I. अतिरिक्त जिला न्यायाधीश, न्यायालय संख्या १०, बदायूं द्वारा चुनाव याचिका संख्या १/२०२३ (दिनेश चंद्र उर्फ दिनेश चंद्र भट्ट बनाम सुनील कुमार और अन्य) (याचिका का अनुलग्नक-१) में दिनांक १४.०८.२०२५ को पारित निर्णय/आदेश को रद्द करने हेतु सर्टिओरारी(उत्प्रेषण) प्रकृति का परमादेश निर्गत करे।

II. प्रकरण की परिस्थितियों के अनुसार माननीय न्यायालय जो उचित समझे ऐसे आदेश अथवा अन्य आदेश निर्गत करे।

III. याचिकाकर्ता को प्रतिवादी के विरुद्ध रिट याचिका का खर्च प्रदान करायें।"

(हिन्दी अनुवाद न्यायालय द्वारा किया गया है।)

२५. जैसा पूर्व में विश्लेषण किया गया है कि उपरोक्त वर्णित प्रस्तर संख्या १९,२० व २८ में भ्रष्ट आचरण के आरोप के लिए अपेक्षित पूर्ण ब्यौरे उपलब्ध नहीं है और न ही 'अधिनियम १९१६' की धारा २८ में दिये गये कारक ही उपस्थित है।

२६. निर्वाचन याचिका के प्रस्तर १० में निर्वाचन याचिकाकर्ता ने यह अभिवचन किया कि वार्ड सं० ६,७,८,९ व १० मतगणना के दौरान मतगणना अधिकारी ने निजी स्वार्थ तथा राजनैतिक प्रभाव के कारण याची के मतों को गलत रूप से घटाया और निर्वाचित उम्मीदवार के मतों को गलत रूप से बढाया गया। एक संख्या का भी उल्लेख किया है परन्तु यह कथन किस आधार पर आधारित है न तो कोई उल्लेख किया और

न ही ऐसा कोई प्रलेख ही संलग्न किया। आरोप, मतगणना अधिकारी पर लगाये गये परन्तु वह नाम से प्रतिवादी नहीं बनाया गया है। मात्र गणना पर्यवेक्षक ही प्रतिवादी बनाये गये है। यह भी अभिवचन नहीं किया है कि कितने मतों को गलत रूप से अस्वीकृत किया गया जो उसके पक्ष में डाले गये थे। यह सही है, कि धारा १९ (१)(ख) के अंतर्गत एक से अधिक मतों को अनुचित रूप से अस्वीकार या स्वीकार किया गया है तो ऐसे निर्वाचन पर आपत्ति की जा सकती है परन्तु यह कारण 'भ्रष्ट आचरण' के अंतर्गत सम्मिलित नहीं है। इसके अतिरिक्त ऐसा कोई सारवान् तथ्य उल्लेखित नहीं है कि, निर्वाचित उम्मीदवार ने स्वयं ऐसा कारित किया हो या किसी और से करवाया हो। मात्र कथित आरोप पर निर्वाचन याचिका संस्थित नहीं करी जा सकती है। कोई ऐसा कथन भी पत्रावली पर उपलब्ध नहीं है कि मतगणना के दौरान कोई लिखित शिकायत ही करी गई हो।

२७. अधिनियम १९१६ की धारा २० के अनुसार यदि याचिकाकर्ता 'भ्रष्ट आचरण' का आरोप लगाता हो तो उसे निर्वाचन याचिका में पूरे ब्यौरे उपलब्ध कराने होते हैं, जिसमें ऐसे पक्षों के नाम हो जिस पर भ्रष्ट आचरण करने का आरोप लगाया हो और ऐसा प्रत्येक भ्रष्ट आचरण करने का दिनाँक तथा स्थान का यथा सम्भव पूरा ब्यौरा देना होता है, परन्तु उपरोक्त वर्णित याचिका के प्रस्तरों के अध्ययन से ऐसा कोई भी ब्यौरा उपलब्ध नहीं कराया गया है वरन् बहुत ही सरलता से यह आरोप लगाया है कि निर्वाचित उम्मीदवार ने २५० अनर्ह मतदाताओं के नाम मतदाता सूची में सम्मिलित करवाये, जो उस परिसीमन के अन्तर्गत नहीं आते थे परन्तु न तो किसी ऐसे मतदाता का नाम उल्लेखित किया और न ही किसी मतदाता सूची का ही उल्लेख किया। इसके अतिरिक्त उक्त आरोप अधिनियम १९१६ की धारा २८ में भ्रष्ट आचरण की किसी भी श्रेणी के अंतर्गत नहीं आता है। प्रारूप ३८ व ३९ के संबंध में कथित आरोप, जैसे कि ओवर राईटिंग आदि के समर्थन में भी निर्वाचन याचिका में न तो कोई विवरण ही दिया गया और न ही किसी प्रकार के आरोप की स्पष्टता है।

२८. इसी प्रकार मतों का गलत ढंग से स्वीकार या अस्वीकार करना भी भ्रष्ट आचरण की श्रेणी में नहीं आता है। अतः यह प्रार्थना कि भ्रष्ट आचरण के कारण पड़े मतों को रद्द किया जायें अपने आप में एक अस्पष्ट प्रार्थना है जिसके लिए निर्वाचन याचिका में न तो कोई सारवान् तथ्यों का संक्षिप्त विवरण है और न तो पूरा ब्यौरा ही दिया गया है।

२९. उपरोक्त विश्लेषण का एक मात्र निष्कर्ष है कि निर्वाचन याचिका में वर्णित अभिवचन अस्पष्ट,असंगत और साधारण प्रवृत्ति के है। अतः ऐसी याचिका को संक्षेप में निरस्त करने में आक्षेपित आदेश में कोई विधिक त्रुटि नहीं की गई है।

३०. अतः वर्तमान याचिका **निरस्त** की जाती है।

(2026) 2 ILRA 1718
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.02.2026

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE BRIJ RAJ SINGH, J.

Writ C No. 2000170 of 2015
with
Another connected cases

Mata Baksh Singh **...Petitioners**
Versus
State of U. P. & Ors. **...Respondents**

ISSUE FOR CONSIDERATION

(i) Whether the invocation of the urgency clause under Section 17 of the Land Acquisition Act, 1894, and the consequent dispensation of enquiry under Section 5-A, was justified in the facts and circumstances of the case?
(ii) Whether reservation of land for "future planning" amounts to utilization?
(iii) Whether the auction and subsequent transfer in favour of the private respondent are hit by the doctrine of lis pendens?
(iv) Whether the impugned actions result in deprivation of property otherwise than by authority of law, infringing Article 300-A?
(v) Whether the landowner is entitled to seek reversion or challenge auction and whether actions are arbitrary, illegal and violative of Articles 14 and 300-A?

HEADNOTE

Land Acquisition Act, 1894 – ss. 4, 5-A, 6, 16, 17(1), 17(4), 17(3-A) – Transfer of Property Act, 1882 – s. 52 – Constitution of India – Arts. 14, 300-A – Acquisition proceedings – Urgency clause – Dispensation of enquiry – Auction – Lis pendens – Utilisation – Deprivation of property:
Held:
A. The condition precedent for invoking Section 17(1) is the existence of real, genuine and compelling urgency. The appropriate Government must be satisfied that possession of the land is urgently required and that any delay would frustrate the very purpose of acquisition, to the extent that even the minimum statutory period prescribed for filing objections and conducting enquiry under Section 5-A cannot be afforded without defeating the public purpose. Such urgency must be based on objective material and due application of mind. Mere administrative exigency or convenience, however pressing, does not meet the statutory threshold. A mechanical recital of urgency in the notification, unsupported by reasons or contemporaneous record, is bad in law, and non-application of mind vitiates the invocation of Section 17. The power to dispense with the enquiry under Section 5-A is an extraordinary and exceptional power. The right under Section 5-A is a valuable statutory right available to the landowner, and its exclusion cannot be resorted to as a matter of routine. Such dispensation is permissible only in exceptional circumstances where strong and demonstrable reasons exist, justifying the elimination of even a brief enquiry. (Para 14, 17, 23)

B. The right of objection under Section 5-A of the Land Acquisition Act, 1894 is **not an empty formality but a valuable and substantive right** available to a landholder prior to compulsory acquisition. Dispensation of such enquiry by invoking the urgency clause under Section 17 can be sustained only in **exceptional circumstances where the urgency is real, immediate and compelling**. Any routine, casual or mechanical exercise of this extraordinary power undermines the statutory safeguard embodied in Section 5-A and is liable to be interdicted by constitutional courts. Section 17(4), which enables such dispensation, has the effect of depriving the landowner of the valuable right to object and be heard; hence, it **cannot be invoked lightly or as a matter of routine**. Mere planned development of a city or town does not automatically justify invoking Section 17(4) of the Act. The possibility of encroachment or future need for land is not a sufficient reason to dispense with the enquiry under Section 5-A. *(Para 28, 57)*

C. By insertion of sub-section (3-A) in Section 17 of the Act, it is made obligatory that 80% of the estimated compensation must be tendered prior to taking possession. Absolute vesting of land in the State is contingent upon compliance with this condition. The statutory scheme contemplates a clear sequence—first, payment of 80% of the estimated compensation; second, taking of possession; and third, consequent vesting. Failure to adhere to any stage of this sequence vitiates the invocation of the emergency provision. Accordingly, possession taken without prior payment of 80% of the estimated compensation cannot be regarded as lawful, nor can it result in absolute vesting of the land in the State. Compulsory acquisition, undertaken in breach of this mandatory safeguard, stands rendered illegal. Even where possession is purportedly assumed under Section 17, non-compliance with Section 17(3-A) defeats the legal fiction of vesting. Court has held that where such payment is not made before dispossession, the acquisition loses its character under Section 17, and in the absence of an award within the prescribed period, the entire proceedings lapse. Thus, non-payment of 80% compensation prior to possession renders such possession unlawful, and vesting cannot be treated as absolute or indefeasible. In the present case, the mandatory requirement under Section 17(3-A) was admittedly not fulfilled (Paras 61, 74).

D. Article 300-A of the Constitution provides that no person shall be deprived of property except by authority of law. The expression "authority of law" requires that the State strictly follow the procedure prescribed under the statute, and that the power of acquisition be exercised fairly, legally, and in accordance with all mandatory provisions. Dispensing with the right of objection under Section 5-A casually or without genuine urgency is neither fair nor lawful, and mechanical or arbitrary exercise of power cannot satisfy constitutional requirements. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. Though the right to property is no longer a fundamental right, it remains a constitutional right. A person can be deprived of property only by authority of a valid law, and such law must prescribe a just, fair and reasonable procedure. State cannot take property by executive action or in an arbitrary manner; deprivation must strictly conform to statutory provisions. Any action not supported by valid law or taken in violation of prescribed procedure would be unconstitutional and liable to be struck down. (Para 56, 59, 60)

E. Where land acquired for a public purpose remains unused for a considerable period and is thereafter selectively alienated, the action ceases to serve the declared purpose and amounts to arbitrary deprivation. The doctrine of eminent domain permits acquisition only for a predominantly public purpose, not for transfer to private parties under the guise of development. Such selective alienation, particularly after long non-utilisation, reflects misuse of statutory power and defeats the very object of acquisition. Even if compensation has been paid, deprivation of property in such circumstances does not satisfy the mandate of Article 300-A of the Constitution. Consequently, the action warrants strict judicial scrutiny and cannot be sustained merely on the ground of formal compliance with procedure.

F. The object of the proviso to Section 17 of the U.P. Urban Planning and Development Act, 1973 is to prevent indefinite retention of land acquired for public purpose without its utilization. the proviso confers a substantive right upon the ousted landholder to apply for restoration after five years of non-utilisation. The right so conferred is not an empty formality but a substantive safeguard intended to ensure that land acquired for a declared public purpose is not retained indefinitely without being put to meaningful and bonafide use. Where

land remains unutilised for a prolonged period and the Authority fails to utilise it for the declared purpose, the right of the landholder to seek restoration cannot be defeated by mere procedural delay or inaction. (Para 84)

G. The expression "utilization" in the relevant statutory provision connotes **actual use of the land for the purpose for which it has been acquired***, and not a mere proposal, intention or reservation for an uncertain future. Reservation of land for "future planning" is inherently contingent and indeterminate and does not result in any present or tangible use.* Mere earmarking or retention of land for a prospective project, in the absence of concrete steps towards development or implementation, cannot in law be regarded as utilisation. The State is not permitted to retain acquired land for an indefinite period on the vague ground of "future planning". The land must be put to real and effective use for the stated public purpose. Utilisation must be **real, substantive and demonstrable, and not illusory**, and reservation of land without actual development or use does not satisfy the requirement of utilisation. *(Paras 34, 35, 37)*

H. The doctrine of *lis pendens*, embodied in Section 52 of the Transfer of Property Act, 1882, is founded on public policy and mandates that during the pendency of litigation wherein rights to immovable property are directly and substantially in issue, the property cannot be transferred so as to prejudice the rights of any party to the lis. A transfer *pendente lite* is not void ab initio; however, it does not confer any independent or superior right on the transferee, who merely steps into the shoes of the transferor and holds the property subject to the final outcome of the proceedings. *(Para 36)*

I. The only ground assigned was that delay in making the land available would delay construction of the residential scheme and affect development in the region. The Court held that such reasoning merely reflects **administrative convenience and apprehension of project delay**, which are routine features of development activities, and **do not disclose any extraordinary or emergent circumstance warranting dispensation of the statutory safeguard under Section 5-A**. There was no material to indicate that even the brief period required for conducting an enquiry under Section 5-A would frustrate the declared public purpose. The satisfaction recorded was **mechanical and not based on objective considerations**. Accordingly, invocation of Section 17 was held to be **arbitrary, unconstitutional and unsustainable in law**. (Para 30)

J. The entire auction process undertaken by the Raebareli Development Authority was **arbitrary, non-transparent and contrary to the mandatory Government Orders and statutory provisions**. The disputed land, originally reserved for future planning, was selectively converted into Commercial Plot C-1A and auctioned **without proper publication, correct valuation or adherence to the prescribed procedure**.The reserve price was **arbitrarily and erroneously fixed**, without applying the correct commercial circle rates and mandatory additions, and in clear disregard of applicable circle rate enhancements, coupled with non-compliance of the requirement of adequate publication in widely circulated newspapers. As a result, the property was sold at a **grossly inadequate and undervalued price**.The Court found that the auction proceedings suffered from **material irregularities and procedural violations**. *(Para 55)*

K. The continued non-utilisation of the acquired land, its physical possession remaining with the petitioner, coupled with the selective carving out and auction of only his land during the pendency of the proceedings, reinforces the arbitrariness of the action. The fact that the petitioner's land alone was segregated and promptly auctioned supports the contention that the exercise was intended to defeat his pending claim for release of unutilised land and to render the writ petition infructuous. Such steps, undertaken only after initiation of the writ proceedings and in the absence of any satisfactory explanation for the prolonged non-utilisation, cannot be treated as bona fide utilisation for the declared public purpose and are, therefore, subject to judicial scrutiny. No material has been placed on record to indicate that the land was utilised for the stated public purpose for several years after acquisition. The subsequent act of auctioning does not constitute bona fide utilisation in furtherance of the original scheme, nor does it reflect any immediate necessity connected with the declared purpose. (Para 88)

L. Point No. (i) was answered in favour of the petitioner and against the respondents. The invocation of the urgency clause under Section 17, together with the dispensation of the enquiry under Section 5-A, was held to be arbitrary, unconstitutional and unsustainable in law. It was further held that reservation of land for "future planning", in the absence of actual development or use, does not amount to utilisation within the meaning of the provision; accordingly, Point No. (ii) was answered in the negative. Point No. (iii) was decided in favour of the petitioner. The Court found that the auction proceedings conducted by the Raebareli Development Authority suffered from material irregularities and procedural violations. It was also held that invocation of the urgency clause dispensing with the enquiry under Section 5-A, in the absence of any real, immediate or compelling urgency, demonstrated non-application of mind and amounted to a colourable exercise of statutory power, the cumulative effect whereof resulted in deprivation of the petitioner's property otherwise than by authority of law, in contravention of Article 300-A; accordingly, Point No. (iv) was answered in favour of the petitioner. It was further held that the original landowner, whose land remained unutilised for a prolonged period, whose compensation was not tendered in compliance with Section 17(3-A), and who continued in physical possession till June 2023, was entitled to seek reversion/restoration and to challenge the hurried transfer/auction. The belated carving out and auction of only the petitioner's land during pendency of the writ proceedings, without demonstrable public purpose or bona fide utilisation, was held to be arbitrary and tainted with malice in law, offending Article 14 and resulting in deprivation of property contrary to Article 300-A; accordingly, Point No. (v) was answered in the affirmative, in favour of the petitioner and against the respondents.

M. The Court held that the acquisition proceedings and the consequential actions of the respondents, insofar as they related to the petitioner's land, were unsustainable in law. The invocation of urgency under Section 17 of the Land Acquisition Act, 1894, in the absence of any real or demonstrable urgency, and the mechanical dispensation of the valuable right under Section 5-A, vitiated the acquisition. Further, non-compliance with the mandatory requirement under Section 17(3-A) regarding tender of 80% compensation prior to taking possession rendered the alleged possession illegal and incapable of conferring lawful vesting. The prolonged non-utilisation of the land belied the claim of urgency, and the subsequent carving out and auction of Plot C-1A during the pendency of the writ petition was arbitrary and not in furtherance of the declared public purpose. (Para 104)

N. The writ petitions were allowed to the extent of the petitioner's land; the impugned auction and consequential allotment were quashed; and the respondents were directed to restore possession to the petitioner, subject to deposit of acquisition charges with interest at 12% per annum in terms of the proviso to Section 17 of the U.P. Urban Planning and Development Act, 1973, upon which the land was to stand restored free from encumbrances, and the auction purchaser was to be refunded the deposited amount with interest at 7% per annum or the prevailing bank rate, whichever was higher, within three months. (Para 104) (E-5)

CASE LAW CITED

Dora Phalauli v. State of Punjab, AIR 1979 SC 1594;
State of Punjab v. Gurdial Singh, AIR 1980 SC 319;
Narayan Narayan Govind Gavate v. State of Maharashtra, AIR 1977 SC 183;
Dev Sharan v. State of U.P., (2011) 4 SCC 769;
Union of India v. Kishan Lal Arneja, AIR 2004 SC 3582;
Union of India v. Shiv Raj, (2010) 11 SCC 242;
Anand Singh v. State of U.P., (2010) 11 SCC 242;
Radhy Shyam v. State of U.P.;
Om Prakash v. State of U.P., (1998) 6 SCC 1;
Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596;
K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple, 2022 (5) SCC 710 ;
Ram and Shyam Company v. State of Haryana, (1985) 3 SCC 267;
State of Punjab v. Mehar Din, (2022) 5 SCC 648;

Lakshmanasami Gounder v. CIT, (1992) 1 SCC 91;
State of M.P. v. Shri Ram Ragubir Prasad Agarwal, (1979) 4 SCC 686;
ICICI Bank v. Municipal Corporation of Greater Bombay, (2005) 6 SCC 404.

List of Acts

Land Acquisition Act, 1894;
Transfer of Property Act, 1882;
U.P. Urban Planning and Development Act, 1973;
Constitution of India.

List of Keyword

Urgency clause under Section 17 of the Land Acquisition Act, 1894; Dispensation of enquiry under Section 5-A; Valuable statutory right of objection under Section 5-A; Administrative convenience and apprehension of project delay; Real, immediate and compelling urgency; Mechanical recital of urgency / Mechanical satisfaction; Utilisation – actual use of the land; Reservation of land for future planning; Doctrine of lis pendens / Transfer pendente lite; Arbitrary, non-transparent auction contrary to mandatory Government Orders; Grossly inadequate and undervalued price / Throwaway price; Article 300-A – deprivation of property except by authority of law; Illegal possession / Possession on paper; Vesting of land / Land never vested in the State.

CASE ARISING FROM

Writ – C No. 2000170 of 2015; Writ – C No. 6261 of 2022; Writ – C No. 3283 of 2024 – **a bunch of three petitions filed by petitioner Mata Baksh Singh, relating to the acquisition proceedings initiated by the State Government with respect to 08.08.2016 hectares of land situated in villages Ratapur, Baraeepur and Akhtiyarpur, District Raebareli – State of U.P.**

Appearances for Parties

Advs For Petitioner: Anish Srivastava Lall, Anand Shanker Asthana, Anuj Kudesia, Manish Chaudhary, Vikas Kumar Agrawal, Shreya Chaudhary, Rinku Kumar Verma.

Advs For Respondents: C.S.C., Amarendra Kumar Bajpai, Dharmendra Kumar Dixit, Ghaus Beg, Apoorva Tewari, Saharsh Srivastava.

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

1. This is a bunch of three petitions filed by petitioner Mata Baksh Singh, which relate to the acquisition proceedings initiated by the State Government with respect to 08.08.2016 ha of land situated in three villages, Ratapur, Baraeepur, and Akhtiyarpur in District Raebareli. The State of U.P. and the Raebareli Development Authority are the respondents in two of such Writ Petitions, and in the third Writ Petition that has been filed in 2024, the auction purchaser of the land in question has been arrayed as respondent no. 5 (hereinafter referred to as 'the private respondent').

2. For the purposes of clear exposition and consideration, the judgment has been divided into the following sections-

A.	Submissions of the Counsel for the Petitioner
B.	Submissions of the respondent State of Uttar Pradesh
C.	Submissions of the Counsel for the Raibareli Development Authority
D.	Submissions of the Counsel for the Private Respondent
E.	Points for Consideration
F.	Analysis
G.	Conclusion

Submissions of the Counsel for the Petitioner

3. Sri Vishwajeet Singh, learned Senior Counsel, assisted by Sri Anand Shankar Asthana, presented the case on behalf of the petitioner and advanced his submissions as follows:

(i) The petitioner had purchased a plot admeasuring 204 sq. m. (2200 sq. ft.) out of khasra no.201/1, situated in village Akhtiyarpur on the Lucknow Allahabad Highway, Tehsil Sadar, District Raebareli, through a registered sale deed on 09.04.2002, and applied for mutation, which was also done in his name. The stamp duty was inadvertently calculated at residential rates, although the property in question was commercial in nature as it was situated adjoining the Lucknow Allahabad Highway, and a Suit No. 5111 of 2002 was instituted against the petitioner, which was decided on 31.05.2004, imposing a fine as well as stamp duty to the tune of Rs. 11,006/-, which was deposited by the petitioner in the office of the Tehsildar on 15.10.2004. Consequently, the said plot stood registered as commercial property in favour of the petitioner.

(ii) Subsequently, a Notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 was issued on 05.04.2006 for developing a residential colony by the Raebareli Development Authority in the name of Yatayat Nagar. A Notification under Section 6/17 was issued on 25.07.2007. Since, Section 17 was invoked, the Section 5-A enquiry was dispensed with, and the first opportunity to file objections came to be given to the petitioner only when notice under Section 9 was issued by the S.L.A.O.

(iii) The petitioner raised an objection before the Special Land Acquisition Officer saying that his land was commercial and compensation be paid to him at commercial rates. An inspection was done on 23.09.2008 and a report filed on 06.10.2008. The S.L.A.O., Raebareli, however,

rejected such objections and calculated compensation at residential circle rate and offered Rs.75,371/- through Award dated 30.05.2009. The petitioner did not accept the compensation but filed a Reference application for enhancement under Section 18 of the Act, 1894. The Raebareli Development Authority deposited compensation in the Treasury as revenue deposit on 08.02.2011. The petitioner remained in possession of the land of khasra no. 201/1 and also filed a Suit Regular Suit No.36 of 2015 for injunction against the Raebareli Development Authority, in which a Commission was called for by the Civil Judge. The site was inspected and a Commission Report was submitted on 04.04.2015, indicating the possession of the petitioner over the said land.

(iv) Subsequently, the petitioner filed Writ Petition No. 170 (Land Acquisition) of 2015 challenging the notifications issued under Sections 4/17 and 6/17 of the Land Acquisition Act, 1894. Such writ petition was renumbered as Writ-C No. 2000170 of 2015 seeking quashing of the acquisition notifications and the Award, relying on Pune Municipal Corporation v. Harakchand Misirimal Solanki AIR 2014 SC 982 wherein it was held that under Section 24(2) of the Land Acquisition Act of 2013, acquisition lapses if possession is not taken and compensation is not paid for more than five years prior to commencement of the new Act. Government Orders dated 28.02.2014 and 24.03.2014 had directed authorities to act in accordance with the said judgment and the petitioner relying upon them asserted that compensation was neither offered nor paid and relied on Khatauni dated 24.03.2015 showing his continued ownership.

(v) During pendency, the petitioner also filed Writ-C No. 6261 of 2022 seeking release of his unutilized land in khasra no. 201/1. He alleged discriminatory treatment, as similarly situated landholders were restored possession and permitted constructions, contrary to the principle of equality laid down in State of Karnataka v. Karnataka State Patel Sangha (2007) 4 SCC 207.

(vi) In Writ-C No. 6261 of 2022, the petitioner asserted that his land remained unutilized for more than five years after acquisition and was therefore liable to be released under Section 17 of the U.P. Urban Planning and Development Act, 1973. By order dated 13.09.2022, this Court directed the counsel for the respondent to obtain instructions on whether the land of the petitioner had been utilized under the scheme. However, instead of answering this specific query, the Raebareli Development Authority filed a counter-affidavit on 03.09.2023, nearly one year later, without disclosing that the land had already been auctioned in favour of respondent no. 5.

(vii) The petitioner further alleges that the auction was conducted clandestinely. His land, earlier marked as D-1, was later shown as commercial Plot C-1A, in the auction notice and that it formed part of Ekta Vihar Colony. The plot area was wrongly shown as 175 sq. m. instead of 204 sq. m. After learning that possession of the entire 204 sq. m. had been handed over pursuant to the auction, the petitioner lodged a complaint, following which an allegedly incorrect report dated 19.09.2023 was submitted by the Raebareli Development Authority to the State Government. Consequently, Writ-C No. 9486 of 2023 was filed and disposed of on 02.11.2023 with liberty to submit a fresh representation. The petitioner thereafter filed a representation on 10.11.2023 seeking release of land under Sections 48 of the Land Acquisition Act, 1894 and 17 of the U.P. Urban Planning and Development Act, 1973, which was rejected on 20.02.2024, leading to the present writ petition.

(viii) That the rejection of the representation of the petitioner rests on an erroneous interpretation of Section 17 of the U.P. Urban Planning and Development Act, 1973. The provision itself contemplates acquisition for development purposes under the Land Acquisition Act, 1894, and its proviso grants a substantive right of restoration where the acquired land remains unutilized for five years. The petitioner asserts that he continued in lawful possession of the land until June 2023, having earlier let it out for a licensed liquor vend and thereafter retaining possession even after the tenancy ended. Despite this, the Development Authority allegedly dispossessed him and proceeded to auction the land without paying compensation. It is submitted that such prolonged deprivation of property, forcing a 73-year-old landholder to litigate for nearly two decades, is arbitrary and unconstitutional. Reliance is placed on Tukaram Kana Joshi & Ors. vs. M.I.D.C. & Ors. (2013) 1 SCC 565 and Sukh Dutt Ratra and Anr. vs. State of Himachal Pradesh and Ors., (2022) 7 SCC 505 to contend that the State cannot divest citizen of his property without authority of law and just compensation, consistent with Articles 14 and 300-A of the Constitution.

(ix) That the State Government invoked the urgency clause under Section 17 of the Land Acquisition Act,1894 without proper application of mind to the statutory prerequisites. Although, the satisfaction regarding urgency is subjective, it must be founded on relevant material showing a genuine need for immediate possession. In cases of planned urban development or residential schemes, no presumption operates in favour of the State, and the burden lies on the Government to justify both the urgency and the dispensation of the enquiry under Section 5A. The Hon'ble Supreme Court has repeatedly held that recourse to Section 17 is an exception and cannot be adopted as a routine measure. While the power exercised under Section 17 is administrative and ordinarily commands deference, it remains open to judicial review where the opinion is based on extraneous or irrelevant considerations or reflects non-application of mind. Strong reliance is placed on Radhy Shyam(D)Thr. Lrs & Ors vs State Of U.P.& Orr, Greater Noida Industrial Development Authority vs. Devendra Kumar and ors (2011) 12 SCC 375, Laxmi Devi versus State of Bihar and others, reported in 2015 (10) SCC 241 (para 13□20); Ram Dhari Jindal Trust v. Union of India & Others reported in 2012 (11) SCC 370 (para 15, 17 to 21); Anand Singh v. State of U.P. & Others, reported in 2010 (11) SCC 242 (para 41 to 51), to contend that the impugned invocation of urgency is legally unsustainable.

(x) That Section 17(3-A) of the Land Acquisition Act, 1894, mandates that at least eighty percent of the estimated compensation must be tendered and paid before taking possession, failing which the vesting of the land does not become absolute. In Delhi Airtech Services Pvt. Ltd. v. State of U.P. (2022 SCC OnLine SC 1408), the Hon'ble Supreme Court reiterated that the urgency clause cannot be invoked as a mere formality and emphasised that the protective safeguards under Section 17(3-A) must be complied with strictly; non-payment of the required compensation would render the acquisition invalid and possession unlawful. In the present case, neither tender nor payment of the requisite compensation was made to the petitioner, and therefore, the possession taken is illegal. Consequently, the protection against lapse under Section 11-A cannot be invoked by the State.

(xi) That the auction conducted by the Raebareli Development Authority was illegal and arbitrary. The disputed land was earmarked for future planning in the 2016 layout plan, yet was selectively carved out and auctioned without proper publicity or compliance with relevant

Government Orders. Such auction, allegedly resulting in inadequate consideration, is liable to be set aside as per K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple, reported in 2022 (5) SCC 710 and allied precedents. Additionally, reliance is placed on Section 17 of the U.P. Urban Planning and Development Act, 1973, contending that since the land remained unutilized for over five years, the petitioner was entitled to seek restoration, which was wrongly denied.

(xii) The learned Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Lucknow Development Authority v. Gopal Das (Deceased), (2019) 8 SCC 172, wherein it was held that the applicability of the proviso to Section 17(1) of the Act of 1973 depends upon whether the acquired land was actually developed after completion of acquisition proceedings. The Court clarified that where no development or utilization of the land takes place within five years from the date of acquisition, the tenure holder becomes entitled to restoration of the land on payment of statutory charges, in accordance with law.

(xiii) In view of the aforesaid facts and the settled legal position, it has been submitted that the impugned acquisition, forcible deprivation of possession in 2023, and subsequent auction of the land of the petitioner suffer from arbitrariness, illegality, and non-compliance with mandatory statutory safeguards. The prolonged non-utilization of the land, non-payment of compensation, unlawful invocation of urgency, and denial of the statutory right of restoration clearly vitiate the action of the respondents. It has therefore been prayed that the writ petition be allowed. ,

Submissions of the respondent State of Uttar Pradesh

4. The State Respondents has been represented by Sri Manish Mishra, Additional Chief Standing Counsel and it has been stated as follows-

(i) That the petitioner repeatedly approached this Court belatedly, despite the Award dated 30.05.2009 and possession having been taken. The petitioner earlier sought only enhancement of compensation by filing a Section 18 reference and never challenged the acquisition on merits. Statutory notices were duly issued, objections were considered, surveys conducted, and possession taken in 2009. As the petitioner did not accept compensation, the awarded amount was deposited in the Treasury under Section 31 of the 1894 Act. Subsequent writ petitions were successive and misconceived.

(ii) That the acquisition proceedings strictly complied with the 1894 Act. Notifications under Sections 4/17 and 6/17 were issued within the statutory period and were valid in law. Actual possession was taken by preparing a panchnama and handing over land to the Development Authority, which is sufficient for large tracts as held in Banda Development Authority versus Moti Lal Agarwal and others, (2011) 5 SCC 394. Section 17(3A) was neither applicable nor available, being prospective in nature. Compensation was duly offered after declaration of the Award. The petitioner, having accepted the acquisition by filing a Section 18 reference, raised belated and untenable challenges.

(iii) That the second writ petition, filed after more than six years of the first, was barred as it arose from the same cause of action, namely the acquisition proceedings, and attracted the bar under Order II Rule 2 CPC, as explained in Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Ltd., 2025 SCC OnLine SC 82. The petitioner could not raise new grounds which were available earlier, including violation of Section 17(3A), based on Laxmi Devi v. State of Bihar, (2015) 10 SCC 241, or Delhi Airtech Services Pvt. Ltd. v. State of U.P., 2022 SCC OnLine SC 1408. No pleading of prejudice was made, except inadequacy of compensation, which is irrelevant at the Section 5-A stage. Possession was taken on 30.05.2009, and the land vested absolutely in the State under Section 16, as held in Indore Development Authority v. Manoharlal, (2020) 8 SCC 129.

(iv) That once possession of acquired land is taken, power under Section 48 of the Land Acquisition Act, 1894 cannot be exercised, as held in Visakhapatnam Urban Development Authority v. S.S. Naidu (2016) 13 SCC 180. In the present case, acquisition stood completed on 30.05.2009, with declaration of the Award and taking of possession, followed by vesting of land in the State free from encumbrances. Reliance was placed on State of M.P. v. V.P. Sharma, AIR 1966 SC 1593; Dedicated Freight Corridor Corporation v. Subodh Singh (2011) 11 SCC 100; and Government of A.P. v. Syed Akbar (2005) 1 SCC 558. Section 17 of the U.P. Urban Planning and Development Act, 1973 was inapplicable as the land formed part of the approved development plan. The petitioner's representation was belated, and successive writ petitions were barred by delay, acquiescence, and Order II Rule 2 CPC, particularly after filing a Section 18 Reference.

(v) In view of the undisputed fact that the Award was declared on 30.05.2009, possession of the land was taken, and the land vested absolutely in the State under Section 16 of the Land Acquisition Act, 1894, the petitioner is not entitled to any relief from this Court. Compensation was duly offered and, upon refusal, deposited in the Treasury in accordance with law. The acquisition proceedings attained finality, and the petitioner himself accepted the same by seeking enhancement under Section 18. Subsequent challenges are barred by delay, acquiescence, and Order II Rule 2 CPC. The land having been utilized under an approved development plan, no case for interference under Article 226 is made out. In view of the foregoing submissions, the writ petitions are liable to be dismissed.

Submissions of the Counsel for the Raebareli Development Authority

5. Learned Senior Counsel Sri Asit Chaturvedi assisted by Sri Dharmendra Kumar Dixit appearing for the Raebareli Development Authority, while opposing the writ petition, submitted that-

a. That after declaration of Award on 30.05.2009, possession was taken of the land in question. Compensation of Rs.75,371/- was offered to the petitioner on 26.06.2009, but on his refusal to take the same, it was deposited in the District Treasury on 08.02.2011. Land was acquired for the purpose of a residential colony and it has been utilized. 8.816 hectares of land was acquired for construction of Yatayat Nagar Residential Colony. Under Section 14 of the U.P. Urban Planning and Development Act, 1973, a development plan was finalized on 11.11.2009, which was revised on 26.07.2016. Land admeasuring 1185 m^2, which includes 175.11 m^2 of land of the

petitioner, has been reserved for future planning. It was later numbered as C-1A Commercial Plot and approved for auction by the Vice-Chairman, Raebareli Development Authority, on 30.05.2003. Since the utilization of the acquired land has been completed, it cannot be released in favour of the petitioner. It was also stated in the counter-affidavit that the judgments cited by the petitioner are inapplicable to the facts of the case. Issues settled by the Award dated 30.05.2009 cannot be reopened. The Reference made by petitioner under Section 18 is pending solely for enhancement of compensation. The Raebareli Development Authority has deposited Rs. 3,35,62,147/- as compensation for the entire scheme and its name was duly recorded in revenue records on 26.12.2015 for plot no. 201/1 also.

(ii) That Possession of the land was duly taken by the Raebareli Development Authority after payment of compensation; hence, the Act of 2013 is inapplicable in view of Indore Development Authority v. Manoharlal (2020) 8 SCC 129. All land acquired under the notifications dated 05.04.2006 and 25.07.2007 and Award dated 30.05.2009 is with the Authority. No original owner, including the petitioner, remains in possession or raised construction. Relevant possession documents were duly filed.

(iii) The acquired land forms part of a duly approved development scheme. An area of 8.816 hectares was acquired for construction of the Yatayat Nagar Residential Colony. The development plan was finalized on 11.11.2009 and subsequently revised on 26.07.2016. The land admeasuring 1185 square metres, including 175.11 square metres claimed by the petitioner, was reserved for future planning and later designated as Commercial Plot No. C-1A, which was approved for auction by the competent authority on 30.05.2023. It was emphasized that once possession is taken and the land is incorporated into an approved development plan, it is deemed to have been utilized in law. Physical construction is not a sine qua non for utilization, as consistently held by judicial precedents.

(iv) The argument regarding Appellate Authority of Section 48 of the Land Acquisition Act, 1894 is wholly misconceived. The power to withdraw from acquisition under Section 48 can be exercised only prior to taking possession. In the present case, possession was taken on 30.05.2009, rendering any subsequent request for release or reconveyance legally impermissible. The representation made by the petitioner under Section 48 in the year 2023, after the land had already been auctioned and allotted, was therefore untenable and devoid of any legal foundation.

(v) The provisions of the Act of 2013 are inapplicable, as both the Award and possession preceded its enforcement. In view of the Constitution Bench judgment in Indore Development Authority v. Manoharlal, acquisition does not lapse once possession has been taken and compensation has been paid or deposited in accordance with law. The contention regarding alleged non-compliance with Section 17(3-A) is also liable to be rejected, as the Award was passed well within the period prescribed under Section 11-A, and no prejudice was either pleaded or has been established. The petitioner, having sought enhancement of compensation by filing a Section 18 Reference, accepted the acquisition and is estopped from assailing it on merits after a prolonged delay.

(vi) The writ petition is barred by delay, laches, acquiescence, and abuse of process. The petitioner has raised successive challenges arising from the same cause of action, which have already attained finality. The auction proceedings were conducted strictly in accordance with law, culminating in execution of a registered sale deed, delivery of possession, and commencement of construction by the allottee, who has altered his position irreversibly. Any interference at this belated stage would unsettle concluded transactions and prejudice third-party rights. Accordingly, no ground for interference under Article 226 of the Constitution is made out, and the writ petition deserves to be dismissed.

Contentions of the Counsel for the Private Respondent

6. Sri Apoorva Tiwari, learned counsel for the private respondents, vehemently advanced his submissions by drawing strength from the relevant statutory provisions and placed reliance upon several judicial authorities, as follows:

(i) Writ-C No. 3283 of 2024 was filed by Petitioner challenging the order dated 24.02.2024 whereby release of land bearing Khasra Plot No. 201/1, Akhtiyarpur was refused, and also seeking quashing of the auction of the carved-out Plot No. C-1-A, Ekta Vihar, Raebareli, its allotment to the private respondent, and consequential reliefs restraining change of nature, construction, or creation of third-party rights. During pendency, the sale deed was executed on 20.03.2024, possession delivered on 22.03.2024, and the building plan sanctioned on 28.03.2024, pursuant to which construction commenced. By interim order dated 10.07.2024, construction was stayed. The private respondent's SLP was disposed of by the Hon'ble Supreme Court on 01.04.2025 with a request to decide the matter within three months.

(ii) Petitioner's reliance on Delhi Airtech Services (P) Ltd. (supra) to contend that possession was illegal due to non-compliance with Section 17(3-A) is misconceived. The Act of 1894 separately provides for taking possession and vesting. As clarified in Delhi Airtech Services, (supra) non-compliance with Section 17(3-A) mandates that an Award must be made within two years from the Section 6 declaration, failing which the acquisition lapses under Section 11-A. In the present case, the Section 6/17 declaration was issued on 25.07.2007 and the Award was delivered on 30.05.2009, well within the statutory period.

(iii) The challenge of the petitioner founded on Section 48 of the Act of 1894 is misconceived. It is well settled by the Supreme Court in Mahadeo (dead) Through L.R.s and others v. State of U.P. and others, (2013) 4 SCC 524, that once possession of acquired land is taken, it vests absolutely in the State free from all encumbrances and cannot be reconveyed merely on the ground of alleged non-utilisation. Section 48 does not confer any vested or enforceable right upon a landowner, but only enables the State, in its discretion, to withdraw from acquisition prior to taking possession, as reiterated in Babu v. State of U.P. & others, reported in 2008 SCC OnLine All 2513. In the present case, the petitioner approached the State under Section 48 only on 10.11.2023, long after the land had been auctioned and allotted in July 2023.

(iv) In Shanti Sports Club v. Union of India, (2009) 15 SCC 705, the Hon□ble Supreme Court has categorically held in paragraph 70 that the burden of establishing discrimination in matters arising under Section 48 of the Land Acquisition Act, 1894 squarely lies upon the person alleging it. The petitioner was therefore required to place on record cogent and concrete material demonstrating complete parity with other landowners whose land had allegedly been released from acquisition. In the absence of any such particulars or supporting evidence, the plea of discrimination is wholly unsustainable and liable to be rejected.

(v) The petitioner invoked Section 17 of the U.P. Urban Planning and Development Act, 1973 for the first time in his representation dated 10.11.2023, simultaneously with Section 48 of the Land Acquisition Act, 1894. Both provisions operate in distinct and mutually exclusive fields: Section 48 of the Land Acquisition Act, 1894 applies prior to taking possession, whereas Section 17 of the Act of 1973 contemplates restoration of unutilized land upon payment of development charges, acquisition cost, and interest. Such mutually inconsistent pleas are impermissible. As held in Heera Singh v. State of U.P. & Others, Writ-C No. 12112 of 2022, decided on 11.05.2022, Section 17 does not result in automatic lapse of acquisition; land is deemed utilized once a development plan under Section 14 is approved. In the present case, possession was taken on 30.05.2009, the development plan was approved on 11.11.2009, and the land had already been allotted to respondent no. 5 prior to the petitioner's representation. Hence, recourse to Section 17 was legally untenable.

(vi) It has been argued that in Shyoraj Singh and another v. State of U.P. and Others, 2021 SCC OnLine Allahabad 873, and in Tejal Uppal v. State of U.P. & others, Writ-C No. 526 of 2022 decided on 25.01.2022, this Court has held that handing over of possession of the acquired land by the State Government to the Development Authority is sufficient for the land to be treated as utilized. The Development Authority, in its counter affidavit filed in Writ-C No. 6261 of 2022, has categorically stated that the land stood utilized once the development plan under Section 14 of the Act of 1973 had been approved on 11.11.2009. Any acquired land can be said to be utilized when its possession has been taken over by the State Government, when the development plan is approved by the Development Authority, and when the said land is allotted to a third person by the Development Authority.

(vii) The objections raised by the petitioner are legally untenable and hit by settled principles of delay, acquiescence, and lack of locus. The land stood vested in the State upon taking possession and declaration of the Award, and all subsequent rights of the petitioner stood extinguished. The auction process was undertaken after due publicity and in accordance with statutory norms, culminating in execution of a registered sale deed and delivery of possession to the private respondent, who has altered his position by commencing construction. The petitioner, not being an intending bidder and having no subsisting right in the land, cannot question the auction proceedings. Any interference at this stage would unsettle concluded transactions and cause grave prejudice to third-party rights. The challenge to the acquisition and allied proceedings has been raised after an inordinate and unexplained delay, despite the petitioner having availed the remedy of Reference under Section 18. Such belated and successive challenges, founded on grounds already settled by authoritative pronouncements, are liable to be rejected on the ground of laches alone.

(viii) It was further emphasized that invocation of urgency under Section 17 of the Land Acquisition Act is based on the subjective satisfaction of the State Government. Such satisfaction can be judicially reviewed only on limited grounds, namely: absence of public purpose, mala fides, or non-application of mind. None of these grounds have been pleaded or substantiated by the petitioner.

(ix) Learned counsel for the private respondent in Delhi Airtech Services Pvt. Ltd. (supra) highlighted that the normal acquisition process begins with a Section 4 notification, followed by compliance with Section 5A, declaration under Section 6, and confirmation of public purpose. Compensation and possession are then determined under Sections 9, 11, and 16. Section 11A, introduced in 1984, ensures that if the award is not passed within two years, the acquisition lapses. Paragraph 19 clarifies that prior cases, including Satendra Prasad Jain versus State of U.P., 1993 (4) SCC 369 and Laxmi Devi v. State of Bihar, (2015) 10 SCC 241, involved attempts by authorities to exploit procedural lapses, which the Court rejected, reinforcing that the protections under Sections 16 and 17(3A) safeguard landowners' rights.

(x) Reliance was placed on Ghulam Mustafa versus State of Maharashtra, 1976 (1) SCC 800 to contend that once an Award is made and possession is taken under Section 16, the land vests absolutely in the State and cannot be restored to the erstwhile owner. Reference was also made to Urban Improvement Trust v. Vidya Devi & ors, 2024 SCC OnLine SC 3725, wherein it was held that writ petitions assailing land acquisition proceedings are liable to be dismissed on the ground of delay and laches, particularly when the acquisition is for public housing and development schemes.

(xi) Lastly, he submitted that the writ petition is wholly devoid of merit and is liable to be dismissed. The acquisition proceedings have attained finality long back with declaration of the Award and taking of possession, resulting in absolute vesting of the land in the State free from all encumbrances. The petitioner has repeatedly invoked mutually inconsistent remedies after an inordinate and unexplained delay, despite having availed statutory remedies for compensation. There is no enforceable legal right of the petitioner shown to have been infringed. The petition therefore deserves to be dismissed.

Reply on Behalf of the Petitioner to Contentions of the Respondents

7. The reply on behalf of the petitioner to the contentions raised by the respondents is as under-

(i) In reply to the above submissions by the respondents, learned Senior Counsel for the petitioner candidly submits that the original challenge to the acquisition proceedings was based exclusively on the ground that compensation had neither been paid nor possession taken, and therefore the acquisition had lapsed under Section 24(2) of the Act of 2013. In light of the law subsequently settled by a Larger Bench of the Hon'ble Supreme Court, this ground has since become untenable.

(ii) That Writ-C No. 6261 of 2022 was instituted on 08.09.2022, wherein the petitioner sought a writ of mandamus directing release of land bearing Khasra No. 201/1, village Akhtiyarpur,

on the ground of its non-utilisation under Section 17 of the U.P. Urban Planning and Development Act, 1973, and also prayed for a declaration that the acquisition proceedings stood vitiated. It was submitted that prior thereto the petitioner had made a representation dated 06.08.2022 to the District Magistrate and the Raebareli Development Authority, which was forwarded to the State Government. The said representation asserted that the land had remained unutilised even after thirteen years from the date of Award and taking over of possession.

(iii) That, as per the counter affidavit in Writ-C No. 3283 of 2024, Plot C-1A was not listed for auction on 15.07.2023, nor were circle rates provided by the Sub-Registrar on 26.12.2022. The plot remained un-utilised and reserved for future planning when the Court passed the interim order on 13.09.2022.

(iv) That the Raebareli Development Authority maliciously singled out 204 sq.m. of the petitioner from a 1185 sq. m. area, renumbered it as Plot C-1A on 30.05.2023, and auctioned 173 sq. m. to defeat the petitioner's claim. The auction notice dated 01.06.2023 misidentified the property as in Ekta Vihar, not Akhtiyarpur, and applied a 'non-agricultural' circle rate instead of the correct commercial rate, ignoring its location adjacent to commercial establishments and the National Highway. The reserve price was arbitrarily fixed, undervaluing the land. The auction also violated the Government Order dated 20.06.2001, as the notice was published only once in insufficiently circulated newspapers, instead of twice in one national and one State-level newspaper, rendering the auction procedurally flawed.

(v) The petitioner relied on Attavur Rahman Kamal v. State of Andhra Pradesh, Writ Petition No. 7482 of 2023, decided on 19.06.2023 to stress the importance of proper publication of auction notices, noting that newspaper publication must be meaningful and not perfunctory. Learned Senior Counsel further contended that under Section 17(3-A) of the Act of 1894, 80% of estimated compensation must be tendered before possession, which was violated in the petitioner's case. Although the Award and possession were recorded on paper on 30.05.2009 and 06.06.2009, compensation was only tendered to the petitioner on 26.06.2009 and deposited on 08.02.2011. This violation, per Delhi Airtech Services, (Supra) renders the possession and vesting of land in the respondents legally defective.

(vi) That the RaeBareli Development Authority violated Section 17(3-A) of the Act of 1894, as 80% of the estimated compensation was deposited only after possession, which was taken on 30.05.2009, with compensation tendered to the petitioner on 26.06.2009 and deposited on 08.02.2011.

(vii) The doctrine of lis pendens was also invoked, as the petitioner had filed Writ-C No. 6261 of 2022 after making representation on 06.08.2022 regarding release of unutilised land, binding subsequent purchasers under Shingara Singh v. Daljit Singh, reported in 2024 SCCOnLine SC 2823. Relying upon the judgment rendered by the Hon'ble Supreme Court in Cuddalore Powergen Corporation Limited versus Chemplast Cuddalore Vinyls Limited and another, reported in 2025 SCC OnLine SC 82, and paragraphs 36, 37, 38, 39, 41, 45 and 47 of the same, it has been submitted that the Hon'ble Supreme Court has itself held that when there is a separate cause of action for each petition, then bar under Order II Rule 2 C.P.C. is not applicable. Reference was also

made to Urban Improvement Trust v. Vidya Devi & ors, 2024 SCC OnLine SC 3725, establishing that no limitation bars the Court from exercising constitutional jurisdiction to ensure substantial justice, irrespective of procedural delays.

(viii) That further the doctrine of lis pendens, as reiterated in Usha Sinha versus Dina Ram and others, (2008) 7 SCC 144 and Sanjay Verma versus Manik Roy and others, 2006 (13) SCC 608, binds a transferee pendente lite to the outcome of the litigation, irrespective of notice or bona fides, as it is founded on public policy to prevent frustration of judicial proceedings. The Hon'ble Supreme Court has further held that compulsory acquisition without strict compliance with statutory safeguards, particularly payment of 80% compensation under Section 17(3A) of the Land Acquisition Act, 1894, renders possession illegal (Delhi Airtech Services, (supra)). Even delay cannot defeat challenges where there is a continuing cause of action or grave procedural illegality, as delay and laches are matters of discretion, not rigid rules as held in, Sukh Dutt Ratra and another versus State of Himachal Pradesh and others, 2022 (7) SCC 508 and Ramchandra Shankar Deodhar & Others versus State of Maharashtra & Others, 1974 (1) SCC 317).

(ix) That several procedural anomalies have occurred. Section 17(3-A) of the Act of 1894 was not complied with, as possession was taken on 30.05.2009 before tendering compensation. The Section 5-A enquiry was dispensed with under the urgency clause of Section 17, despite no real urgency, as the acquisition process began in 2004 and notifications were issued in 2006 2007. The land remained unutilised, with development plans in 2009 and 2016, reserving 1185 m^2 for future planning. Reliance on Hamid Ali Khan v. State of U.P. (Supra) emphasized that dispensing with Section 5-A violates the valuable right of the landowner. The claim of respondents that possession followed Section 16 confirms that invocation of Section 17 was unnecessary and arbitrary, violating due procedure and Article 300-A of the Constitution.

(x) He relied upon the judgment of Gian Chand & Brothers v. Rattan Lal AIR 2013 SC 1078 to contend that every allegation of fact in the petition must be specifically denied in the written statement, failing which such averments shall be deemed to be admitted. Reliance has also been placed on Sanjay Sharma v. Kotak Mahindra Bank Ltd., 2025(3) ALD19 wherein the Hon'ble Supreme Court held that under Section 54 of the Transfer of Property Act, ownership of immovable property valued above ₹100 is transferred only through a registered instrument, and mere payment of consideration or delivery of possession does not complete or validate the transfer in absence of registration.

(xi) That publication of an auction notice through newspapers cannot be treated as an empty or ritualistic formality. Its object is to meaningfully inform the public at large, attract genuine participation, and ensure fair competition so as to secure maximum revenue for the public authority. In matters involving State largesse, especially public auctions, fairness, transparency, and adequate publicity are mandatory. Absence of wide and effective publication vitiates the auction, as held in Attavur Rahman Kamal v. State of Andhra Pradesh, Writ Petition No. 7482 of 2023 and State of Madhya Pradesh and another versus Shri Ram Ragubir Prasad Agarwal, (1979) 4 SCC 686 which clarified that publication means making information known to the public generally.

(xii) Recent decisions, including Urban Improvement Trust v. Vidya Devi & ors, 2024 SCC OnLine SC 3725 and D.B. Basnett (D) through Legal Representatives vs. Collector, East District, Gangtok, Sikkim & Another, 2020 (4) SCC 572, reaffirm that the right to property under Article 300-A is a constitutional right, and expropriatory Statutes must be strictly construed. Courts may intervene despite delay where procedural anomalies are glaring and dispossession is without due process.

Points for Consideration

8. With reference to the above rival factual and legal contentions urged on behalf of the parties, the points that would arise for consideration are as follows:

(i) Whether the invocation of the urgency clause under Section 17 of the Land Acquisition Act, 1894, and the consequent dispensation of enquiry under Section 5-A, was justified in the facts and circumstances of the case?

(ii) Whether reservation of land for 'future planning' amounts to utilization within the meaning of the said provision?

(iii) Whether the auction and subsequent transfer in favour of the private respondent are hit by the doctrine of lis pendens, and if so, to what extent such transfer is subject to the outcome of the present proceedings?

(iv) Whether, in the facts of the case, the impugned actions of the respondents result in deprivation of property otherwise than by authority of law, infringing Article 300-A of the Constitution?

(v) Whether the original landowner, whose land remained unutilized for a prolonged period, whose compensation was not received, and who retained possession till June 2023, is entitled to seek reversion of the land or challenge its hurried transfer/auction in favor of a third party, and whether the actions of the respondents are arbitrary, illegal, and tainted with malice in law, and violative of Articles 14 and 300-A of the Constitution?

Analysis

9. Before proceeding to analyze the submissions of the parties, a brief reference to the relevant provisions of the Land Acquisition Act, 1894 would be necessary. The normal procedure for acquisition of land under the Land Acquisition Act, 1894 can broadly be divided into two parts. In the first part, comprising Sections 4, 5-A and 6, the process commences with the issuance of a preliminary notification under Section 4 when it appears to the appropriate Government that land is needed or is likely to be needed for a public purpose. Such notification is published in the Official Gazette and public notice of its substance is given in the locality concerned. Thereafter, under Section 5-A, any person interested in the land may, within thirty days from the publication of the notification, file objections in writing before the Collector, who is required to grant an opportunity of hearing and submit a report with recommendations to the Government. Upon consideration of

such report, if the Government is satisfied that the land is required for a public purpose, it makes a declaration under Section 6, which is published in the Official Gazette and constitutes conclusive evidence of such requirement.

10. The second part, consisting of Sections 7, 9, 11 and 16, deals with the steps following the declaration. After the declaration under Section 6, the Government issues directions to the Collector under Section 7 to take steps for acquisition of the land. The Collector then issues notices under Section 9 to persons interested, calling upon them to submit their claims for compensation. Upon conducting an enquiry, the Collector makes an Award under Section 11 determining the area of the land, the compensation payable and its apportionment among the interested persons. Thereafter, under Section 16, upon making the Award, the Collector may take possession of the land, and once possession is taken, the land vests absolutely in the Government free from all encumbrances.

11. Section 17 of the 1894 Act gives special powers to the State government in the cases of urgency and emergency. To the extent it is relevant, Section 17 reads as under:

Section 17. Special powers in case of urgency. --In cases of urgency, whenever the State Government so directs the Collector though no such award has been made may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the State Government free from all encumbrances.

xxx

2. xxx

3. xxx

3(A). Before taking possession of any land under sub-section (1) or sub-section(2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested (sic therein and) entitled thereto, and

(b) pay it to them, unless prevented by someone or more of the contingencies mentioned in Section 31, sub-section (2),

and where the Collector is so prevented, the provisions of Section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

3(B). The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section

11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

4. In the case of any land to which in the opinion of the State Government the provisions of Sub-sections (1) or Sub-section (2) are applicable the State Government may direct that the provisions of Section 5-A shall not apply and, if it does so direct a declaration may be made Under Section 6 in respect of the land at any time after the publication of the order Under Sub-section (1) of Section

12. Section 17 of the Act provides a special and exceptional procedure for acquisition in cases of urgency, and operates as a departure from the normal process prescribed under Sections 4, 5-A, and 6. Under sub-section (1), where the appropriate Government is satisfied that the situation demands urgent action, it may direct the Collector to take possession of the land after the expiry of fifteen days from the publication of notice under Section 9(1), even though no award has been made. Upon such possession being taken, the land vests absolutely in the Government, free from all encumbrances.

13. Sub-section (4) of Section 17 contemplates cases of extreme urgency and empowers the appropriate Government to dispense with the enquiry under Section 5-A, which otherwise confers a valuable right of objection upon the landowner. If such a direction is issued, a declaration under Section 6 may be made at any time after publication of the notification under Section 4(1), without waiting for the completion of the Section 5-A enquiry. Being an exception to the ordinary rule, this power must be invoked sparingly and only in genuine cases of urgency.

14. The condition precedent for invoking Section 17(1) is the existence of real and genuine urgency. The appropriate Government must be satisfied that possession of the land is urgently required and that any delay would frustrate the very purpose of acquisition. Likewise, before exercising power under Section 17(4) to dispense with the enquiry under Section 5-A, the Government must form a clear opinion that the case is one of extreme urgency. The urgency must be of such a nature that even the minimum statutory period of thirty days for filing objections, along with the reasonable time required for enquiry under Section 5-A, cannot be afforded without defeating the public purpose.

15. Section 17(4) has the effect of depriving a landowner of a valuable statutory right to object and to be heard. Therefore, the power to dispense with Section 5-A cannot be exercised lightly or in a routine manner.

16. On a careful examination of Section 17 of the Land Acquisition Act, 1894, it is evident that the said provision incorporates the urgency clause and vests extraordinary powers in the State to take possession of the land even prior to the making of an award and to dispense with the enquiry contemplated under Section 5-A of the Land Acquisition Act,1894. Such power being exceptional in nature and having the effect of depriving the landholder of the valuable and substantive right of objection, its scope is necessarily narrow and circumscribed. The invocation of Section 17, therefore, cannot be justified as a matter of course or administrative expediency and is required to be strictly construed and sparingly exercised.

17. It further stipulates that the existence of a real, immediate, and compelling urgency is a condition precedent for the invocation of Section 17 of the Land Acquisition Act. The urgency contemplated by the statute must be of such a nature that even the minimal time required for holding an enquiry under Section 5-A would defeat or frustrate the public purpose sought to be achieved. Mere administrative exigency or convenience, howsoever pressing, does not meet the statutory threshold of urgency envisaged under Section 17. Moreover, the satisfaction of the appropriate Government must be based on objective material and due application of mind. A mechanical recital of urgency in the notification, without supporting reasons or contemporaneous record, is bad in law. Non-application of mind vitiates the invocation of Section 17.

18. In Dora Phalauli v. State of Punjab (AIR 1979 SC 1594), the Hon'ble Supreme Court held that the right to file objections under Section 5-A should not be interfered with in a casual or cavalier manner. Similarly, in State of Punjab v. Gurdial Singh (AIR 1980 SC 319), the Court observed:

"...Without referring to supportive case-law, it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act...."

19. It has been the consistent view of the Apex Court and this Court that since the invocation of Section 17 results in denial of hearing and exclusion of the principle of natural justice, audi alteram partem, its exercise is subject to strict judicial scrutiny. Such extraordinary power can be justified only in cases of real, immediate, and compelling urgency. The action of the State must satisfy the constitutional requirements of fairness, non-arbitrariness, and reasonableness under Article 14 and must also conform to the protection against unlawful deprivation of property under Article 300-A of the Constitution. Any mechanical, routine, or unjustified invocation of Section 17 vitiates the entire acquisition proceedings.

20. A three Judge Bench of the Hon□ble Supreme Court in Narayan Narayan Govind Gavate v. State of Maharashtra AIR 1977 SC 183 has elaborately considered the ambit and scope of Section 17 of the Act and held as under:

"40. In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry under Section 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries under Section 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry under Section 5A of the Act."

21. In Dev Sharan and Ors. v. State of U.P. and Ors., (2011)4SCC769, the Hon'ble Supreme Court observed that the extraordinary power under Section 17 to dispense with the valuable right of objection under Section 5-A can be exercised only in cases of real urgency and not as a matter of routine, and such action must conform to constitutional safeguards, which is quoted below-

"14. In connection with land acquisition proceeding whenever the provision of Section 17 and its various Sub-sections including Section 17(4) are used in the name of taking urgent or emergent action and the right of hearing of the land holder under Section 5A is dispensed with, the Court is called upon to consider a few fundamentals in the exercise of such powers.

15. Admittedly, the Land Acquisition Act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

16. The concept of public purpose cannot remain static for all time to come. The concept, even though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one. It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre- Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles.

17. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

18. Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in

exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires. In this context we reiterate the principle laid down by this Court in Authorised Officer, Thanjavur and Anr. v. S. Naganatha Ayyar and Ors. (1979) 3 SCC 466, wherein this Court held:

"...It is true that Judges are constitutional invigilators and statutory interpreters; but they are also responsive and responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio- economic order. The judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme."

19. In other words public purpose must be viewed through the prism of Constitutional values as stated above.

20. The aforesaid principles in our jurisprudence compel this Court to construe any expropriartory legislation like the Land Acquisition Act very strictly.

21. The judicial pronouncements on this aspect are numerous, only a few of them may be noted here.

22. In DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors. (2003) 5 SCC 622, this Court construed the statute on Town Planning Law and held "Expropriatory statute, as is well known, must be strictly construed." (See para 41 page 635).

23. The same principle has been reiterated subsequently by a three-Judge Bench of this Court in State of Maharashtra and Anr. v. B.E. Billimoria and Ors. (2003) 7 SCC 336 in the context of ceiling law. (See para 22 at page 347 of the report).

24. These principles again found support in the decision of this Court in Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd. and Ors. (2007) 8 SCC 705, wherein this Court construed the status of a person's right to property after deletion of Article 19(1)(f) from Part III. By referring to various international covenants, namely, the Declaration of Human and Civic Rights, this Court held that even though right to property has ceased to be a fundamental right but it would however be given an express recognition as a legal right and also as a human right.

25. While discussing the ambit and extent of property right, this Court reiterated that expropriatory legislation must be given strict construction. (See para 53 to 57 at pages 731 to 732 of the report)

26. In the background of the aforesaid discussion, this Court proceeds to examine the scope of a person's right under Section 5A of the Act.

27. Initially, Section 5A was not there in the Land Acquisition Act, 1894 but the same was inserted long ago by the Land Acquisition (Amendment) Act, 1923 vide Section 3 of Act 38 of 1923.

28. The history behind insertion of Section 5A, in the Act of 1894 seems to be the basis of a decision of the Division Bench of Calcutta High Court in J.E.D. Ezra v. The Secretary of State for India and Ors. 7 C.W.N. 249. In that case, the properties of Ezra were sought to be acquired under the pre amended provision of the Act for expansion of the offices of the Bank of Bengal. In challenging the said acquisition, it was argued that the person whose property is going to be taken away should be allowed a hearing on the principles of natural justice. However the judges found that there was no such provision in the Act. (see p. 269)

29. In order to remedy this shortcoming in the Act of 1894, an amendment by way of incorporation of Section 5A was introduced on 11th July, 1923. The Statement of Objects and Reasons for the said Amendment is as follows:

The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under Section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under Section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government. (Gazette of India, Pt. V, dated 14th July, 1923, page 260)

30. The said amendment was assented to by the Governor General on 5th August, 1923 and came into force on 1st January, 1924.

Relying upon earlier pronouncements in Nandeshwar Prasad and Ors Vs. U. P. Government and Others AIR 1964 SC 1217; Munshi Singh and Ors. v. Union of India (1973) 2 SCC 337; Hindustan Petroleum Corporation Limited v. Darius Shahpur Chennai and Ors. (2005) 7 SCC 627 and quoting Essco Fabs (supra), (2009) 2 SCC 377; The Court observed as follows:-

41. Whereas Sub-section (1) of Section 17 deals with cases of "urgency", Sub-section (2) of the said section covers cases of "sudden change in the channel of any navigable river or other unforeseen emergency". But even in such cases i.e. cases of "urgency" or "unforeseen emergency", enquiry contemplated by Section 5A cannot ipso facto be dispensed with which is clear from Sub-section (4) of Section 17 of the Act.

The Court further observed in Para 35 onwards:

35. This Court, therefore, held that once a case is covered under Sub-section (1) or (2) of Section 17, Sub-section (4) of Section 17 would not necessarily apply.

54. In our opinion, therefore, the contention of learned Counsel for the Respondent authorities is not well founded and cannot be upheld that once a case is covered by sub- sections (1) or (2) of Section 17 of the Act, Sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections under Section 5A of the Act. Acceptance of such contention or upholding of this argument will make sub- section (4) of Section 17 totally otiose, redundant and nugatory.

36. This Court also held that in view of the ratio in Union of India v. Mukesh Hans (2004) 8 SCC 14, Sub-section (4) of Section 17 cannot be pressed into service by officers who are negligent and lethargic in initiating acquisition proceedings.

37. The question is whether in the admitted facts of this case, invoking the urgency clause under Section 17(4) is justified. In the writ petition before the High Court, the Petitioners have given the details of the land holding, and it has also been stated that the entire holding of Petitioners 2, 5, 7, 9, 10, 11 and 13 have been acquired, and as a result of such acquisition, the Petitioners have become landless. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's letter dated 4th of June, 2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of the suitable site for construction was held on 27th June, 2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2nd of July, 2008. This was in turn forwarded to the State Government by the Director on 22nd of July, 2008. After due consideration of the forwarded proposal and documents, the State Government issued the Section 4 notification, along with Section 17 notification on 21st of August, 2008. These notifications were published in local newspapers on 24th of September, 2008. Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the landowners, along with 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Section 6 declaration was sent to the Director, Land Acquisition on 19th of June, 2009. The Director in turn forwarded all these to the State Government on 17th July, 2009, and the State Government finally issued the Section 6 declaration on 10th of August, 2009. This declaration was published in the local dailies on 17th of August, 2009.

38. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration, in the local newspapers is 11 months and 23 days, i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

39. In paragraph 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the Petitioners their right under

Section 5A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.

40. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section 17. If so advised, Government can initiate acquisition proceeding by following the provision of Section 5A of the Act and in accordance with law.

41. For the reasons aforesaid, we hold that the State Government was not justified, in the facts of this case, to invoke the emergency provision of Section 17(4) of the Act. The valuable right of the Appellants under Section 5A of the Act cannot flattened and steamrolled on the 'ipse dixit' of the executive authority. The impugned notifications under Sections 4 and 6 of the Act in so far as they relate to the Appellants' land are quashed. The possession of the Appellants in respect of their land cannot be interfered with except in accordance with law.

(emphasis supplied by us)

22. In Union of India v. Kishan Lal Arneja AIR2004SC3582, Hon'ble Supreme Court has observed as under:

"Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the enquiry under Section 5A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous, A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

(emphasis supplied by us)

23. From the above judgments, the law is clear that the power to dispense with the enquiry under Section 5-A of the Land Acquisition Act is an extraordinary and exceptional power. The right under Section 5-A is a valuable statutory right available to the landowner, and its exclusion cannot be resorted to as a matter of routine or administrative convenience. The State Government may invoke Sections 17(1) and 17(4) only when there exists real, genuine, and demonstrable urgency of such a nature that even the brief enquiry contemplated under Section 5-A cannot be tolerated. The satisfaction regarding urgency must be based on relevant material and must reflect due application of mind. In short, the dispensing of enquiry under Section 5A of the Act is not a normal procedure but is resorted to only in exceptional circumstances where strong reasons exist for the same.

23. In Union of India (UOI) and Ors. v. Shiv Raj and Ors., (2010) 11 SCC 242, the Hon'ble Supreme Court emphatically reiterated the scope, object and significance of Section 5-A of the Land Acquisition Act, 1894 in the context of the principles of natural justice and the valuable right of objection conferred upon landowners, which are as under-

"8. The rules of natural justice have been ingrained in the scheme of Section 5A of the Act 1894 with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land.

Section 5A(2) of the Act 1894, which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued Under Section 4(1) of the Act 1894 or that there are other valid reasons for not acquiring the same. Thus, Section 5A of the Act 1894 embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.

On the consideration of the said objection, the Collector is required to make a report. The State Government is then required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made Under Section 6(1) of the Act 1894.

9. Therefore, Section 5A of the Act 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

10. Thus, the limited right given to an owner/person interested Under Section 5A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed Under Section 17(4) of the Act, 1894.

25. The Apex Court in Anand Singh and Ors. Vs. State of Uttar Pradesh and Ors. (2010) 11 SCC 242 has dealt with the scope, extent and ambit of the power of the State Government under Section 17(1) and (4) of the 1894 Act and the legal position has been culled out as follows:

"43. The exceptional and extraordinary power of doing away with an enquiry Under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry Under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry Under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry Under Section 5-A.

44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power Under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry Under Section 5-A has been formed by the Government after due application of mind on the material placed before it.

45. It is true that power conferred upon the Government Under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary.

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency Under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated Under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry Under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

47. The special provision has been made in Section 17 to eliminate enquiry Under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry Under Section 5-A. We have already noticed a few decisions of this Court. There is a conflict of view in the two decisions of this Court viz. Narayan Govind Gavate (1977) 1 SCC 133 and Pista Devi (1986) 4 SCC 251. In Om Prakash (1998) 6 SCC 1 this Court held that the decision in Pista Devi (1986) 4 SCC 251 must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in Narayan Govind Gavate (1977) 1 SCC 133.

(emphasis supplied by us)

26. In the case of Radhy Shyam (Dead) through L.Rs. and Ors. v. State of U.P. and Ors., the Hon'ble Apex Court summarized the legal position governing the exercise of power under Section 17 of the Land Acquisition Act, particularly with regard to dispensing with the enquiry under Section 5-A, and laid down guiding principles for judicial review of such action.

"53. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.,AIR (1954) SC 119, Chiranjit Lal Chowdhuri v. Union of India AIR (1951) SC 41 and Jilubhai Nanbhai Khachar v. State of Gujarat (1995) Supp. (1) SCC 596.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriators legislation and such legislation must be construed strictly - DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana (2003) 5 SCC 622; State of Maharashtra v. B.E. Billimoria (2003) 7 SCC 336 and Dev Sharan v. State of U.P., civil Appeal No. 2334 of 2011 decided on 7.3.2011.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency

provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. therefore, before excluding the application of Section 5A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5A would not apply to the cases covered under Sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition."

27. Recently, in Hatam Singh and Others v. State of U.P. Thru Secy. Housing (WRIT C No. 4986 of 2005), decided on 17 October 2025 along with 32 connected petitions, this Court, after a detailed survey of binding precedents of the Hon'ble Supreme Court and this Court, observed that Section 5-A of the Land Acquisition Act, 1894 embodies a substantive safeguard for landowners. It further held that recourse to Section 17 to dispense with such enquiry is permissible only in cases

of real urgency, founded on cogent material and a conscious application of mind by the competent authority.

Issue No. (I)

28. We now proceed to consider the first issue that arises for determination, namely, whether the invocation of the urgency clause under Section 17 of the Land Acquisition Act, 1894 and the consequent dispensation of the enquiry contemplated under Section 5-A were justified in the facts and circumstances of the present case. This issue goes to the very root of the matter and requires determination at the threshold. It is now well settled that the right of objection under Section 5-A of the Land Acquisition Act, 1894 is not an empty formality but a valuable and substantive right available to a landholder prior to the compulsory acquisition of his property. The enquiry contemplated under Section 5-A constitutes the sole and effective opportunity afforded to the affected person to raise objections with regard to the public purpose, suitability, and necessity of the proposed acquisition. Dispensation of such enquiry by resorting to the urgency clause under Section 17 can be sustained only in exceptional circumstances where the urgency is real, immediate, and compelling. Any routine, casual, or mechanical exercise of this extraordinary power undermines the statutory safeguard embodied in Section 5-A and is liable to be interdicted by the constitutional courts.

29. Keeping the above principles in mind discussed in preceding paragraphs, it is to be considered whether there was any justification for applying the urgency clause and for dispensing with the requirements of Section 5-A of the Act. As per the record produced on behalf of the State Government, which was produced before this Court, the Chairman, Raebareli Development Authority and the Special Land Acquisition Officer, Sanyukta Sangathan, Raebareli, jointly signed a request, which is being quoted verbatim hereinbelow in its entirety:

"धारा 17 लागू करने हेतु औचित्य

रायबरेली विकास प्राधिकरण की आवासीय योजना के निर्माण हेतु भूमि की तुरंत आवश्यकता है क्योंकि भूमि उपलब्ध होने में विलंब होने से निर्माण कार्य की पूर्ति में देरी होगी, जिससे आवासीय योजना के निर्माण में विलंब होगा और प्रदेश के विकास में रुकावट पड़ेगी। अतः धारा 17(1) के अनुसार भू-अर्जन की कार्यवाही आवश्यक है ताकि शीघ्रातिशीघ्र भूमि उपलब्ध कराई जा सके।

30. On a careful examination of the reasons recorded for invoking Section 17(1), it becomes evident that no real, immediate or exceptional urgency has been demonstrated. The only ground assigned is that delay in making the land available would consequently delay construction of a residential scheme and affect development in the region. Such reasoning merely reflects administrative convenience and apprehension of project delay, which are routine features in almost every development activity. These grounds are vague and general in nature and do not disclose any extraordinary or emergent circumstance warranting dispensation of the statutory safeguard under Section 5-A. There is no material to show that even the short period required to conduct an enquiry under Section 5-A would frustrate or defeat the declared public purpose. In the absence of any special, unforeseen or compelling situation, the satisfaction recorded under Section 17 appears mechanical and not based on objective considerations. Therefore, the reasons given do not satisfy the strict legal requirements for properly invoking the urgency clause under Section 17 of the Act.

31. Moreover, such invocation of the urgency clause is clearly contrary to the settled legal principles consistently laid down by authoritative judicial pronouncements noticed in several preceding paragraphs. The Apex Courts have repeatedly held that the power under Section 17 is extraordinary in nature and must be exercised with great caution and only in cases of genuine and compelling urgency. It cannot be invoked on the basis of routine administrative delay, convenience, or anticipated project timelines. The law is well settled that the valuable right of objection under Section 5-A cannot be taken away lightly or in a mechanical manner. Any satisfaction recorded without concrete, objective and exceptional circumstances stands vitiated in law.

32. Upon an anxious and careful consideration of the statutory scheme of the Land Acquisition Act, 1894 and the authoritative pronouncements noticed in several preceding paragraphs, this Court has no hesitation in holding that the mandatory pre-condition of real, immediate and compelling urgency for invoking Section 17 of the Act has not been satisfied in the present case. The reasons relied upon by the State disclose nothing beyond administrative convenience and apprehended delay in execution of the project, which are wholly insufficient in law to justify dispensation of the valuable right of objection under Section 5-A.

33. The material on record does not demonstrate any circumstance of such pressing urgency as would render even the minimal enquiry contemplated under Section 5-A impracticable or frustrative of the public purpose. The statutory threshold for exercise of the extraordinary power under Section 17, therefore, remains unsatisfied, in clear violation of the settled principles of law consistently laid down by the Hon'ble Supreme Court as well as by this Court discussed in preceding paragraphs. Consequently, Point No. (i) is answered in favour of the petitioner and against the respondents. The invocation of the urgency clause under Section 17, together with the dispensation of the enquiry under Section 5-A, is held to be arbitrary, unconstitutional and unsustainable in law.

Point No. (ii)

34. We now proceed to consider Point No.(ii) as framed by us. The expression 'utilization' occurring in the relevant statutory provision necessarily connotes actual use of the land for the purpose for which it has been acquired, and not a mere proposal, intention, or reservation for an uncertain future. Reservation of land for 'future planning' by its very nature, is contingent and indeterminate and does not result in any present or tangible use of the land.

35. Mere earmarking of land or its retention for a prospective future project, in the absence of any concrete steps towards development or implementation, cannot, in law, be regarded as utilisation. Any contrary interpretation would defeat the very object of the provision, which mandates that land acquired for a specified public purpose be put to effective and timely use.

36. In our considered view, the law does not permit the State to keep acquired land for an unlimited period on the vague ground of 'future planning'. The land must be put to real and actual use. Its utilisation must be genuine and visible, not merely on paper or based on uncertain future possibilities. Simply reserving the land without carrying out any development or using it for the

stated public purpose does not fulfill the legal requirement of utilisation. 'Utilisation' must be real, substantive and demonstrable, and not illusory.

37. It must be borne in mind that the Land Acquisition Act, 1894 was framed in a different era. In the present Constitutional framework, every statutory power has to be exercised in accordance with the Constitution of India, the Supreme law of the land, and in keeping with the principles of a welfare State. The rule of law, which is a foundational feature of our constitutional framework and finds expression in Article 14 of the Constitution of India, requires that all State action to be fair, transparent, reasonable and free from arbitrariness. It ensures that power is exercised within defined legal limits and for the purpose for which it is conferred. In a constitutional democracy governed by the rule of law, the State cannot act on vague assumptions or indefinite plans while dealing with valuable property rights of citizens. Retention of acquired land for years together without any concrete development or utilisation defeats the very purpose for which the power of acquisition is granted. Such inaction not only weakens the statutory intent but also violates the constitutional guarantee against arbitrary State action.

Accordingly, this Court holds that reservation of land for 'future planning' in the absence of actual development or use, does not amount to utilisation within the meaning of the said provision. Point No. (ii) is, therefore, answered in the negative.

Point No. (iii)

36. Point No. (iii) concerns the applicability of the doctrine of lis pendens, as embodied in Section 52 of the Transfer of Property Act, 1882, to the auction and subsequent transfer of the subject land in favour of the private respondent during the pendency of the present proceedings. The doctrine of lis pendens, embodied in Section 52 of the Transfer of Property Act, 1882, is founded on public policy and mandates that during the pendency of any litigation in which rights to immovable property are directly and substantially in issue, the property cannot be transferred so as to prejudice the rights of any party to the lis. The principle is not based on notice or bona fides of the transferee, but on the necessity to preserve the subject matter of the litigation until its final adjudication. In the present case, it is undisputed that at the time when the auction was conducted and the subsequent transfer was made in favour of the private respondent, writ proceedings concerning the very same land, particularly with respect to its utilisation, release, and legality of acquisition were already pending before this Court. The subject land thus formed an integral part of the lis. A transfer pendente lite is not void ab initio; however, it does not confer any independent or superior right upon the transferee. The transferee merely steps into the shoes of the transferor and takes the property subject to the final outcome of the pending proceedings. Accordingly, this Court holds that any rights claimed by the private respondent shall abide by and be governed by the final decision rendered by this Court.

39. It is also clear that such auction was done in a clandestine manner. The petitioner's land was shown marked as 'D-1' at the time of depositing compensation. It was thereafter shown as commercial Plot C-1A on 30.05.2023. The auction notice dated 01.06.2023 states that commercial Plot C-1A situated in Ekta Vihar was proposed to be auctioned but the auction notice dated 01.06.2023 only stated that 'the Raebareli Development Authority's Ekta Vihar, Jawahar Vihar,

Indira Nagar, in front of Supermarket, Raebareli Development Authority Complex consisting of vacant commercial shops, office space and commercial plots would be allotted by way of auction on 30th/31st of every month. Auction information shall be notified later. The auction was held on 07.07.2023 just after one publication of this notice without separately notifying auction information later.

40. Disputed land was kept for future planning in the layout plan of Ekta Vihar Colony prepared in 2016 by Raebareli Development Authority itself. Picking up the said land and marking it as C-1A and auctioning it alone out of 1185 sq. m. kept aside for future planning cannot be justified under any circumstances and is liable to be set aside. Not only was the auction notice not published in one national daily and one other daily having statewide circulation, such notice was not published twice as is required under the relevant Government Order. Without adequate publicity in well-known newspapers, people willing to offer more money for commercial plot adjacent to Lucknow Allahabad Highway were prevented from participating in the auction. The Hon'ble Supreme Court in the case of K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple, reported in 2022 (5) SCC 710, has been pleased to hold that a sale pursuant to a public auction can also be set aside in an eventuality where it is found, on the basis of material on record, that the property has been sold away at a throwaway price and/or on a wholly inadequate consideration because of fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding of such public auction. The Hon'ble Supreme Court in Ram and Shyam Company v. State of Haryana and others, 1985 (3) SCC 267 (para 12); Kolkata Municipal Corporation & another v. Bimal Kumar Shah & others (para 30 and 31); State of Punjab & Others v. Mehar Din, 2022 (5) SCC 648 (para 25); Lakshmanasami Gounder v. Commissioner of Income Tax, Selvamani & others, 1992 (1) SCC 91 (para 4 and 5) has held that very low price for the property in question can be set aside by the Court.

41. It is evident from paragraph 23 of the counter affidavit of the Raebareli Development Authority in Writ C No. 3283 of 2024, the Raebareli Development Authority through its letter dated 15.07.2022 (Annexure-23) had requested the Sub-Registrar, Raebareli, for providing circle rates of properties mentioned in the enclosure to the said letter, which were proposed to be put to auction. Plot No.C-1A was not mentioned in such enclosure. The Sub-Registrar replied to the Raebareli Development Authority on 26.12.2022 (Annexure-25), enclosing the rates of properties as requested by the Raebareli Development Authority. A perusal of C.A.-23 and C.A.-24 shows that Plot C-1A was not mentioned either in the list of properties proposed to be auctioned by the Raebareli Development Authority on 15.07.2022 or in the list of properties whose rates were given by the Sub-Registrar, Raebareli, by his letter dated 26.12.2022. It makes it clear that the petitioner's plot was still unutilised and was not proposed for any auction and was admittedly reserved for future planning at the time when this Court passed the interim order on 13.09.2022.

42. The property in question was marked and sold as commercial by the Raebareli Development Authority. However, the rate of commercial property was not taken as the reserve price. Rate of non residential property was taken arbitrarily. At the time when the property in question was auctioned, the circle rate list effective from 01.11.2022 had become operative. The shops which the Raebareli Development Authority proposed to auction had a reserve price of Rs.1,05,000 per sq. m. The portion of land belonging to the petitioner proposed to be auctioned was

173.11 sq. m. As such, its reserve price ought to have been fixed at more than Rs.1.80 crore, because under Clause 4(kha) of the circle rate list effective from 01.11.2022, if a property is adjacent to a property being commercially used, 30% of the value as per Circle Rate is to be added in the circle rate for valuation, and if the property is adjacent to a National Highway 20% of its value must be added for its valuation, which was admittedly not done by the Raebareli Development Authority. It has been informed to the Court that the property in question is situated right next to Bajaj Agency /Shakti Agencies on Lucknow Allahabad Highway.

43. Not only was the reserve price arbitrarily fixed by the Raebareli Development Authority, it never followed the procedure for auction as provided in the Government Order dated 20.06.2001 (C.A.-11), which provides guidelines for how auction is to be conducted. In Clause 5 of the same, it has been provided that auction notice has to be published in one national and one State-level newspaper, and such publication is to be at least twice in each newspaper. It is evident from the counter affidavit filed by the Raebareli Development Authority that the auction notice was published in Lucknow Mail and Aaj newspapers only once. Lucknow Mail is not a newspaper which can be said to be widely circulated in the State of U.P., and Aaj newspaper could not be said to be a national daily, at the time when notice was published in such newspapers in the State of U.P. much less at national level. It was also not published twice in each of such newspapers as is evident from the counter affidavit filed by the Raebareli Development Authority.

44. With regard to the argument raised regarding the auction conducted by the Raebareli Development Authority and that respondent no. 5 was a bona fide auction purchaser; the circle-rate list circulated for District Raebareli with effect from 01.11.2022 has general instructions given on page-1 and paragraph-4 thereof. Evaluation of non-agricultural plots which are adjoining a commercial/industrial property shall be done in such a manner that 30% of its value will be added to its nominal value determined on the basis of the circle-rate list. The plot of the petitioner was situated next to a commercial establishment/ Bajaj Shakti Agency. Similarly, in Clause 21-A of the Circle Rate list, it has been provided that value of any non-agricultural land which is adjoining a national highway/State Highway/District Road or any other main road may be determined after adding 20% of its normal value to it. It is not disputed that the land of the petitioner is adjoining the national highway, i.e., Allahabad□Lucknow National Highway. Praroop-3 relates to non-agricultural or commercial land in urban and semi-urban areas. Undoubtedly subject land in Ekta Vihar Colony is situated adjacent to the Lucknow-Allahabad National Highway.

45. In case the R.D.A. had sought valuation of Commercial Plot C-1A from the office of the Sub-Registrar, Raebarile indicating it to be situated in Ekta Vihar Colony, then its reserved price would have been fixed at much higher value.

46. In the counter-affidavit of Raebareli Development Authority, page 49, paragraph 23, mention has been made of the land in question actually being sold as commercial. If 30% of its value for being situated adjacent to commercial premises had been added and also 20% of its value had been added because it was situated adjoining the national highway, then the reserve price of the plot in question would have been more than Rs.2 Crores, however, it was sold off for only Rs.67 lakhs to the private respondent for extraneous considerations.

47. In State of Madhya Pradesh and another versus Shri Ram Ragubir Prasad Agarwal, (1979) 4 SCC 686, the Hon'ble Supreme Court has held that, 'contextually speaking, we are satisfied that publication means more than mere communication to concerned officials or departments. To publish a news item is to make known to people in general; and advising of the public or making known of something to the public for a purpose_. In our view, the purpose of Section 3 animates the meaning of the expression 'published.' 'Publication' is an act of publishing anything, offering it to public notice, or rendering it accessible to public scrutiny _and advising of the public; making known of something to them for a purpose_.

48. In ICICI Bank and another versus Municipal Corporation of Greater Bombay and others, (2005) 6 SCC 404, the Hon'ble Supreme Court had held that 'an advertisement is a matter that draws attention of the public or a segment of the public to a product, service, person, organisation, line of conduct in a manner calculated to promote or oppose, directly or indirectly, that product, service, person, organisation, or line of conduct intended to promote sale or use of product or range of products.

49. A perusal of such notice dated 01.06.2023 itself shows that the Raebareli Development Authority, in its table published along with the auction notice, had shown the plot of the petitioner as admeasuring 175 sq. metres instead of its actual area of 204 sq. metres.

50. The petitioner approached this Court in Writ Petition No. 9486 of 2023 which was disposed of on 02.11.2023. Consequent to such order, the petitioner filed a representation to the State Government on 10.11.2023, praying for exemption of his land from acquisition under the provisions of Section 48 of the Land Acquisition Act, 1894, and release of unutilized land under Section 17 of the U.P. Urban Planning and Development Act, 1973. The State Government, by its order dated 20.02.2024, rejected the representation of the petitioner, against which the petitioner has filed Writ-C No.3283 of 2024. The petitioner has also challenged the auction proceedings and the consequent allotment made on 24.07.2023 in favour of the private respondent.

51. It is not in dispute that the petitioner remained in possession of the land until the month of June 2023, when the Raebareli Development Authority forcibly evicted him from his land and delivered its possession to respondent no. 5. Until 2018, the petitioner had leased the said plot, and it was in tenancy of persons who were running a liquor vend on it, as is evident from the rent agreement between the parties from 2013 up to 2017, a copy of which has been filed as annexure to the petition. The liquor vend was running on the commercial plot of the petitioner, and he was in continuous possession until June 2023, even after the tenants vacated his plot.

52. A perusal of the auction notice dated 01.06.2023 also reveals that proper identification of the khasra no. 201/1 in village Akhtiyarpur was not mentioned. Instead, it was stated that Plot C-1A was situated in Ekta Vihar Colony. The circle rate which was used for determining the reserve price was also much less, and the criteria used was 'non-agricultural' instead of 'commercial'.

53. The Hon'ble Supreme Court in the aforecited judgments had relied upon the definition of advertisement given in Black's Law Dictionary, Law and Commercial Dictionary, Collins Dictionary of the English Language, and the Chambers Dictionary, and observed that an

advertisement is an information intended for potential customers and not only a display of the name of the company, unless the same happens to be a trademark or trade name.

54. In view of the aforesaid judgments, publication in newspaper should not be an empty formality. Its purpose is to make publicly known all relevant information and to attract the attention of public/individuals concerned to such information for the purposes for which such publication is made. In the context of a public auction, the purpose of publication is to make the public aware that on a particular date, the public auction is to take place and to enable them to participate, giving sufficient time to fulfill the requisite formalities as provided under the terms of the publication. The question is not who could have participated or could not have participated, in spite of a reasonable period's notice through publication in the newspapers, but certainly, if wide publicity was given by newspaper publication, giving sufficient time, it could have fetched more persons to participate. Such possibility cannot be ruled out. It is a public auction and revenue to the Development Authority being involved, the requirement is for adopting a fair and transparent procedure. State largesse can be granted only by following that procedure. The Auction notice in the instant case was published indicating the 30th or 31st of each month as dates for holding public auction. However, auction was held on 7th of July, 2023.

55. In view of the aforesaid facts and settled legal position discussed above, it is evident that the entire auction process undertaken by the Raebareli Development Authority was arbitrary, non-transparent and contrary to the mandatory Government Orders and statutory provisions. The disputed land, originally reserved for future planning, was selectively converted into Commercial Plot C-1A and auctioned without proper publication, correct valuation, or adherence to the prescribed procedure. The reserve price was arbitrarily and erroneously fixed without applying the correct commercial circle rates and mandatory additions, in clear disregard of the applicable circle rate enhancements, and without complying with the requirement of proper publication in widely circulated newspapers as prescribed under the relevant Government Order, thereby resulting in the property being sold at a grossly inadequate and undervalued price. Such material irregularities, coupled with deviation from notified auction dates, vitiate the process. The impugned auction and consequential allotment therefore deserves to be quashed in the interest of fairness, transparency, and protection of public revenue. Therefore, point No. (iii) is decided in favour of the petitioner. The Court finds that the auction proceedings conducted by the Raebareli Development Authority suffered from material irregularities and procedural violations.

Point No. (iv)

56. We now proceed to consider Point No. (iv). Article 300-A of the Constitution provides that no person shall be deprived of property except by authority of law. The expression ‘authority of law’ requires that the State strictly follow the procedure prescribed under the statute, and that the power of acquisition be exercised fairly, legally, and in accordance with all mandatory provisions. Dispensing with the right of objection under Section 5-A casually or without genuine urgency is neither fair nor lawful, and mechanical or arbitrary exercise of power cannot satisfy constitutional requirements.

57. In Om Prakash & Anr. v. State of U.P. & Ors., 1998 (6) SCC 1, the Hon'ble Supreme Court held that mere planned development of a city or town does not automatically justify invoking Section 17(4) of the Act. The possibility of encroachment or future need for land is not a sufficient reason to dispense with the enquiry under Section 5-A. The Court emphasized that, in the absence of any material to demonstrate genuine urgency, Section 17(4) cannot be invoked to bypass the rights of landowners under Section 5-A.

58. In the present case, the respondents have deprived the petitioner of property without proper authority of law. The reasons recorded do not show any real urgency as noticed in preceding paragraphs and the statutory procedure, including the Section 5-A enquiry, has not been followed. Resort to Section 17(4) to waive this right, without legitimate or legally sustainable grounds, is therefore arbitrary, unconstitutional, and legally unsustainable.

59. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order.

60. In Jilubhai Nanbhai Khachar vs. State of Gujarat, 1995 Supp (1) SCC 596 the Hon'ble Supreme Court authoritatively explained the scope of Article 300-A and held that though the right to property is no longer a fundamental right, it remains a constitutional right. A person can be deprived of property only by authority of a valid law, and such law must prescribe a just, fair and reasonable procedure. The Court clarified that the State cannot take property by executive action or in an arbitrary manner; deprivation must strictly conform to statutory provisions. Any action not supported by valid law or taken in violation of prescribed procedure would be unconstitutional and liable to be struck down. The Hon'ble Supreme Court stated the law in the following terms:

"34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain'.

It was further observed:

"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the

judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

61. By inserting Sub-section (3-A) in section 17 of the Act, it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, only if 80% of the compensation is offered and paid, the vesting would become absolute, and in such event, the consequence of lapsing in respect of absolutely vested land cannot occur, and as such, in that circumstance alone Section 11-A will not be applicable. In the present case, the mandatory requirement of the provision under Sub-section (3-A) of Section 17 was never fulfilled.

62. The power under Section 17 of the Act of 1973 could have been exercised by the competent authority for restoring back the land to the petitioner, as it was not utilized till June 2023, in spite of having been acquired and taken possession of on paper by the Raebareli Development Authority in June, 2009. Section 17 of the Act is designed to impose an obligation on the State Government to acquire any land for the Authority in terms of the provisions of the Act of 1894. However, the same carves out a proviso that even if after expiry of five years from the date of such acquisition, the land has not been utilized, then the tenure holder can apply to the State Government for restoration of their land and on a satisfaction to that effect, the restoration can be allowed provided the tenure holders deposit the charges that were incurred in connection with the acquisition together with interest at the rate of 12%. There are two sub-sections in Section 17 of the Act of 1973. The first gives a discretion to the Government that if land is required for the purpose of planned development for an Urban Development Authority, then the State Government can take action in this regard by resorting to the Land Acquisition Act, 1894. The proviso clearly stipulates that if after expiry of a period of five years from the date of such acquisition, the land has not been utilized for the purpose for which it was acquired, then the State Government shall order restoration of land to the tenure holder on payment of charges which were incurred during the process of acquisition alongwith inherent as aforesaid.

63. The possession is ordinarily taken in land acquisition proceedings under Section 16 of the Land Acquisition Act after the Award has been made under Section 11, and not prior to it. Only thereafter vesting is complete. However, when urgency clause under Section 17 is invoked, then Section 16 does not come into the picture. Under Section 17(3-A), 80% of the estimated compensation should be tendered to the land loser before possession is taken, and admittedly, as per the counter affidavit dated 21.08.2024 of the opposite party nos. 1, 2, and 3 in Writ-C No. 6261 of 2022, the Award was declared on 30.05.2009 and possession on paper was taken on 30.05.2009

and on 06.06.2009. Compensation was tendered to all land losers only on 20.06.2009 after possession was taken. Also, only by letter dated 26.06.2009 compensation was offered to the petitioner, and by Revenue Deposit Form No. 175, in the case of the petitioner, the amount was deposited in the Treasury on 08.02.2011. It is evident that Section 17(3-A) of the Act of 1894 was violated by the respondents.

64. Also, it is evident from a perusal of the Government Order dated 09.12.1996, only the pre-deposit condition before issuance of Notification under Section 4 and Section 6 was relaxed and not the pre-condition of payment to the land loser prior to taking possession under Section 17. That deposit of 70% of estimated compensation was not made at the time when Section 6/17 declaration was made is evident from the letter dated 18.10.2006 of the District Magistrate, Raebareli, to the Director, Land Acquisition, which states that the Raebareli Development Authority had requested that it would deposit the 70% compensation at the time of taking possession, after receipt of money from HUDCO. HUDCO loan was sanctioned to the Raebareli Development Authority only on 24.08.2006, which meant that till 18.10.2006, the Raebareli Development Authority had not received any money from HUDCO. Admittedly, 80% of the estimated compensation for the land was deposited in the Treasury after Section 4/17 declaration was made on 05.04.2006. and it was tendered to the land losers after taking possession, and therefore the strict conditions as laid down under Section 17(3-A) of the Act were not complied with, and possession was taken illegally. Therefore, the land never vested in the State.

65. In the instant case, there were several procedural anomalies. There was non-compliance of Section 17(3-A) of the Act of 1894. Illegal possession was taken on paper by the R.D.A. on 30.05.2009. Compensation was offerred later on. The enquiry under Section 5-A was dispensed with by invoking the urgency provision of Section 17 of the Act of 1894, whereas no urgency existed, as is evident from the conduct of the Raebareli Development Authority which had initially proposed acquisition of land for Yatayat Nagar in 2004. The Notification under Section 4 read with Section 17 was issued in 2006, the Notification under Section 6 read with Section 17 was issued in 2007, and the Award was declared in 2009. Possession was taken in 2009, but the land remained unutilised. One development plan was made on 11.11.2009. It was amended on 26.07.2016, but 1185 m^2 of land in which the petitioner's land was included was reserved for future planning.

66. Regarding the argument made by counsel for the R.D.A. that the Award was passed within the stipulated period of two years from the date of Section 6 declaration, and possession being taken only thereafter, it is evident therefrom that the acquisition proceedings had followed the procedure as laid down under the Act of 1894 and such possession shall be understood to have been taken under Section 16 of the Act, is an argument which proves the petitioner's point that the urgency clause under Section 17, which dispensed with the enquiry under Section 5-A, had been invoked unnecessarily and arbitrarily. The respondents had not followed due procedure in depriving the petitioner of his property, thereby violating Article 300-A of the Constitution.

67. The Hon'ble Supreme Court in Delhi Airtech Services Private Limited and another versus State of U.P. and another, 2022 SCC OnLine SC 1408, had held that "even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the prerequisite condition for payment of 80% before taking possession is not complied with. In such

circumstances, by legal fiction, it loses its character as an acquisition under Section 17, and since the absolute vesting does not take place, it will lapse if the further process is not complied with and the award is not passed within two years from the date of declaration of Award. Therefore, even though Section 11A is applicable to the cases of acquisition initiated under Section 17 (1) of the Land Acquisition Act, 1894, the consequence of it will not affect the case where the land has absolutely vested on compliance of subsection 3A to Section 17 of the Act and 80% of the estimated compensation is tendered and paid."

(emphasis supplied by us)

68. The Hon'ble Supreme Court in Lucknow Development Authority & another v. Gopal Das (Deceased) & others, reported in 2019 (8) SCC 172, has been pleased to hold that the applicability of Section 17(1) proviso of the Act of 1973 would depend on whether the development of the land proposed to be released had indeed been carried out or not immediately after completion of acquisition proceedings. This clearly reflects that if no development work towards utilization of the said land is carried out within five years of the date of acquisition, the tenure holder would be entitled for restoration of his land and payment of usual charges as stipulated in law.

69. In the case of Tukaram Kana Joshi & others through Power of Attorney Holders and Others vs. Maharashtra Industrial Development Corporation and Others, reported in 2013 (1) SCC 353, the Hon'ble Supreme Court observed that the State, especially the welfare State, which is governed by the Rule of Law, cannot arrogate to itself a status beyond that as provided by the Constitution. The question of condonation of delay, moreover, is one of discretion and has to be decided on the basis of the facts of the case at hand, as they may vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are, and when and how the delay arose. Ultimately, it would be a matter within the discretion of the Court, and such discretion must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of a party's defence must be tried upon principles substantially equitable.

70. The Hon'ble Supreme Court has held in State of Karnataka & Another vs. Karnataka State Patel Sangh & Others, 2007 (4) SCC 207, that when two different lands have been acquired under the same acquisition proceedings for the same purpose, then the concerned authorities cannot discriminate between them and proceed against one but not the other. Lands adjacent to the land of the petitioner, which were acquired in the same acquisition proceedings for construction of Yatayat Nagar, are still in possession of the original owners. They have permanent constructions thereon, but it is only the petitioner who was threatened with eviction by the respondents.

71. In Delhi Airtech Services Private Limited and another versus State of U.P. and another, 2022 SCC OnLine SC 1408, the Larger Bench of the Hon'ble Supreme Court was considering an Appeal which had been decided by a two-Judges Bench on 18.08.2011 with divergent opinions. One of the Judges, after consideration of the matter, arrived at the conclusion that taking over possession of the land without complying with the requirement under Section 17(3A) of the Act of 1894 was clearly illegal and in violation of the statutory provision, which automatically violated the constitutional guarantee under Article 300A of the Constitution. On the other hand, Justice Swatantra Kumar came to the conclusion that Section 11A of the Act had no application to

acquisition under Section 17 of the Act of 1894. He held that default in complying with Section 17(3A) of the Act does not invalidate or vitiate the entire acquisition proceedings. The Hon'ble Judge, while deciding so, had however believed that 80% of the estimated value in terms of sub-section (3A) of Section 17 had been paid to the land loser, and in that context had held that the interest provided in terms of Section 34 will be payable.

72. Due to divergence of opinion between the Learned Judges, the Chief Justice placed the matter before a Larger Bench to resolve the conflict. No specific question had been framed and referred for decision to the three-Member Bench. Hence, the Bench heard the matter on factual aspects involved in the case de novo so as to determine the legal aspects which touched upon the same.

73. Justice A.K. Ganguly had found Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369, to be rendered per incuriam. Justice Swatantra Kumar had relied on it and held that compliance with Section 17(3A) of the Act is not mandatory. The Supreme Court has referred to the questions which arose for its consideration in paragraph 8 as:

(a) Is the requirement to tender payment of 80% of the estimated compensation as contemplated under subsection(3A) to Section 17 of Act, 1894, mandatory to ensure absolute vesting of the notified land.

(b) Whether the requirement to pass the award within the time frame contemplated under Section 11A applicable to the acquisition notified under Section 17 of Act, 1894.

74. The Larger Bench considered the language of Section 11A of the Act and Section 17 and then observed in paragraphs 12, 13, 14, 15, 16 & 17 as follows:

"12. ... The question however is as to whether the rigour of Section 11A of Act, 1894 will apply when the appropriate Government exercises its special power in cases of urgency, which does not contemplate the same procedure as in the normal acquisition process noted above. under Section 17 of Act, 1894, possession is permitted to be taken even before the award is passed. Though such power was absolute earlier, sub-section (3A) was inserted by Act 68 of 1984, w.e.f 24.09.1984 whereby the pre-condition imposed before taking possession is that 80% of the estimated compensation is to be tendered and paid to the persons interested in the land. The tendered amount should be paid unless prevented by one or more of the contingencies mentioned in Section 31(2) of Act, 1894. It would necessarily mean that Section 31 will come into play and the 80% of the estimated compensation amount, though no award is passed, will have to be tendered and paid to the persons interested. If tendered, but not able to pay due to valid reasons, it is to be deposited in Court. The word employed in sub-section (3A) of Section 17 of the Act, 1894 is "shall" and it is to be tendered and paid "before taking possession". Hence it cannot be understood as providing any discretion to the acquiring authority. In fact, the last sentence of sub-section (1) of Section 17 uses the word "thereupon" with respect to vesting. This word "thereupon" is correlated to taking possession and payment in terms of sub-section (3A) is a sine qua non for taking possession. Therefore (1) payment of 80% (2) taking over possession thereafter and (3) vesting of land in the government take place in a sequence. Absent anyone of these in the sequence, the

emergency provision fails. It is a pre-requisite condition to acquire and take possession of the land since such acquisition is permitted by exempting the requirement of the procedure under Section 5A and possession is permitted to be taken prior to an award being passed under Section 11 of Act, 1894.

13. That apart, sub-section (4) to Section 17 of Act, 1894 provides the discretion to the appropriate Government to waive the application of the provisions of Section 5A and make the declaration under Section 6 in respect of the land at any time after the initial publication of the notification under Section 4 of Act, 1894. This makes it clear that even in a case where the appropriate Government exercises its power to invoke the special power in case of urgency, all other procedure contemplated under the Act except the requirement under Section 5A of Act, 1894 is to be complied. Therefore, after issue of the initial notification under Section 4 read with Section 17(1) and on taking possession after issue of notice under Section 9, the declaration under Section 6 of Act, 1894 is to be made so as to complete the process of acquisition, which indicates that the objection to acquisition of land shall alone stand muted and not the right to compensation which is to be paid in strict compliance of the requirement in that regard.

15. However, on a careful composite perusal of all the provisions noted above, it is evident that the requirement to tender and pay 80% of the estimated compensation before taking possession assumes significance so as to carve out an exception for non-applicability of 'lapsing' as contemplated under Section 11A of Act, 1894. This is so, since the terms "vesting absolutely" and "lapsing" cannot co-exist and cannot go hand in hand. Post amendment w.e.f 24.09.1984, two elements have been inserted in Section 17 for the land to vest absolutely in the Government for public purpose even before the award is passed. One, is that possession should be taken. The other is, by inserting sub-section (3A) it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, 80% of the estimated compensation, on payment of which only if tendered and paid, the vesting would become absolute and in such event the consequence of lapsing in respect of absolutely vested land cannot occur and as such, in that circumstance alone Section 11A though applicable will not take effect. The right of the land loser would be to enforce passing of award which will include the balance 20% of compensation even if it is beyond two years and get adequately compensated in terms of Section 23 and 34 of Act, 1894 for the delay if any.

16. But it is a different matter altogether, when Section 17(1) is invoked but the requirement thereunder which is a pre-requisite condition is not complied. As noted, sub-section (3A) has been inserted w.e.f. 24.09.1984, whereunder it is made mandatory to tender and pay 80% of the estimated compensation before taking possession. Therefore, even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the pre-requisite condition for payment of 80% before taking possession is not complied.

17. Therefore, we are of the considered view that Section 11A though applicable to the cases of acquisition initiated under Section 17(1) of Act, 1894 the consequence of it will not affect the case where the land has absolutely vested on compliance of sub-section (3A) to Section 17 of Act, 1894 and 80% of estimated compensation is tendered and paid. Hence, when there is a challenge by the land loser, each case will have to be considered on its own merits to determine

whether the pre-requisite condition to tender and pay as contemplated under sub-section (3A) is made before possession is taken. If in the case concerned the mandatory prerequisite is not complied, such acquisition will loose its character as being under Section 17"

(emphasis supplied by us)

75. The Hon'ble Supreme Court categorically held that even where possession is purportedly taken under Section 17, such possession cannot be regarded as lawful so as to result in absolute vesting of the land in the State if the mandatory precondition of payment of 80% of the estimated compensation under Section 17(3A) has not been complied with. The Court observed that in the absence of such payment prior to dispossession, the acquisition loses its character under Section 17 by legal fiction, and since absolute vesting does not take place, the proceedings would lapse if the award is not made within the stipulated period. Therefore, if 80% of the estimated compensation is not paid to the landowner before taking possession, as mandatorily required under Section 17(3A), such possession must be treated as illegal and not in accordance with law. In such circumstances, vesting cannot be said to be absolute or indefeasible.

76. The Hon'ble Supreme Court in Anil Kumar Gupta Vs. State of Bihar & others, (2012) 12 SCC 443, where the Supreme Court observed that a person who is deprived of his land can challenge the acquisition proceedings at various stages. He can question the Notification issued under Section 4 of the Land Acquisition Act on the ground of violation of the mandate contained therein, like publication of the Notification in the Official Gazette and/or two newspapers, including the one in the regional language, failure of the Collector to cause public notice of the substance of the Notification to be given at convenient places in the locality. He can challenge the declaration issued under Section 6(1) of the Land Acquisition Act on the ground of non-compliance with Section 5A(i) and/or (ii) or violation of the first proviso to Section 6(1). In a given case, the landowner can also challenge the notice issued under Section 9 of the Land Acquisition Act and the Award passed under Section 11 of the Land Acquisition Act on the ground that he had not been heard, that the acquisition proceedings are a nullity. He can also challenge the Award if it is not made within the period prescribed under Section 11A of the Act. The vesting of land in the Government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure. The invoking of the urgency clause contained in Section 17 can be questioned on the ground that there was no real urgency.

77. Till the date of filing of the Writ Petitions no. 170 of 2015 and 6261 of 2022, no construction whatsoever had commenced under the proposed residential scheme, nor was there any material to indicate that such construction was likely to begin in the near future. Even the allotment process had not been initiated. These undisputed facts clearly belie the claim of urgency. The invocation of the urgency clause, in the absence of any immediate or compelling necessity, demonstrates non-application of mind and lack of sufficient cause. The power under the urgency provisions, being extraordinary in nature and resulting in deprivation of the valuable right under Section 5-A, could not have been exercised in a routine or mechanical manner.

78. It must be borne in mind that the expression 'subjective satisfaction' does not confer an unfettered or absolute discretion upon the acquiring authority. Even though the formation of

opinion rests with the authority, such opinion must be based on objective facts and relevant material. The power under the urgency clause is exceptional in nature and, therefore, its exercise must reflect due application of mind to the necessity of dispensing with the enquiry under Section 5-A. If the record fails to disclose any material justifying immediate action, or if the circumstances do not demonstrate real urgency, the invocation of such power would be open to judicial scrutiny and liable to be set aside. Further, the authority must apply its mind to the material. This is apart from the requirement that action must not be mala fide. Undoubtedly, the purpose must be a public purpose. But merely because the purpose of the acquisition is found to be a public purpose, the duty of the authority does not end. He must be satisfied that there is real urgency, such that the invaluable right saved to a person to ventilate his grievances against the Act is not unjustifiably extinguished. Section 5A of the Land Acquisition Act guarantees a right to the person interested in the property which is the only statutory safeguard against compulsory acquisition of property. The power under Section 17(4) is discretionary. Being a discretion, it must be exercised with due care. It is true that if there is material, however meagre it may be, and the authority has, without being guided by extraneous considerations, applied its mind and taken the decision, then a hands-off approach is warranted. The authorities must remain alive and alert to the precious right created in favour of the citizens, which is not meant to be an empty ritual.

79. A recent judgment of the Apex Court in Yerikala Sunkalamma and Ors. vs. State of A. P., Department of Revenue and Ors. 2025 SCC Online SC 630, observed-

"Article 300-A provides that no person shall be deprived of his property save by authority of law. This Article has been inserted by the Constitution (44th Amendment) Act, 1978. Prior to this amendment, the right to property was guaranteed by Article 31. While Clause (1) of that Article has been shifted from Part III to Article 300-A, Clause (2) of that Article, which dealt with compulsory acquisition of property, has been repealed. Sub-clause (f) of Clause (1) of Article 19, which guaranteed the right to acquire and hold property, has also been omitted by the same 44th Amendment Act, 1978. The result of these changes, in short, is that the right to hold property has ceased to be a fundamental right under the Constitution and it has been left to the Legislature to deprive a person by the authority of law.

125. Article 300-A provides that the property of a person can be deprived by authority of law. The phrase "save by authority of law" came before the Court for interpretation. This Court in the case of Wazir Chand v. State of H.P., reported in (1954) 1 SCC 787 held that under the Constitution, the Executive cannot deprive a person of his property of any kind without specific legal authority which can be established in Court of law, however laudable the motive behind such deprivation may be. In the same decision, this Court also held that in case of dispossession of property except under the authority of law, the owner may obtain restoration of possession by a proceeding for mandamus against the governmental authorities. Further, this Court in Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh reported in (1982) 1 SCC 39 held that the phrase "by authority of law" means by or under a law made by the competent Legislature. The same position is reiterated by this Court in the case of Jilubhai Nanbhai Khachar v. State of Gujarat reported in 1995 Supp. (1) SCC 596 wherein it has been observed that "Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not

acquisition or taking possession Under Article 300-A. In other words, if there is no law, there is no deprivation."

80. In the light of the settled legal position and the authoritative pronouncements of the Hon'ble Supreme Court referred to in the preceding paragraphs, it is clear that deprivation of property must be strictly in accordance with a validly enacted law and scrupulous compliance with the procedure prescribed thereunder. In the present case, the respondents have admittedly failed to comply with the mandatory requirement under Section 17(3-A) of the Land Acquisition Act, 1894, which mandates tender and payment of 80% of the estimated compensation prior to taking possession. Such non-compliance strikes at the root of the acquisition proceedings, vitiates the very act of taking possession, and renders the alleged vesting legally untenable.

Moreover, the invocation of the urgency clause dispensing with the enquiry under Section 5-A, in the absence of any real, immediate, or compelling urgency, demonstrates non-application of mind and amounts to a colourable exercise of statutory power. The cumulative effect of these procedural and substantive lapses results in deprivation of the petitioner□s property otherwise than by authority of law, in clear contravention of Article 300-A of the Constitution. Accordingly, Point No. (iv) is answered in favour of the petitioner and against the respondents.

Point no. (v)

81. Now we proceed to deal with last point i.e., Point No. (v), namely, whether the original landowner, whose acquired land remained unutilized for a prolonged period, who did not receive compensation in accordance with law, and who continued to retain possession till June 2023, is entitled to seek reversion of the land or to challenge the hurried transfer/auction in favour of a third party; and further, whether the impugned actions of the respondents are arbitrary, illegal, tainted with malice in law, and violative of Articles 14 and 300-A of the Constitution of India.

82. The petitioner had, prior to the auction, submitted a representation dated 06.08.2022 seeking release/restoration of the land on the ground of prolonged non-utilization. The existence of such representation has not been specifically controverted by the respondents. On the contrary, it was only during the pendency of the writ proceedings, and pursuant to interim directions of this Court on 13.09.2022 to find out whether land had been utilized, that the subject land was for the first time carved out and marked as Plot C-1A on 30.05.2023 and hurriedly put to auction on 01.06.2023.

83. Further, the material on record discloses that although possession was shown to have been taken in 2009 by invoking the urgency provisions, the mandatory requirement under Section 17(3-A) of the Land Acquisition Act, 1894, namely tender of 80% of the estimated compensation prior to taking possession, was not complied with. The compensation was admittedly offered on 26.06.2009 and deposited in the treasury only on 08.02.2011. In Delhi Airtech Services Private Limited and another v. State of U.P. and another (2022 SCC OnLine SC 1408), the Hon□ble Supreme Court held that the urgency provisions under Section 17 of the Land Acquisition Act, 1894 can be invoked only upon strict compliance with statutory safeguards, particularly the requirement of tendering 80% of the estimated compensation prior to taking possession under

Section 17(3-A). In the present case, possession was taken in 2009 by invoking the urgency provisions, but the mandatory requirement of Section 17(3-A) was not complied with, and the compensation was deposited only in 2011. The non-compliance with the statutory safeguard strikes at the legality of taking possession and casts serious doubt on the completeness of vesting in favour of the State. This non-compliance, coupled with prolonged non-utilisation of the land and its selective alienation during the pendency of the writ petition, indicates that the acquisition cannot be said to have been carried out for a genuine public purpose and raises a substantial question under Article 300-A of the Constitution of India. In view of the law laid down by the Supreme Court in Delhi Airtech Services Pvt. Ltd. (Supra) and allied decisions, such non-compliance strikes at the legality of the taking over of possession and renders the completeness of vesting open to serious doubt.

84. As much emphasis has been placed on the proviso to Section 17 of the U.P. Urban Planning and Development Act, 1973, it is necessary to examine the provision in the light of the rival submissions of the parties. The object of the proviso is to prevent indefinite retention of land acquired for public purpose without its utilization. Although, the provision does not provide for automatic lapse merely by the passage of time, the proviso confers a substantive right upon the ousted landholder to apply for restoration after five years of non-utilisation. The right so conferred is not an empty formality but a substantive safeguard intended to ensure that land acquired for a declared public purpose is not retained indefinitely without being put to meaningful and bonafide use. The discretion vested in the State Government is not unfettered and must be exercised in a fair, reasonable and non-arbitrary manner, consistent with the constitutional mandate enshrined under Articles 14 and 300-A of the Constitution of India. Where land remains unutilised for a prolonged period and the Authority fails to utilise it for the declared purpose, the right of the landholder to seek restoration cannot be defeated by mere procedural delay or inaction.

85. This Court, by its order dated 13.09.2022 passed in Writ-C No. 6261 of 2022, had specifically directed the respondents to seek instructions as to whether the land of the petitioner had been utilised or not. A perusal of the counter affidavits filed by opposite party nos. 1, 2 and 3 shows that there is no specific denial of the pleading of the Petitioner that a representation dated 06.08.2022 had been submitted seeking release of his land on the ground of prolonged non-utilisation. Even in paragraph 21 of the counter affidavit filed by the Raebareli Development Authority on 26.08.2024, the factum of such representation has not been denied, instead, the Authority has merely stated that a Reference for enhancement of compensation preferred by the petitioner was pending before the Land Acquisition Tribunal. In view of the settled principle that if there is no specific denial, then such averment is deemed to have been admitted by the Respondent as held by the Apex Court in the case of Asha vs. Pt. B.D. Sharma University of Health Sciences and Ors. MANU/SC/0542/2012, and it cannot be accepted that the petitioner had not invoked his remedy under Section 17 of the U.P. Urban Planning and Development Act, 1973.

86. It is also evident from perusal of records available that when this Court passed the interim order dated 13.09.2022, the respondents were fully aware that a writ petition seeking release of the alleged unutilised land had been instituted on 08.09.2022 and was pending consideration. The Development Authority was, therefore, under a clear obligation to place before the Court the true and complete factual position regarding the utilisation of the land as it existed on that date.

However, the Raebareli Development Authority filed its counter affidavit only on 26.08.2024, wherein it was disclosed that although the development plan of Ekta Vihar dated 11.11.2009 was amended on 26.07.2016, the petitioner's land formed part of 1185 sq. m. shown as "reserved for future planning" and had not been put to any actual or effective use for a considerable period thereafter.

87. The record further shows that out of the said 1185 sq. m. of land reserved for future planning, only 173.11 sq. m., corresponding to the land of the petitioner, was carved out, numbered as Plot C-1A, and approved by the Vice-Chairman of the Raebareli Development Authority on 30.05.2023. The remaining land continued to remain reserved for future planning. Significantly, an auction notice in respect of Plot C-1A was issued the very next day, i.e. on 01.06.2023. Thus, the land was treated as utilised for the first time only on 30.05.2023, more than fourteen years after the Award and during the pendency of the writ proceedings.

88. What reflects from these circumstances is that the timing and manner in which the petitioner's land alone was carved out and immediately put to auction lends credence to the contention of the petitioner that such action was undertaken with a view to defeat his pending claim for release of unutilised land and to render the writ petition infructuous. Such belated steps, initiated only after the filing of the writ petition and in the absence of any satisfactory explanation for the prolonged non-utilisation, cannot be regarded as bona fide utilisation for the declared public purpose and are, therefore, open to judicial scrutiny. The concept of a welfare State, as explained by the Hon□ble Supreme Court in Lala Ram v. Union of India ((2015) 5 SCC 813), is that the State bears a positive and affirmative obligation to protect and promote the economic and social well-being of its citizens, guided by the principle of securing the greatest good of the greatest number. The Court emphasised that public welfare must remain the central commitment of all State action, and that the Directive Principles embodied in Articles 38 and 39 of the Constitution mandate the State to strive for equitable distribution of resources, meaningful livelihood, and dignified living conditions, particularly for the poor, the weak, and other vulnerable sections of society. The true test of a welfare State, as held therein, lies in whether its actions advance the happiness and well-being of the people, and not merely in formal or technical compliance with the law. Further, in People's Union for Democratic Rights v. Union of India ((1982) 3 SCC 235), the Apex Court cautioned that the Rule of Law cannot be reduced to an instrument for protecting vested interests or perpetuating existing inequities. The Court observed that legal protection must not be confined to a privileged few, and that the law cannot be permitted to be 'prostituted' to legitimise the exploitation of the weak and powerless under the guise of enforcing civil or political rights. Read together, these decisions reaffirm that State action, particularly when it affects constitutional guarantees and fundamental rights, must be just, humane, and welfare-oriented, and cannot be sustained where it results in arbitrariness, exclusion, or injustice to those whom the Constitution seeks to protect most.

89. The expression 'public purpose' under the law of land acquisition is wide, however, it is not unlimited and is always subject to judicial scrutiny. Deprivation of property under Article 300-A of the Constitution of India is permissible only when the acquisition is supported by a genuine and subsisting public purpose and when the statutory provisions are complied with in a fair and reasonable manner. Mere reservation of land for 'future planning,' without actual utilization or

demonstrable steps towards execution of the declared purpose for a prolonged period, cannot by itself satisfy the requirement of public purpose.

90. The reliance placed by the respondents on the decisions in Indore Development Authority v. Manoharlal and others 2020 SCC OnLine SC 316, Shyoraj Singh and another v. State of U.P. and others (2022) 1 All LJ 546), Heera Singh v. State of U.P. and others (2023 (1) UPLBEC 604), and Banda Development Authority v. Moti Lal Agarwal and others ((2011) 5 SCC 394) does not advance their case, as the facts, statutory context, and issues considered in those decisions are materially different from those arising in the present matter.

91. The Constitution Bench judgment of the Hon□ble Supreme Court in the case of Indore Development Authority v. Manoharlal and others, 2020 SCC OnLine SC 316 pertains to the interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the concept of deemed lapse of acquisition proceedings. The facts and legal issues in the present case are totally different. The present petition does not involve the 2013 Act or any question of deemed lapse. It concerns prolonged non-utilisation of the acquired land, continued possession by the petitioner, failure of the Authority to utilise the land for the declared public purpose, and the sudden alienation/auction of the same during the pendency of writ proceedings. Therefore, the principles laid down in Indore Development Authority (Supra) are not attracted to the facts of this case.

92. We have also gone through the judgment of Shyoraj Singh (Supra) and find that the facts and issues involved therein are clearly distinguishable from the facts and issues of the present case. The said decision was rendered in a different factual and statutory context and does not deal with a situation where the acquired land remained unutilised for a prolonged period and was sought to be dealt with only after initiation of judicial proceedings. In the referred case, petitioners had no continuing possession or any credible claim of prolonged non-utilisation. Whereas in the present case, the land remained unutilised for an extended period, and the original owner in continued physical possession. The respondents also failed to utilise the land for the declared purpose and instead, after long delay, created and numbered the plot only to auction it immediately, thereby defeating the petitioner's pending claim. Therefore, Shyoraj Singh (Supra) is clearly distinguishable. Further, the Court in Shyoraj Singh (Supra) had also found that possession had been lawfully taken and the land had been utilised for the declared public purpose, or that the statutory requirements governing acquisition stood substantially complied with. In those cases, there was no prolonged and unexplained non-utilisation of the acquired land, no continuation of physical possession with the original landholder for years after the award, and no belated steps taken to alienate the land during the pendency of judicial proceedings, as is evident in the present case.

93. In Heera Singh (Supra) the Court held that mere delay in project implementation does not amount to non-utilisation when the land was in the possession of the Authority and earmarked for Tech Zone-2. However, in the present case, the land remained unutilised for a prolonged period, and the petitioner continued in actual possession. The Authority's failure to utilise the land and sudden auction after filing the writ petition demonstrates arbitrariness, making the petitioner's claim valid.

94. The decision of Banda Development Authority v. Moti Lal Agarwal (Supra) also turned on its own facts, where the Hon'ble Hon'ble Supreme Court upheld the acquisition upon finding that possession had been duly taken and the land had vested absolutely in the Development Authority, followed by utilisation in furtherance of the planned development scheme. The said decision does not deal with a situation where land remains unused for over a decade, continues to remain in the physical possession of the landowner, and is thereafter selectively carved out and auctioned while a challenge to non-utilisation is pending before the Court. Further, the reliance placed by respondent State on Visakhapatnam Urban Development Authority v. S.S. Naidu, (2016) 13 SCC 180; State of M.P. v. V.P. Sharma, AIR 1966 SC 1593; Dedicated Freight Corridor Corporation v. Subodh Singh, (2011) 11 SCC 100; and Government of A.P. v. Syed Akbar, (2005) 1 SCC 558 is not tenable in the present case, as the said judgments were rendered in distinct factual and statutory contexts and do not deal with prolonged non-utilization of the acquired land, non-payment of compensation, or the statutory right of restoration under Section 17 of the U.P. Urban Planning and Development Act, 1973, which are central to the present case.

95. So far as the submission of learned counsel for the private respondent that the application of the petitioner under Section 48 of the Land Acquisition Act, 1894 is not maintainable is concerned, the same has to be examined in the light of the judgments relied upon and the factual matrix of the present case. A reliance has been placed on Mahadeo (Dead) Through L.R.s and others v. State of U.P. and others, (2013) 4 SCC 524 and Babu v. State of U.P., 2008(5) ADJ 171. The Hon'ble Supreme Court in said decisions held that once land is lawfully acquired under the Land Acquisition Act, 1894 and mandatory requirements are complied with, including taking possession, the land vests absolutely in the State free from all encumbrances. Even if any part of the acquired land remains unutilised, neither Section 48 nor any executive decision permits reconveyance or release of such land to the erstwhile owners. Section 48 applies only before possession is taken. Internal resolutions or proposals of a development authority cannot compel the State to withdraw from a validly completed acquisition.

96. However, the said principle applies only where acquisition is validly completed, compensation is paid, and possession lawfully vests in the State. In the present case, neither compensation was paid in accordance with Section 17(3-A) of the Act of 1894, nor was possession lawfully taken. On the contrary, the land admittedly remained in the physical possession of the petitioner till June 2023 and the acquisition was never implemented in accordance with the statutory mandate or utilised for the declared public purpose. The application of the petitioner under Section 48, filed on 10.11.2023, was necessitated after an illegal and clandestine auction conducted in July 2023 during the pendency of Writ proceedings. Section 48 cannot be used as a shield to deny restoration where vesting itself is incomplete, possession is unlawful, and the land has remained unutilised for years. The belated auction reflects malice in law and misuse of statutory power. In the absence of lawful vesting and utilisation, the refusal to restore or withdraw from acquisition is arbitrary and violative of Articles 14 and 300-A of the Constitution, besides being contrary to the scheme of Section 17 of the U.P. Urban Planning and Development Act, 1973. In Babu v. State of U.P., 2008(5) ADJ 171, this Court held that Section 48 confers only a discretionary liberty on the State and no enforceable right on landowners, a principle applicable only where acquisition is validly completed with payment of compensation and lawful taking of possession. In the present case, compensation was never paid in accordance with Section 17(3-A)

of the Act of 1894 and possession admittedly remained with the petitioner till June 2023. The land was never utilised for the declared public purpose, and a belated auction was conducted during pendency of proceedings. Section 48 cannot be used to protect unlawful vesting. The impugned action is arbitrary, tainted by malice in law, and violative of Articles 14 and 300-A, besides being contrary to Section 17 of the U.P. Urban Planning and Development Act, 1973.

97. The present case raises distinct and substantial issues relating to prolonged non-utilisation of the acquired land, its continued physical possession with the petitioner, and the belated and selective carving out and auction of only the petitioner's land during the pendency of the writ proceedings. No material has been placed on record to demonstrate that the land was utilised for the stated public purpose for several years after acquisition. The subsequent action of auctioning the land cannot be construed as bona fide utilisation in furtherance of the original scheme, nor does it disclose any immediate necessity connected with the declared public purpose. In view of the materially different factual foundation and legal issues involved, the aforesaid decisions do not govern the controversy in the present case, which is required to be examined independently in the light of the applicable statutory and constitutional principles.

98. Further, when land acquired for a public purpose remains unused for a long time and is later selectively alienated, the action can no longer be said to serve the declared public purpose and becomes arbitrary deprivation. The doctrine of eminent domain allows acquisition only for a predominantly public purpose, and not for transfer to third parties under the guise of planning or development. Such selective alienation, especially after prolonged non-utilisation, indicates misuse of statutory powers and defeats the object of acquisition. Even where compensation has been paid, deprivation of property in such circumstances does not meet the requirements of Article 300-A of the Constitution. Therefore, the action is liable to strict judicial scrutiny and cannot be sustained merely because a formal procedure has been followed.

99. It is well settled that where the State invokes the urgency clause under Section 17 of the Land Acquisition Act, 1894, it assumes a higher burden to demonstrate strict adherence to statutory safeguards, particularly those enacted for the protection of landowners. Section 17(3-A) is not a mere procedural formality but a substantive safeguard intended to balance the extraordinary power of dispossession without enquiry. Any infraction thereof strikes at the root of the acquisition process and weakens the claim of the State of lawful vesting. It is also well settled that the urgency clause under Section 17 of the Land Acquisition Act, 1894, being an exception to the normal procedure, must be strictly construed and can be invoked only in cases of real emergency. The Hon'ble Supreme Court in Radhy Shyam (D) Thr. Lrs. & Ors. v. State of U.P. & Ors., Air Online 2011 SC 429 and Greater Noida Industrial Development Authority v. Devendra Kumar & Ors. (2011) 12 SCC 375, has held that the power under Section 17 cannot be used as a device for acquiring land for ordinary development projects. Similarly, in Laxmi Devi v. State of Bihar 2015 (10) SCC 241, Ram Dhari Jindal Trust v. Union of India 2012 (11) SCC 370), and Anand Singh v. State of U.P. 2010 (11) SCC 242, the Court emphasised that the urgency clause is not a mere procedural formality but a substantive safeguard intended to protect landowners from arbitrary dispossession, and any violation thereof vitiates the acquisition.

100. In these circumstances, the prolonged non-utilisation of the acquired land, coupled with its continued possession by the original owner, casts serious doubt on the bona fides of the Authority. The State holds acquired land in a fiduciary capacity and must utilise it for the declared public purpose. Selective auction of only the land of the petitioner, without any rational basis, is arbitrary and violative of Article 14. Moreover, the initiation of auction proceedings only after the writ petition was filed, during its pendency, suggests an attempt to frustrate the litigation and cannot be sustained.

101. At this juncture, it must be borne in mind that justice is the foundational virtue by which a society, court, or tribunal ensures that every individual receives what is lawfully due to him, rather than being subjected to injury or injustice. Justice is not merely the absence of wrong, but the positive act of rendering what is right, fair, and equitable to one who has suffered a legal injury. The Constitution of India, in its Preamble, accords a position of primacy to justice - social, economic, and political - thereby making it the cornerstone of our constitutional framework. It is evident that without the assurance of justice, the other cherished ideals of liberty, equality, and fraternity would be rendered hollow and illusory.

102. Judicial review seeks to ensure fairness, legality, and accountability in State action. It is a Constitutional mechanism through which courts examine the actions of the legislature and the executive to ensure that they act lawfully, fairly, and within the limits of their authority. Under the Constitution of India, the power of judicial review flows primarily from Articles 13, 32, 226, and 136, which empower Constitutional Courts to scrutinize legislative enactments and administrative decisions to determine whether they violate fundamental rights, exceed jurisdiction, or suffer from arbitrariness, thereby ensuring that all State action conforms to constitutional mandates and the rule of law.

103. In view of the above discussion, this Court holds that the original landowner, whose land remained unutilised for a prolonged period, whose compensation was not tendered in compliance with Section 17(3-A) of the Land Acquisition Act, 1894, and who continued in physical possession till June 2023, is entitled to seek reversion/restoration of the land and to challenge its hurried transfer/auction in favour of a third party. The mandatory statutory safeguard having not been complied with, lawful vesting did not take place. The belated carving out and auction of only the petitioner’s land during pendency of the writ proceedings, without demonstrable public purpose or bona fide utilisation, reflects arbitrariness and malice in law. Such action offends Article 14 and results in deprivation of property otherwise than by authority of law, contrary to Article 300-A of the Constitution of India. Accordingly, Point No. (v) is answered in the affirmative, in favour of the petitioner and against the respondents.

Conclusion

104. In view of the foregoing discussion and the findings recorded on Points (i) to (v), this Court is of the considered opinion that the acquisition proceedings and the subsequent actions of the respondents, insofar as they relate to the land of the petitioner, cannot be sustained in law. The representation was wrongly rejected by the Respondent No.1 without due consideration. The urgency clause under Section 17 of the Land Acquisition Act, 1894 was invoked without any real

or demonstrable urgency, and the valuable right of objection under Section 5-A was dispensed with mechanically and arbitrarily. The mandatory requirement under Section 17(3-A) to tender and pay 80% of the estimated compensation before taking possession was not complied with, and possession taken without this statutory precondition cannot vest lawful ownership in the State. The land remained un-utilised for several years, contradicting the claim of urgency and casting serious doubt on the bona fides of the acquisition. Moreover, the hurried carving out and auction of Plot C-1A during the pendency of the writ petition was arbitrary, non-transparent, and not in furtherance of the declared public purpose.

Accordingly, the Writ Petition is allowed insofar as it relates to the land of the petitioner. The order dated 20.02.2024 rejecting the representation of the petitioner is hereby set aside. The impugned auction proceedings and the consequential allotment, insofar as they pertain to the land of the petitioner, are hereby quashed. The respondents are directed to restore possession of the land to the petitioner.

However, in terms of the proviso to Section 17 of the U.P. Urban Planning and Development Act, 1973, and having regard to the equities of the case, the petitioner shall deposit with the competent Authority the acquisition charges together with interest at the rate of 12% per annum, as contemplated under the said provision, within such reasonable period as may be prescribed by the Authority. Upon such deposit, the land in question shall stand restored to the petitioner, free from all encumbrances created pursuant to the impugned auction proceedings. It is further provided that the amount deposited by respondent no. 5 shall be refunded to him along with interest at the rate of 7% per annum or the prevailing bank rate, whichever is higher, within a period of three months from the date of this order.

105. The Writ Petitions are allowed to the aforesaid extent. No order as to costs.

This Judgement pronounced under Chapter VII Rule 1(2) of the Allahabad High Court Rules, 1952.

(2026) 2 ILRA 1769
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.02.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 2525 of 1984

Ram Hirday & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to conviction under Section 302/34 IPC.

Headnotes

Indian Penal Code-Section 302/34 - to invoke Section 34 IPC-must be established that the criminal act was done by more than one person in furtherance of common intention of all - appeal on behalf of appellant Nos. 1 and 3 have been abated-present appellants were only standing at the place of occurrence having lathi - no whisper in the evidence of any of the prosecution witnesses -assigning any role to the present appellant Gur Prasad - role of exhortation and firing both have been assigned to Ram Hirday - no role has been assigned to the present appellant Gur Prasad, except of standing at the place of occurrence with lathi - prosecution has failed to establish the guilt of the appellant-Gur Prasad with the aid of Section 34 IPC - **Appeal allowed.** (E-9)

Case Law Cited

1. Mahbub Shah Vs. Emperor, AIR 1945 PC 118
2. Gadhdhar Chandra Vs State of West Bengal, (2022) 6 SCC 576
3. Constable 907 Suendra Singh and another Vs. State of Uttrakhand, (2025) 5 SCC 433
4. Surendra Singh and another Vs. State of Uttrakhand (2025 INSC 114)

List of Acts

1. Indian Penal Code
2. Code of Criminal Procedure

List of Keywords

Common intention; pre-arranged plan; meeting of minds; with the aid of Section 34 IPC; standing at the place of occurrence with lathi; no role assigned; appeal allowed.

Appearances of parties

Counsel for Appellant(s) : D.S.Tewari, S.P. Shukla, Shashwat Shukla
Counsel for Respondent(s) : Government Advocate

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. The matter pertains to district Sultanpur, which comes under the jurisdiction of Lucknow Bench of this Court.

2. Vide order of Hon'ble the Chief Justice dated 16.09.1983 the matter had been transferred to Allahabad High Court for disposal.

3. Pursuant to the order of this Court dated 02.05.2018, appeal on behalf of appellant Nos. 1 and 3 namely Ram Hirday and Shiva Ram have been abated.

4. Now this Court is only concerned with the appellant Gur Prasad.

5. This criminal appeal has been filed against a judgement and order dated 18.03.1981 passed by the Additional Sessions Judge, Sultanpur in ST No. 78 of 1979 whereby the learned Judge convicted and sentenced the appellants Ram Hirdey, Sheo Ram and Gur Prasad to life imprisonment under Section 302/34 IPC.

Facts of the case

6. Brief facts giving rise to the present criminal appeal in short compass are that a written report was filed by the first informant Bhawani Sevak at the police station Musafir Khana, district Sultanpur that the first informant had five bothers and they live separately. One Ram Hirday Upadhyay is his Pattidar (co-sharer). Yesterday, he assaulted his brother Mahesh Narain, report whereof was got lodged. Due to that enmity, Ram Hirday has announced in the village that he will kill everyone. Today, at about 01:00 PM, when he was sitting along with his brothers Raj Narain and Bhawani Prasad were standing at their door, Ram Hirday armed with gun, Gur Prasad and Shiva Ram carrying lathi surrounded his brother and Ram Hirday fired at his brother Tribhuwan Dutt, due to which he got injured and fell down. On hearing the sound of fire, when the first informant, his brothers Raj Narain and Bhawani Prasad as well a several persons of the village rushed to the spot, the accused persons fled away. His brother has received injuries of gun.

7. On the basis of the aforesaid report, a case was registered against the accused Ram Hirday, Gur Prasad and Shiva Ram under Section 307 IPC, Ext. Ka-3.

8. Injured Tribhuwan Dutt was sent for medical examination and his injuries were examined by PW-3, Dr. Mohd Taufiq, who found the following injuries.

1. Lacerated wound 17 cm x 5 cm x muscle deep oval shape wound over right axilla extending from front to chest about 8 cm below right shoulder joint to posterior border of axilla, depth more marked in lower side, margin inverted, clotted blood present at margin with multiple lacerated wound skin deep about 4 to 5 in number over upper margin of wound, no tattooing or blackening seen, probing not done, pellets not palpable into upper root of wound, there are small multiple punctured wound, movement at shoulder joint retracted, diffused swelling present. Adv. X-ray. No wound of exit seen.

2. Multiple abrasion 8 cm x 4 cm over inner aspect of right arm just below injury No. 1, and in close contact with lower border of injury No. 1, clot present at base margin at some places, grey in colour, no tattooing or blackening at other places seen.

9. Injury No. 1 was kept under observation. Injury No. 2 simple in nature. Adv. X-ray of right shoulder. All the injuries caused by firearm. Duration of the injures are about 1/4th day old. The medical examination was done on 14.03.1978 at 03:30 PM. The doctor has proved the injury report as Ext. Ka-4.

10. Thereafter, the injured was taken to Sadar Hospital, where he was under treatment. As the injured was retired military personnel, he was thereafter shifted to Military Hospital Lucknow on 20.03.1978 and was admitted there at 11.35 PM, where he was examined by PW-10, Dr. Major S.K. Jai Puriya. He found the condition of injured very serious and sent information to the civil police vide memo Ext. Ka-09. During the treatment, injured Tribhuwan Dutt died in the Military Hospital on the same night.

11. On the information received by the Military Hospital, SI R.P. Dohrey rushed to Command Hospital, Lucknow on 21.03.1975 at 10-11 AM and prepared inquest report Ext. Ka-8. The body was sealed and sent for postmortem examination. After the death of the deceased, the case was converted to one under Section 302 IPC.

12. PW-7, Dr. Virendra Bahadur conducted autopsy on the cadaver of the deceased, who found the age of the deceased to be about 35 years. Rigormortis passed off all over the body. Post mortem staining present on the back. Both the eyes and mouth were closed. The yellowish fluid coming from both nostrils. The doctor found the following ante-mortem injuries:

"*Septic wound 4 cm x 5.5 cm x bone deep on the right axilla extending from posterior axillary line towards front of right side of chest, 9.5 cm above the nipple. Its edges and sloughed wrinkled and dirty yellowish in lower 2/3rd rim of the wound, while the upper 1/3rd rim of the edges are black in colour. The wound is full of pus tht ha gravitated down around the mid axilla. Line towards lower most part of chest. A piece of while most cloth rubbed against the black edge, but no carbon particles could be collected on the cloth.*

13. Doctor further noted that no pellets or wads were obtained from the wound mentioned above.

14. In the opinion of the doctor, the death was caused due to septicaemia and toxaemia due to septic wound. The doctor has proved the post-mortem report as Ext. Ka-16.

15. After the registration of the case, the investigation of the case was handed over to PW-11, Radhey Shyam Tiwari. He reached the place of occurrence on 14.03.1978 and collected bloodstained and plain earth and sealed them in two boxes, memo whereof was prepared as Ext. Ka-5. He also prepared site plan Ext. Ka-20. Thereafter, the investigation was transferred. Thereafter the investigation was completed by SI Jagan Nath Prasad Pandey, who submitted the charge sheet Ext. Ka-21.

16. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions where case was registered as ST No. 78 of 1979. Learned Additional Sessions Judge-II, Sultanpur vide order dated 06.08.1979 framed the charges against the appellants under Section 302/34 IPC. The charges were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

17. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as 11 witnesses, out of whom PW-1, Bhawani Sevak, PW-4, Jag Ram and PW-5 Ram Murat are eyewitnesses of the case whereas remaining witnesses are formal one.

18. PW-1, Bhawani Sevak is the first informant. In his examination-in-chief, he deposed that accused Ram Hirday is his Pattidar, accused Shiva Ram is the ploughman of Ram Hirday and accused Gur Prasad is the companion of Ram Hirday. He further deposed that he is five brothers and all of them are residing separately in different houses and had separate cultivation. This witness in his deposition has told about the location of the houses of the accused and the deceased. He deposed that Ram Acchaiber, brother of Ram Hirday, was having a single barrel licensed gun at the time of occurrence. Mahesh Narain is his (Bhawani Sevak) elder brother. In 1977 his brother Mahesh Narain had filed a complaint against 23 persons including the present accused persons, namely Ram Hirday, Shiva Ram and Gur Prasad, which ended in acquittal on 20.06.1977. Accused persons harbour enmity on account of that criminal litigation. He further deposed that on

13.03.1978, his brother Mahesh Narain was assaulted by Ram Hirday and a report to this effect was lodged by Mahesh Narain at the police station. He further deposed that on 14.03.1978, in the morning Mahesh Narain had gone to Sultanpur to get an x-ray done of the injuries received by him. Since Mahesh Narain was living all alone at this house, he had asked Tribhuwan Dutt (deceased) to look after his cattle. He further deposed that on 14.03.1978 at about 1:00 PM, he was sitting at his door and his brother Tribhuwan Dutt (deceased) had gone to the house of Mahesh Narain at about 12:30 noon to look after the cattle. He heard the abuses coming from the house of Mahesh Narain. He along with Raj Narain and Bhawani Prasad proceeded towards the house of Mahesh Narain and on reaching in front of the house of Jagjiwan, he saw that accused Ram Hirday was armed with a gun and Shiva Ram and Gur Prasad were carrying lathis. Hot talks were going on between Ram Hirday and Tribhuwan Dutt (deceased). There was distance of about 16-17 paces between Ram Hirday and deceased-Tribhuwan Dutt. After exchange of words, Ram Hirday came near the deceased and opened fire causing injury over the right axilla as a result thereof Tribhuwan Dutt fell down. Jagram and Ram Murat reached there and scolded the accused persons. Report of the incident was lodged by PW-1, Bhawani Sevak at police station, Musafirkhana Ext. Ka-1. Thereafter, he took his brother to the hospital at Musafirkhana. This witness further deposed that thereafter, his brother was sent to Sadar Hospital, Sultanpur for treatment and thereafter shifted to Military Command Hospital, Lucknow where he succumbed to the injuries on 21.03.1978.

19. PW-2, ASI Kandhya Singh in his examination-in-chief deposed that on 14.03.1978, he was posted at police station Musafirkhana as Head Muharrir. On that date, he prepared a Chik Report Ext. Ka-1 at 03:05 PM, on the basis of which a case was registered.

20. PW-3, Dr. Mohd Taufiq had examined the injuries of the injured, the details of which have already been given above.

21. PW-4, Jag Ram, who claims himself to be the eyewitness of the occurrence, in his examination-in-chief deposed that on the date of occurrence at about 12:00 in the noon, he was present at his door which is towards the south of the house of Tribhuwan (deceased). He saw Tribhuwan (deceased) going through the public way to the house of Mahesh Narain. After sometime accused Ram Hirday armed with gun and accused Shiva Ram and Gur Prasad armed with lathis reached near the wall of the house of Mahesh Narain which is on the public way. He further deposed that Ram Hirday started abusing Tribhuwan Dutt. Bhawani Sewak and others also reached there. Tribhuwan Dutt (deceased) also came on the public way. On the exhortation of Ram Hirday to kill Tribhuwan Dutt, Shiva Ram and Gur Prasad proceeded further. At the same time Ram Hirday fired at the deceased, due to which he fell down. Blood had also oozed at the spot. The bloodstained and plain earth was taken into possession by the Sub-Inspector in his presence, memo whereof was prepared Ext Ka-5 on which he put his thumb impression.

22. PW-5, Ram Murat, another eyewitness of the occurrence deposed that about two years ago at about 01:00 PM, he was taking bath at the well situated at the door of Mahesh Narain. Tribhuwan Dutt (deceased) also reached there and started feeding the cattle. However, he denied to have seen anyone or abusing anyone. He also deposed that he had not seen anyone firing at Tribhuwan Dutt.

23. On this statement, PW-5, Ram Murat has been declared hostile and prosecution was permitted to cross-examine him.

24. PW-6, Mahesh Narain, is not an eyewitness of the occurrence. He deposed about his enmity with Ram Hirday and others. He further deposed that he filed a complaint against Ram Hirday and others which ended in acquittal on 20.06.1977. He also stated that he was again beaten by Ram Hirday by lathi and he had lodged a report, the copy whereof is Ext. Ka-6. He is living all alone in his house because his wife had died and his son was living with his family at Patiala. On 14.03.1978, he went to Sultanpur to get the x-ray done of his injuries and asked Tribhuwan Dutt to look after his cattle in his absence. He came back in the evening and came to know about the occurrence.

25. PW-7, Dr. Virendra Bahadur had conducted autopsy on the cadaver and his deposition has already been discussed above.

26. PW-8, Bodh Ram in his examination-in-chief deposed that on 21.3.1978, he was posted at police station Cantt, Lucknow. Inquest Ext. Ka-8 was prepared in his presence by SI R.P. Dohray. He had also taken the dead body along with relevant documents for post mortem examination.

27. PW-9, Ram Lal, an employee of Military Hospital, Lucknow, is also a witness of the inquest, which was prepared by the police personnel.

28. PW-10, Major S.K. Jai Puriya, was posted at Command Hospital Lucknow on 20.03.1978 for Special Surgical Training. He deposed about the steps taken by him during the admission of the deceased.

29. PW-11, SI Radhey Shyam Tewari was the first investigating officer of the case, whose evidence has already been discussed above.

30. After the closure of the prosecution evidence, the statements of the accused-appellants were recorded under Section 313 Cr.P.C., who denied the charges levelled against them and stated that they have been dragged in the present case on account of previous enmity and claimed to be tried.

31. Learned Additional Sessions Judge, Sultanpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

32. Hence, this appeal.

Submissions on behalf of the appellant

33. Shri Shashwat Shukla, learned counsel for the appellant-Gur Prasad submits that only surviving appellant Gur Prasad has been convicted with the aid of Section 34 IPC and no overt act has been assigned to him. He was shown to have armed with lathi, but neither any witness has

stated that Gur Prasad assaulted the deceased with lathi nor PW-3, Dr. Mohammad Taufiq, who has examined the injured at Musafirkhana nor PW-7 Virendra Bahadur, who conducted pos-mortem examination on the body of the deceased found any injury caused by lathi. It is pointed out that Section 34 IPC requires that all accused persons share a common intention and participate in the criminal act.

34. Shri Shashwat Shukla further pointed out that for conviction under Section 34 IPC, the prosecution must prove a pre-arranged plan or a meeting of minds, which is missing in this case. He submits that merely being present at the scene of occurrence does not prove common intention to commit the murder. In support of his case, learned counsel for the appellant has placed reliance upon the judgement o Hon'ble Supreme Court in Constable **Surendra Singh and another Vs. State of Uttrakhand** (2025 INSC 114).

Submissions on behalf of State

35. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate-Ist representing the State submits that the appellant Gur Prasad was present at the place of occurrence armed with lathi and, therefore, he is liable for his conviction under section 302/34 IPC.

Analysis and conclusion

36. Heard learned counsel for the appellant and learned Additional Government Advocate representing the State and perused the record of the case.
37. To invoke Section 34 IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:- (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention.

38. The earliest judgement on the point is **Mahbub Shah Vs. Emperor, AIR** 1945 PC 118, wherein it was held as under:-

"Section 34 IPC lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all" nor does it say "an intention common to all". Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 IPC successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships

that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.″

39. In **Gadhdhar Chandra Vs State of Wet Bengal,** (2022) 6 SCC 576, Hon′ble Supreme Court while upsetting the judgement of the High Court and the trial Court convicting the appellant with the aid of Section 34 IPC, held as under:

"As consistently held by this Court, common intention contemplated by Section 34 of IPC pre-supposes prior concert. It requires meeting of minds. It requires a pre-arranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. In the present case the non-examination of two crucial eyewitnesses makes the prosecution case about the existence of a prior concert and pre-arranged plan extremely doubtful.″

40.. **Constable 907 Suendra Singh and another Vs. State of Uttrakhand, (2025)5 SCC 433**, was a case in which on the basis of secret information about smuggling of liquor in a Maruti Car, Head Constable along with appellants three Constables set out in their Indica Car to intercept the Maruti Car. In order to stop the Maruti Car, the Head Constable fired a single shot from his revolver, which hit the wife of the driver of the Maruti Car, who was seated in the front seat in her temporal region, resulting in her death. The Trial Court convicted and sentenced the Head Constable who fired from his revolver under Section 302 IPC and 27(1) of the Arms Act, but all the three Constables acquitted by the trial Court. In appeal, acquittal of all the three constables were set aside by the High Court by applying Section 34 IPC against them. Hon′ble Supreme Court while upsetting the judgement of the High Court held as under″

"*27. Upon consideration of these factors, the lerned trial Judge came to a conclusion that even if it was assumed that the remaining three accused had accompanied accused-Jagdish Singh, there was no evidence to come to a conclusion that accused No. 2, 3 and 4 (appellants herein), who were in car with accused-Jagdish Singh had shared a common intention with him to fire upon or to kill the deceased.*

28. The learned trial Judge, therefore, found that the prosecution had failed to prove the mental involvement of accused No. 2, 3 and 4 (the appellants herein) who were in car with accused-Jagdish Singh beyond the shadow of reasonable doubt.

29. However, this well-reasoned finding of the learned trial court has been upset by the High Court on the ground that the remaining three accused were sitting in the same vehicle along with accused-Jagdish Kumar was sufficient to convict them with the aid of Section 34 IPC.

30. By now it is settled principle of law that for convicting the accused with the aid of Section 34 IPC, the prosecution must establish prior meeting of minds. It must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that criminal act has been done in furtherance of the common intention of all the accused."

41. In view of the aforesaid legal position enunciated by Hon'ble Supreme Court, this Court will now consider whether In the facts and circumstances of the case, the learned Trial Court was right in reaching the conclusion that the appellants acted in furtherance of common intention in committing murder of Tribhuwan Dutt and in attributing constructive liability to the appellants while convicting them under Section 302 read with Section 34 IPC.

42. The first information report was lodged by PW-1, Bhawani Sevak, who is the brother of the deceased with the allegations inter alia that on the date of occurrence when he was sitting along with his brother Raj Narain and Bhawani Prasad was standing at their door, Ram Hirday armed with gun, Gur Prasad and Shiva Ram carrying lathi surrounded his brother and Ram Hirday fired at his brother Tribhuwan Dutt, due to which he got injured and fell down. The first informant in his deposition has also stated that Ram Hirday was armed with gun, whereas Gur Prasad and Shiva Ram were carrying lathis. Ram Hirday fired at his brother Tribhuwan Dutt.

43. PW-4, Jag Ram, who also claimed himself to be the eyewitness of the case, in his deposition has stated that when he reached at the place of occurrence accused Ram Hirday exhorted that Tribhuwan Dutt be killed. Shiva Ram and Gur Prasad proceeded towards Tribhuwan Dutt with lathis in their hands. At the same time, Ram Hirday fired at Tribhuwan.

44. PW-5, Ram Murat, who was the witness of the case, did not support the prosecution case and turned hostile.

45. Both the eyewitnesses namely PW-1, Bhawani Sevak and PW-4, Jag Ram in their deposition has only stated that present appellant Gur Prasad and Shiva Ram (now dead) were only standing at the place of occurrence having lathi. There is no whisper in the evidence of any of the prosecution witnesses assigning any role to the present appellant Gur Prasad. Moreover, role of exhortation and firing both have been assigned to Ram Hirday, (whose appeal has been disposed of as abated) by the prosecution witnesses and no role has been assigned to the present appellant Gur Prasad, except of standing at the place of occurrence with lathi.

46. In view of the above, we are of the view that the prosecution has failed to establish the guilt of the appellant-Gur Prasad with the aid of Section 34 IPC.

47. Accordingly, the appeal is allowed. The order dated 18.03.1981 passed by the Additional Sessions Judge, Sultanpur in ST No. 78 of 1979 convicting and sentencing the appellant Gur Prasad to life imprisonment under Section 302/34 IPC is set aside.

48. The appellant-Gur Prasad is on bail. His bail bond is cancelled and sureties are discharged.

49. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 2 ILRA 1778
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.02.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1001290 of 2005

Ramnath Singh **...Petitioner**
Versus
Lal Sahab Singh & Anr. **...Respondents**

ISSUE FOR CONSIDERATION

Whether an order passed in mutation proceedings without notice to the recorded tenure holder, resulting in deletion of his name in violation of principles of natural justice, can be sustained; and whether such order is amenable to challenge under Article 226.

HEADNOTE

Constitution of India – Art. 226 – U.P. Land Revenue Act – Mutation proceedings – Principles of natural justice – Deletion of name of recorded tenure holder without notice – Maintainability of writ petition.

Held: Petitioner's name was mutated in the revenue records on 30.06.1998 and he came into possession of the bhumidhari land - Such entry remained operative for several years and was not challenged within reasonable time - Subsequent mutation proceedings in the year 2002 conducted behind the back of the petitioner without issuing notice or impleading him despite he being the recorded tenure holder - Tehsildar allowed the mutation application without recording the mandatory statement of the Lekhpal and without examining whether the applicant had any subsisting right and the order was passed in a mechanical manner in violation of statutory requirements – Sub-Divisional Officer rightly set aside the mutation order and remanded the matter for fresh consideration after affording opportunity of hearing to both sides – Revisional authority, despite noticing that no notice was served upon the petitioner, allowed the revision on misconception of law and facts and failed to appreciate that any order adversely affecting the rights of a recorded tenure holder without hearing him is void ab initio – Impugned order resulted in serious miscarriage of justice by depriving the petitioner of his recorded rights and possession without due process of law – Rule of alternative remedy is a rule of discretion and does not operate as a bar where the impugned order is without jurisdiction or has been passed in breach of fundamental procedural safeguards – Writ petition held to be maintainable – Impugned order set aside and order of remand restored. (Paras 46, 47, 48, 50) **(E-5)**

CASE LAW CITED

Jagdish Narayan Tondon and 3 others, Civil Revision No. 95 of 2017, 20.04.2017 ;
Videocon Appliances Ltd. v. Maker Chambers V Premises Co-op. Society, 2006 (1) BOMCR 6;
Satyadhyan Ghosal v. Smt. Deorjin Debi, AIR 1960 SC 941;
A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506;

M/s Radha Krishan Industries v. State of Himachal Pradesh, 2021 SCC OnLine SC 334;
British India Steam Navigation Co. Ltd. v. Jasjit Singh, AIR 1964 SC 1451;
Pramod Kumar v. Sub-Divisional Officer, Khaga, 1999 (90) RD 649;
Kali Shanker Dwivedi v. Board of Revenue, 2000 (18) LCD 1401;
Gudiya v. State of U.P., 2015 (33) LCD 1303;
Shiv Raj Gupta v. Board of Revenue, 1989 (15) ALR 30 – referred to.

List of Acts

U.P. Land Revenue Act;
Constitution of India.

List of Keyword

Mutation proceedings; Recorded tenure holder; Deletion of name; No notice; Principles of natural justice; Void order; Revisional jurisdiction; Misconception of law; Mechanical order; Mandatory procedure; Lekhpal statement; Alternative remedy; Maintainability of writ petition; Miscarriage of justice; Due process of law.

CASE ARISING FROM

Order dated 15.02.2005 passed by the Additional Commissioner in Civil Revision No. 591/281/198 of 2003-05.

Appearances for Parties

Advs For Petitioner: Girish Chandra Sinha, Kuldeep Kumar Srivastava, Praveen Kumar Tripathi.

Advs For Respondents: C.S.C., A.S. Chaudhary, Prabhakar Vardhan Chaudhary.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri G.C. Sinha, learned counsel for the petitioner, Sri P.V. Chaudhary, learned counsel for respondent No.1 and Sri Devesh Mishra, learned Additional CSC for respondent No.2.

2. The present writ petition has been filed challenging the impugned judgment and order dated 15.02.2005 passed by respondent No.2 in Civil Revision No.591/281/198 of 2003- 05 contained as Annexure NO.1 to the writ petition.

3. Factual matrix of the case is that for the purpose of clarifying the fact the following pedigree is required to be produced hereinbelow:

Narayan Singh	Arjun Singh Gaya Din Singh Bhagwati Singh
Gaya Din Singh	Ram Nath (Petitioner) Ram Lakhan - Phoola Devi
Bhagwati Singh	Amar Nath Singh
Amar Nath Singh	Ram Kuber Ram Singh

	Lal Sahab Singh

4. The above referred Ram Lakhan died on 16.01.1998 and has left his married daughter Phoola Devi to be his only heir (in normal course of Hindu Law) but as per the provisions of Zamindari Abolition Act, the petitioner being the real brother of late Ram Lakhan Singh has inherited the Bhumidhari Property of the said Ram Lakhan Singh and his name accordingly mutated in the revenue records on 30.06.1998.

5. The petitioner on the basis of inheritance and order of mutation took possession over the Bhumidhari lands of the deceased ram Lakhan Singh. The opposite party no.1 has nothing to do with the property of the late Ram Lakhan Singh but he misled Smt. Phoola Devi, the daughter of Ram Lakhan Singh and obtained a general power of attorney from her.

6. The opposite party no.1 who had obtained a power of attorney from Smt. Phoola Devi by misleading her, prepared a fake will deed of Shri Ram Lakhan Singh dated 14.01.1998 in which it has been mentioned that Shri Ram Lakhan Singh wants to inherit all of his property in favour of his daughter Smt. Phoola Devi.

7. It is pertinent to mention here that the said will deed was written by one Shyam Sunder Pandey and opposite party no.1 was one of the witness on the said will deed.

8. On the basis of the forged will deed an objection has been filed after 3 years in the name of Smt. Phoola Devi against the mutation already done in favour of the petitioner.

9. The opposite party no.1 immediately after filing the objection on behalf of Smt. Phoola Devi, when realized that Smt. Phoola Devi will not support him for the fraud committed by him, he immediately prepared another will of Ram Lakhan Singh dated 15.01.1998 in his own favour and what is important in this reference is that this will deed was also written by some person i.e. Shyam Sunder Pandey.

10. The opposite party no.1 on the basis of new will deed filed an application for mutation in the court of Tahsildar, Lalganj, District Pratapgarh on 05.03.2002 for substitution of his name in the place of deceased Ram Lakhan. It is pertinent to mention here at this stage that at the time of moving application for mutation by opposite party no.1 the name of Ram Lakhan Singh was not existing on record and the name of the petitioner was already being mutated but opposite party no.1 has deliberately intentionally concealed this fact from the court and not impleaded the petitioner in that case.

11. The Tahsildar Lalganj has not recorded the statement of Lekhpal which is mandatory in law for making an order for mutation, summarily allowed the application for mutation of Ram Lakhan and passed an order on 16.8.2002, by which he has directed the name of opposite party no.1 to be mutated at the place of deceased Ram Lakhan Singh. (However, the name of Ram Lakhan Singh was nowhere in record) and an order of mutation of the name of the petitioner have already been mutated 4 years ago.

12. On the basis of said mutation order, the name of the petitioner has been deleted from the revenue records (however, there is no such order for deletion of the name of the petitioner) and when this fact came into knowledge of the petitioner, he preferred an appeal before the court of Sub Divisional Officer, Lalganj, under Section 210 of the Land Revenue Act against the judgment and order passed by the Tahsildar, Lalganj.

13. The appeal was registered at case No. 14 'Ram Nath Singh Versus Lal Sahab and the Sub Divisional Officer, Lalganj, Pratapgarh after hearing the counsel of both the parties, has quashed the order of Tahsildar Lalganj and recorded a finding that no order of mutation can be passed without affording opportunity to the petitioner whose name was already entered in the revenue records and the appellate court has remanded the matter back to the court of Tahsildar Lalganj, District Pratapgarh with a direction that he should dispose of the application for mutation filed by Lal Sahab after giving both of the partiers a reasonable opportunity of being heard.

14. The order passed by the Sub Divisional Officer, Lalganj, was legal and acquitable order and neither of the parties were adversely affected by that order but the malicious opposite party no.1 who just want to grab the property of the late Ram Lakhan Singh had filed a revision before the court of opposite party no.2 against the order of Sub Divisional Officer, Lalganj, District Pratapgarh.

15. The Additional Commissioner, Allahabad, before whom the revision was transferred for disposal, has heard the counsel for both of the parties and has found that no notice was ever served to the petitioner in the case of mutation filed by opposite party no.1 but the court has wrongly allowed the revision on misconception of law and fact.

16. The said order dated 15.02.2005 is impugned order in this writ petition and as the judgment and order passed by the opp. party no.2 was initially illegal and against the proposition of law. The opposite party No.1 who was absconding is is informed in the court to be no more alive and one Ram Singh is claiming to be his elder brother and legal representative, therefore, the said Ram Singh is impleaded as Opposite party No.1/1.

17. By way of the impugned order the opposite party has deprived the petitioner to protect his right and title which was over thrown from the revenue records without any order against him and having no other efficacious and alternative remedy the petitioner has filed the present writ petition before this Court.

18. Submission of learned counsel for the petitioner is that the order dated 15.02.2005 passed by opposite party No.2 in Revision No. 591/281/198 is wholly illegal, arbitrary, and contrary to settled principles of law. The said order has been passed without proper appreciation of facts and evidence on record and deserves to be quashed.

19. He further submitted that the petitioner is the lawful successor and recorded tenure holder. It is submitted that Ram Lakhan Singh, brother of the petitioner, expired on 16.01.1998 leaving behind only a married daughter, Smt. Phoola Devi. Under the provisions of the Zamindari Abolition Act, the petitioner, being the real brother, inherited the bhumidhari property of the

deceased. Consequently, the petitioner's name was duly mutated in the revenue records on 30.06.1998 and he has since been in lawful possession of the land.

20. He next submitted that the mutation in favour of the petitioner was carried out in accordance with law after due verification and has remained unchallenged for several years. The petitioner took possession on the basis of the said mutation and has been cultivating and enjoying the property peacefully.

21. It is submitted that opposite party No.1 has no right, title, or interest in the property of late Ram Lakhan Singh. He is a complete stranger to the family and has no legal relationship with the deceased.

22. He further submitted that opposite party No.1 misled Smt. Phoola Devi and fraudulently obtained a General Power of Attorney from her. On the basis of the said document, he prepared forged and fabricated will deeds in order to usurp the property. It is submitted that two alleged wills dated 14.01.1998 and 15.01.1998 have been brought on record by opposite party No.1. Both the wills were prepared by the same scribe, namely Shyam Sunder Pandey and opposite party No.1 himself is a witness to one of them. The preparation of multiple wills in close proximity of time and the active involvement of opposite party No.1 clearly establishes fraud, manipulation, and fabrication.

23. He submitted that on the basis of the forged will, objections were filed after about three years against the mutation already standing in favour of the petitioner. The delay itself shows malafide intention and abuse of process of law.

24. He submitted that opposite party No.1 deliberately concealed the fact that the petitioner's name was already recorded in the revenue records and that he was in possession of the land. He also failed to implead the petitioner in the mutation proceedings, thereby violating principles of natural justice.

25. It is submitted that the Tahsildar, Lalganj, without recording the mandatory statement of the Lekhpal and without issuing notice to the petitioner, illegally allowed the mutation application on 16.08.2002. The said order was passed mechanically and in complete disregard of statutory provisions.

26. He further submitted that on the basis of the illegal mutation order, the petitioner's name was deleted from the revenue records without any specific order for deletion and without affording him an opportunity of hearing, which is against law.

27. He next submitted that the Sub-Divisional Officer, Lalganj, after hearing both parties, rightly quashed the order of the Tehsildar and held that no mutation order could be passed without hearing the petitioner. The matter was remanded for fresh decision in accordance with law.

28. He submitted that despite the lawful order of the Sub-Divisional Officer, opposite party No.1 filed a revision only with the intention to grab the property and prolong the litigation.

Although the Additional Commissioner found that no notice was served upon the petitioner in mutation proceedings, he wrongly allowed the revision on misconception of law and facts, thereby causing serious miscarriage of justice.

29. He further submitted that the impugned order has been passed without granting proper opportunity of hearing to the petitioner and without considering his lawful rights, which amounts to violation of natural justice. Due to the impugned order, the petitioner has been unlawfully deprived of his right, title and possession over the property without any valid judicial determination. In support of his submissions, he placed reliance upon following judgments:

a) Jagdish Narayan Tondon and 3 others; Civil Revision No.95 of 2017 decided on 20.04.2017

b) Videocon Appliances Ltd. Vs. Maker chambers V Premises Co-Op. Socy.; 2006 (1) BOMCR6

c) Satyadhyan Ghosal Vs. Smt. Deorjin Debi; AIR 1960 Supreme Court 941

30. On the other hand, learned counsel for respondent No.1 as well as learned Additional CSC for respondent No.2 - State at the very outset submitted that the present writ petition is not maintainable in law, as the dispute pertains to mutation proceedings under Section 34 of the U.P. Land Revenue Act. It is well settled that mutation proceedings are fiscal in nature and do not determine title. Therefore, invocation of the extraordinary jurisdiction of this Hon′ble Court under Article 226 of the Constitution of India is wholly misconceived. The writ petition is liable to be dismissed with costs on this ground alone.

31. They next submitted that the order dated 15.02.2005 passed by the competent authority is just, proper, legal and in accordance with law. The said order does not suffer from any illegality, arbitrariness or procedural irregularity and, therefore, does not call for any interference by this Hon′ble Court in exercise of its extraordinary jurisdiction.

32. They further submitted that the petitioner has deliberately suppressed and distorted the correct pedigree of the parties with an intention to mislead this Hon′ble Court. The respondent has placed on record the complete and correct genealogy along with counter affidavit showing the lawful succession. The petitioner has failed to disclose material facts and has approached this Court with unclean hands.

33. It is submitted that Ram Lakhan Singh expired on 16.01.1998. On the date of his death, succession was governed by Section 171 of the U.P. Zamindari Abolition and Land Reforms Act, as amended w.e.f. 19.09.1997. In view of the amended provision, the married daughter, namely Smt. Phoola Devi became the preferential heir and was legally entitled to succeed to the property of her father in preference to the brother of the deceased.

34. They submitted that the entry dated 30.06.1998, whereby the petitioner′s name was recorded, was made in collusion with the Supervisor Kanoongo and the Prescribed Authority. The said entry was illegal and void, as the petitioner was not an heir in the presence of the lawful daughter. The petitioner never came in lawful possession of the property.

35. They submitted that the allegations that the respondent misled Smt. Phoola Devi or fabricated any will are wholly false and baseless. Smt. Phoola Devi herself moved the mutation application on the basis of the will and other relevant documents. The respondents played no role in manipulating the proceedings.

36. It is submitted that the Will dated 15.01.1998 was executed by late Ram Lakhan Singh voluntarily, in sound disposing state of mind and without any pressure or coercion. The same is genuine, valid and legally enforceable. The petitioner has failed to produce any cogent material to challenge the authenticity of the said Will.

37. The petitioner, in connivance with revenue officials, managed to get his name recorded with undue haste on 30.06.1998, and the corresponding entries in the Khatauni were also made on the same day, which itself reflects mala fide intention and fraudulent conduct. Such hurried proceedings cast serious doubt on the legality and genuineness of the petitioner′s claim.

38. They further submitted that the orders passed by the Tehsildar and other revenue authorities are lawful and based on proper appreciation of facts and evidence. The authorities rightly rectified the fraudulent entry and restored the lawful position. The criticism levelled by the petitioner against these orders is unwarranted and misconceived.

39. They next submitted that though the respondent filed an appeal, it is submitted that the order passed by the Sub-Divisional Officer was improper and illegal, as it failed to consider the fraudulent manner in which the petitioner′s name was recorded. A person who himself commits fraud is not entitled to equitable relief or prior hearing for rectification of such fraud.

40. They submitted that the present writ petition has been filed with an oblique motive to grab the property of late Ram Lakhan Singh by abusing the process of law. The petitioner has suppressed material facts, made false allegations and indulged in forum shopping. Such conduct disentitles him to any discretionary relief under Article 226.

41. They pointed out that it is well settled that this Hon′ble Court does not act as a court of appeal over factual findings in mutation matters. In absence of any patent illegality, perversity or violation of natural justice, no interference is warranted. The present case does not disclose any such exceptional circumstances.

42. They also pointed out that the dispute relates to proceedings under Section 34 of the U.P. Land Revenue Act, and therefore, the writ petition is absolutely not maintainable. The petitioner has an alternative statutory remedy, which he has failed to pursue effectively. They submitted that in view of the facts and circumstances of the case, the writ petition is devoid of merit and is liable to be dismissed with exemplary costs for wasting valuable judicial time. In support of submissions, learned counsel for respondent No.1 placed reliance upon following judgments:

a) A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani; 1961 AIR Supreme Court 1506.

b) M/s Radha Krishan Industries Vs. State of Himachal Pradesh (SC); 2021 SCC Online SC 334.

c) British India Steam Navigation Co. Ltd. Vs. Jasjit Singh (SC); 1964 AIR Supreme Court 1451.

d) Pramod Kumar Vs. Sub - Divisional Officer, Khaga (Allahabad((DB) ; 1999 (90) RD 649.

e) Kali Shanker Dwivedi Vs. Board of Revenue (Allahabad) (Lucknow Bench); 2000 (18) LCD 1401

f) Gudiya (Obje. Filed) Vs. State of U.P. thr. P.S.R.L. (Allahabad) (Lucknow Bench); 2015 (33) LCD 1303.

g) Shiv Raj Gupta Vs. Board of Revenue, Uttar Pradesh, Lucknow (Allahabad); 1989 (15) ALR 30.

43. 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 parties.

44. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the parties are being quoted below:

Judgments relied upon by learned counsel for the petitioner:

a) Jagdish Narayan Tondon (Supra):

"8. Due to some contradictory observations of Supreme Court in Qama-ruddin v. Rasul Baksh,5 the matter was again referred for consideration of Full Bench of this Court in Ganag Saran v. Civil Judge.6 The Full Bench after considering entire controversy afresh upheld and followed Full Bench's decisions in Har Prasad Singh v. Ram Swarup,7 and Jupiter Chit Fund (Pvt.) Ltd. v. Dwarika Dinesh Dayal8, and Supreme Court's decisions in Vishesh Kumar v. Shanti Prasad,9 and Vishnu Awatar v. Shiv Autar,10 and held that revision under section 115, C.P.C. is not maintainable against the order of Appellate or Revisional Court.

14. In view of the aforesaid discussions, do not find any reason to doubt correctness of the decisions of three Full Benches of this Court as well as Supreme Court, holding that the words "or other proceedings" have to be read ejus-dem getieris with the words "original suits". They will not include appeals or revisions. Present revision has been filed from the order passed by Appellate Court rejecting amendment application, filed in appeal as such the revision is not maintainable under section 115, C.P.C. as amended in Uttar Pradesh."

b) Videocon Appliances Ltd. (Supra):

"5. Insofar as the maintainability of second revision is concerned, the learned counsel appearing for the petitioner has contended that in the light of the judgment of the Supreme Court in the case of Ishwar Singh v. State of Rajasthan, reported in (2005) 2 SCC 334 that the second revision is maintainable. It has been contended that the Hon'ble Supreme Court was considering the identical provisions of the Rajasthan Co-operative Societies Act, 1965 which is section 128 of the said Act and has held that the power conferred on the Joint Registrar and the State Government

is concurrent and not alternative and, therefore, a second revisionary power can be exercised under the very same provision of revision under section 128 of the Rajasthan Co-operative Societies Act, 1965. The learned counsel has particularly relied upon paras 13 and 14 of the said judgment to contend that the second revisionary power can be made applicable. The learned counsel for the petitioner has also contended that in light of the recent judgment of the Supreme Court in the case of Ishwar Singh v. State of Rajasthan (supra) all the earlier judgments of this Court which have taken a consistent view that under section 154 of the Maharashtra Cooperative Societies Act, a second revision is not available and the power of second revision cannot be exercised by the State Government are impliedly overruled and thus cannot be considered. The respondent society on the other hand has brought to my attention the judgments of the learned Single Judges of this Court, particularly the unreported judgment of Lodha, J. in W.P. No. 4180 of 1998 dated 18-2-1999, the judgment in the case of Bhupendra Villa Premises Co-operative Society Ltd. v. Chandrakant G. Shah, reported in 2007 (2) Mh.L.J. 834, a judgment of another learned Single Judge in the case of Shri Ramesh T. Gopalani v. The Janata Sahakari Bank Ltd., reported in 2000 (3) Mh.L.J. 115 : 2000 (3) BCR 474, a judgment of another learned single Judge in the case of Virendra Bhanji Rathod v. Anand Vihar Co-operative Housing Society Ltd., Mumbai, reported in 2004 (1) Mh.L.J. 656 and lastly the judgment of another learned Single Judge in the case of Dadar Avanti Co-operative Housing Society Ltd. v. State of Maharashtra, reported in 2004 (5) Mh.L.J. 222 : 2005 (2) Bom.C.R. 604. Each of the aforesaid judgment have taken a consistent view that the power of revision under section 154 of the Maharashtra Co-operative Societies Act, 1960 cannot be exercised twice over and once the power having been exercised by the Registrar or the Secretary, the said power is exhausted and revision against the order of Registrar in exercise of revisionary power under section 154 is not maintainable before the Secretary and/or Minister of Co-operation of the State of Maharashtra under very same provision of law. The view has been consistently taken that the power of revision can only be exercised once and cannot be exercised twice over under section 154 of the Act. However, the learned counsel for the petitioner has vehemently contended that the aforesaid views are all impliedly overruled by the recent judgment of the Apex Court in the case of Ishwar Singh v. State of Rajasthan (supra). I have considered the judgment of the Supreme Court in case of Ishwar Singh v. State of Rajasthan (supra). Firstly, in my opinion the said judgment has no application because the provisions of section 128 of the Rajasthan Co-operative Societies Act, 1965 is in pari materia different to the provisions of the present case. The power under section 128 is simultaneously conferred on the Government and the Registrar because the opening words of the provisions of section 128 reads as under:"

"The State Government and the Registrar may call for and examine the record of any enquiry or proceedings of any other matter."

In contrast to the same, the provisions of section 154 does not give a concurrent jurisdiction to the Registrar and the State Government because the words prescribed thereunder are "the State Government or the Registrar may call for and examine the records."The wording in that section by substitution of the word "or" in place of "and" is materially significant because in case where the word "and" is used is a conjoint power conferred both on the Registrar as well as the Government whereas the word "or" indicates that it is the power conferred on "either" or "or" in such cases the power cannot be exercised by both but it can be exercised by one of the two and in that view of the matter, I am not inclined to accept the contention that by virtue of the judgment of the Apex Court in the case of Ishwar Singh v. State of Rajasthan (supra) all the learned Single Judges judgments of this Court interpreting the very section 154 are deemed to be impliedly

overruled. Thus, the contention that the order passed by the Secretary holding that the second revision is not maintainable is bad in law is rejected. The order passed by the Secretary holding that the second revision is not maintainable is upheld."

c) Satyadhyan Ghosal (Supra) :

16. It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the Supreme Court against an order of remand.

22. In our opinion the order of remand was an interlocutory judgment which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order. We hold therefore that the appellant is not precluded from raising before us the question that Section 28 of the original Thika Tenancy Act was not available to the tenants after the Thika Tenancy Amendment Act came into force. On this question we have already decided, as already indicated above, in Mahadeolal Kanodia case [(1960) 3 SCR 578] that Section 28 after its omission by the amending Act is not available in respect of proceedings pending on the date of the commencement of the Thika Tenancy Ordinance of 1952.

Judgments relied upon by learned counsel for the respondent No.1:

a) A.V. Venkateswaran, Collector of Customs, Bombay (Supra):

"8. The only point, therefore, requiring to be considered is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners. In the present case, he urged, the High Court in appeal had expressly dissented from the reasoning of the learned Single Judge as regards the lack of jurisdiction of the Customs officers to adjudicate regarding the item under which the article imported fell and the duty leviable thereon. Nor was there any complaint in this case that the order had been passed without an opportunity to the importer to be heard, so as to be in violation of the principles of natural justice. The learned Solicitor-General questioned the correctness of the reasoning of the learned Chief Justice in condoning the conduct of the respondent in not moving the Government in revision by taking into account the time that had elapsed between the date of the impugned order and that on which the appeal was heard. The submission was that if this were a proper test, the Rule as to a petitioner

under Article 226 having to exhaust his remedies before he approached the Court would be practically a dead letter because in most cases by the date the petition comes on for hearing, the time for appealing or for applying in revision to the departmental authorities would have lapsed.

9. We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the Rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a Rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases : In Union of India v. T.R. Varma [(1958) SCR 499 at pp. 503-504] Venkatarama Ayyar speaking for the Court said:

"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs". Vide also K.S. Rashid and Son v. Income Tax Investigation Commission. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."

There is no difference between the above and the formulation by Das, C.J., in State of Uttar Pradesh v. Mohammad Nooh [(1958) SCR 595 at pp. 605-607] where he observed;

"....It must be borne in mind that there is no Rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this Rule requiring the exhaustion of statutory remedies before the writ will be granted is a Rule of policy, convenience and discretion rather than a Rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added:

"It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari."

In the result this Court held that the existence of other legal remedies was not per se a bar to the issue of a writ of certiorari and that the Court was not bound to relegate the petitioner to the other legal remedies available to him."

b) M/s Radha Krishan Industries (Supra):

"27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy

before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion."

c) British India Steam Navigation Co. Ltd. (Supra):

"7. We have heard all these matters together because they raise the same question which was raised for our decision by the appellant in C.A. No. 770 of 1962 [Indo-China Steam Navigation Co. Ltd. v. Additional Collector of Customs, Calcutta(1964) 34 Comp. Cas. 435 (S.C.).] . If these matters had not been placed together for hearing along with the said civil appeal, we would not have entertained them, except C.A. No. 299 of 1963. This latter appeal has been brought against the decision of the Calcutta High Court and the only point which could have been argued by the appellant would be one of jurisdiction, since the appellant had moved the said High Court under article 226, and that too against the order of the Collector of Customs. But in regard to the other matters, the parties have come to this court directly against the orders of the Collector of Customs and this court generally does not entertain appeals against the orders passed by a Tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revisions have been pursued by the aggrieved party. We have already seen that, against the order of confiscation and fine passed by the Collector of Customs, an appeal is competent, and against the decision of the appellate authority, a revision also lies. That being so, we would have hesitated to entertain these appeals if each one of them had come separately for hearing before us. In fact, the question as to whether the writ jurisdiction of the High Court could be successfully invoked by a party immediately after an order is passed against him by the Collector of Customs under section 167(12A) and section 183, does not appear to have ben argued before the Calcutta High Court when it entertained the writ proceedings from which Appeal No. 299 of 1963 has been brought to this court. As was observed by this court in A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani [(1962) 1 S.C.R. 753.] the rule that a party who applies for the issue of a high prerogative writ should, before he approaches the court, have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the court to entertain the petition or to deal with it, but is a rule which courts have laid down for the exercise of their discretion. That is one aspect which has to be borne in mind in dealing with C.A. No. 299 of 1963, and the other writ petitions in this group."

d) Pramod Kumar Vs. Sub - Divisional Officer, Khaga (Supra):

"6. Apart from the aforesaid infirmities, we find substance in the submissions made by Sri H.R. Mishra, learned Standing Counsel, that this writ petition is not maintainable as it arises out of proceedings under the Land Revenue Act, which does not involve adjudication of right, title and interest of a party concerning the lands and the remedy, If at all, to an aggrieved person, is to file arevislon under Section 219 of the U.P. Land Revenue Act."

e) Kali Shanker Dwivedi (Supra):

"2. The matter pertains to mutation of agricultural land under Section 34 of the Land Revenue Act. A preliminary objection was raised to the effect that no writ petition lie in a case where the proceedings are not conclusive and can be decided by regular suit and that mutation proceedings being also of summary nature and do not decide the title of the parties, therefore, no writ petition lie under Article 226 of the Constitution of India. It was also opposed on the ground that since alternative remedy is available, therefore, the writ petition also does not lie in cases of

mutation proceedings. Learned counsel supported his argument with the case of Akhtar Hussain v. Board of Revenue [1987 RD 33.] , wherein it has been held that question of title is not conclusively decided in mutation proceedings and parties can get a judgment from appropriate court on question of their title over disputed property. The other case is that of Shiv Raj Gupta v. Board of Revenue U.P. [1989 RD 35.] , wherein it has been held that a writ petition under Article 226 of the Constitution of India is not maintainable challenging an order passed by revenue authorities in mutation proceedings under Land Revenue Act because the judgment and order passed by the revenue authorities in mutation proceedings are not conclusive because competent court in a regular suit for title can ignore the observations made by the revenue authorities in mutation proceedings. In the present case also it is not disputed that the order was passed in mutation proceedings under the Land Revenue Act. In view of the above citations the writ petition is not maintainable and is to be dismissed."

f) Gudiya (Obje. Filed) (Supra):

"2. Admittedly, in the present case, the proceeding arising out of section 34 of the U.P.L.R. Act an order 30.4.2003 has been passed, thereafter in a revision the order dated 10.12.2007 has been passed by Additional Commissioner, Lucknow Mandal, Lucknow, so taking into the said fact as well as the settled proposition of law that the proceedings under section 34 of the Land Revenue Act does not decide the right and title of the parties. The object of mutation proceedings is as to from whom the State has to recover the land revenue. It becomes immediately imperative to have got the name of some successor mutated in place of the deceased so that the land revenue can be recovered from him. The scope of these proceedings are not that any right or title of any body is sought to be decided.

3. Further, it is settled view of this Court that it should not interfere with the order issued by the authorities while deciding the proceedings under section 34 of the Land Revenue Act, as in the said proceedings the issue only in respect to record the name of tenure holder in the revenue record is under consideration. Such an entry does not ordinarily confer upon the person in whose favour it is made any title of property in question and his right is to be established as per the procedure provided under law (See Jaipal v. Board of Revenue, U.P., Allahabad, [1956 ALJ 807.] Smt. Lakhpati v. Board of Revenue, U.P. [1984 RD 378.] State of U.P. through Collector, Agra v. Board of Revenue at Lucknow, [1993 RD 206.] Shiv Raj Gupta v. Board of Revenue, U.P., Lucknokw, [1989 RD 35.] Pooran Singh v. Baord of Revenue, [2004 (1) AWC 853.] and Ram Kumar v. Board of Revenue U.P. Lucknow). [2003 (94) RD 73 (HC).]

4. For the foregoing reasons, the writ petition is dismissed, on the ground of availability of alternative statutory remedy under section 229-B of the U.P.Z.A. & L.R. Act."

g) Shiv Raj Gupta (Supra):

"3. The apprehension is unfounded as any observations made by the Board of Revenue while disposing of the impugned proceedings touching upon the title of the petitioner shall be subject to the decision by a court of competent jurisdiction. If, therefore, the petitioner files a suit he will not be in the slightest degree prejudiced by any finding or observation made by the Board Revenue.

4. With these observations the petition is dismissed without going into the merits of the petitioner's claim on the ground that the petitioner has an effective alternative remedy available by

way of a regular suit in the court of a competent jurisdiction. A copy of this order may be given to the learned counsel for the petitioner on payment of requisite charges within two days."

45. Having considered the rival submissions advanced by learned counsel for the parties, the pleadings on record and the authorities cited at the bar, this Court is of the considered opinion that the impugned judgment and order dated 15.02.2005 passed by respondent No.2 is unsustainable in law and liable to be set aside.

46. At the outset, it is evident from the record that after the death of Ram Lakhan Singh on 16.01.1998, the petitioner's name was duly mutated in the revenue records on 30.06.1998 in accordance with law and he came into possession of the bhumidhari land. This entry remained operative for several years and was not challenged within a reasonable time. The subsequent proceedings initiated at the instance of opposite party No.1 were conducted behind the back of the petitioner despite the fact that he was the recorded tenure holder. It is undisputed that no notice was issued to the petitioner, nor was he impleaded in the mutation proceedings which ultimately resulted in deletion of his name from the revenue records. Such an action strikes at the very root of the principles of natural justice.

47. The Tehsildar, Lalganj allowed the mutation application without recording the mandatory statement of the Lekhpal and without examining whether the applicant had any subsisting right to seek mutation when the name of the deceased was no longer on record. The order was, thus, passed in a mechanical manner and in flagrant violation of statutory requirements. The Sub-Divisional Officer, Lalganj rightly appreciated these infirmities and set aside the mutation order, remanding the matter for fresh consideration after affording opportunity to both sides. The said order was neither perverse nor illegal and, in fact, restored procedural fairness.

48. However, the revisional authority despite noticing that no notice had been served upon the petitioner, proceeded to allow the revision on a misconception of law and facts. The revisional court failed to appreciate that any order adversely affecting the rights of a recorded tenure holder passed without hearing him is void ab initio. The impugned order, therefore, has resulted in serious miscarriage of justice by depriving the petitioner of his recorded rights and possession without due process of law.

49. The judgments relied upon by learned counsel for the petitioner lend support to this conclusion. The principle emerging from those decisions is that revisional jurisdiction cannot be exercised in a manner that perpetuates illegality or defeats procedural safeguards. Further, an interlocutory or procedural order which causes prejudice to a party and has not attained finality can be questioned at a later stage. The reliance on precedents emphasizing the limited scope of revision and the impermissibility of entertaining successive or misconceived revisions reinforces the view that the revisional authority exceeded its jurisdiction while interfering with a well-reasoned remand order.

50. On the contrary, the authorities cited by learned counsel for respondent No.1 relating to non-maintainability of writ petition in mutation matters and availability of alternative remedies are clearly distinguishable. It is true that mutation proceedings are summary in nature and ordinarily do

not decide title; however, the present case does not merely concern a routine mutation dispute. The petitioner′s name, already recorded in the revenue records, was deleted without notice, without hearing and without any adjudication against him. Such an action constitutes a clear violation of natural justice and an arbitrary exercise of jurisdiction. The rule of exhaustion of alternative remedies is a rule of discretion and does not operate as an absolute bar where the impugned order is without jurisdiction or has been passed in breach of fundamental procedural safeguards.

51. Moreover, the allegation that the petitioner procured mutation by fraud remains unsubstantiated by any credible material. Conversely, the conduct attributed to opposite party No.1 setting up multiple wills within a short span, filing objections after considerable delay and pursuing mutation proceedings without impleading the recorded tenure holder casts serious doubt on the bona fides of his claim. The revisional authority failed to examine these aspects and instead upset a just and equitable order of remand.

52. In these circumstances, this Court is satisfied that the impugned revisional order has been passed on a patent misappreciation of law and facts and has resulted in manifest injustice. Allowing such an order to stand would amount to endorsing deprivation of property rights without due process, which is impermissible.

53. Accordingly, the writ petition succeeds and is **allowed**.

54. The impugned judgment and order dated 15.02.2005 passed by respondent No.2 in Civil Revision No. 591/281/198 of 2003-05 is hereby quashed.

55. The order of the Sub-Divisional Officer, Lalganj, Pratapgarh remanding the matter to the Tehsildar for fresh decision after affording opportunity of hearing to all concerned parties is restored.

56. The Tehsildar shall decide the mutation proceedings afresh strictly in accordance with law, after issuing notice to all affected parties and granting them full opportunity of hearing, expeditiously.
